

PLANNING COMMISSION  
August 23, 2023

Meeting Minutes

The Planning Commission of Monroe County conducted a hybrid virtual and in-person meeting on **Wednesday, August 23, 2023**, beginning at 10:00 a.m.

**CALL TO ORDER** by Chair Scarpelli

**PLEDGE OF ALLEGIANCE**

**ROLL CALL** by Ilze Aguila

**PLANNING COMMISSION MEMBERS**

Joe Scarpelli, Chair	Present
Ron Demes, Vice Chair	Present
George Neugent, Commissioner	Present
David Ritz, Commissioner	Present
Rosemary Thomas, Commissioner	Present
Douglas Pryor, Ex-Officio Member (MCSD)	Absent
Christina Gardner, Ex-Officio Member (NASKW)	Absent

**STAFF**

Emily Schemper, Senior Director of Planning and Environmental Resources  
Mike Roberts, Assistant Director of Environmental Resources  
Brad Stein, Development Review Manager  
Tiffany Stankiewicz, Development Administrator  
Devin Tolpin, Principal Planner  
Liz Lustberg, Senior Planner  
Peter Morris, Assistant County Attorney  
John Wolfe, Planning Commission Counsel  
Ilze Aguila, Planning Commission Supervisor

**COUNTY RESOLUTION 131-92 APPELLANT TO PROVIDE RECORD FOR APPEAL**

County Resolution 131-92 was read into the record by Mr. John Wolfe.

**SUBMISSION OF PROPERTY POSTING AFFIDAVITS AND PHOTOGRAPHS**

Ms. Ilze Aguila confirmed receipt of all necessary paperwork.

**SWEARING OF COUNTY STAFF**

County staff was sworn in by Mr. John Wolfe.

**CHANGES TO THE AGENDA**

Items 3 and 4 were read together. Item 6 is to be rescheduled.

## **DISCLOSURE OF EX PARTE COMMUNICATIONS**

None.

## **APPROVAL OF MINUTES**

**Motion: Commissioner Neugent made a motion to approve the July 25, 2023 meeting minutes after two noted corrections by Commissioner Demes. Commissioner Ritz seconded the motion. There was no opposition. The motion passed unanimously.**

## **MEETING**

### **AGENDA ITEMS**

**1. A PUBLIC HEARING TO CONSIDER AND FINALIZE THE RANKING OF APPLICATIONS IN THE DWELLING UNIT ALLOCATION SYSTEM FOR APRIL 13, 2023 THROUGH JULY 12, 2023, ROGO (Quarter 4, Year 31). ALLOCATION AWARDS WILL BE ALLOCATED FOR ALL UNINCORPORATED MONROE COUNTY. (FILE 2022-140)**

(10:02 a.m.) Ms. Tiffany Stankiewicz, Development Administrator, presented the staff report for the residential dwelling unit allocations for Lower and Upper Keys subareas and Big Pine and No Name Key subareas. The Planning Department is recommending approval of the following market rate rankings: Lower Keys applicants ranked 1 through 7 recommended for allocation awards; Big Pine/No Name applicant ranked 1, recommended for allocation award subject to mitigation availability at the time of permitting; Upper Keys applicants ranked 1 through 8 recommended for allocation awards. All other applications roll over to the next quarter.

There were no comments or questions by Commissioners. There was no public comment. Public comment was closed.

**Motion: Commissioner Neugent made a motion to approve. Commissioner Demes seconded the motion. There was no opposition. The motion passed unanimously.**

**2. AN ORDINANCE BY MONROE COUNTY BOARD OF COUNTY COMMISSIONERS ADOPTING AMENDMENTS TO MONROE COUNTY LAND DEVELOPMENT CODE AMENDING CHAPTER 122 FLOODPLAIN MANAGEMENT, SECTION 122-25(b)(1)b TO AMEND CHAPTER 122 FLOODPLAIN MANAGEMENT, SECTION 122-25(b)(1)b TO ALLOW FOR 299 SQUARE FEET OR LESS OF OPAQUE BREAKAWAY CONSTRUCTION FOR ENCLOSED SPACE BELOW ELEVATED STRUCTURES IN VE AND COASTAL A FLOOD ZONES; PROVIDING FOR SEVERABILITY; PROVIDING FOR APPLICABILITY; PROVIDING FOR REPEAL OF CONFLICTING PROVISIONS; PROVIDING FOR TRANSMITTAL TO THE STATE LAND PLANNING AGENCY AND THE SECRETARY OF STATE; PROVIDING FOR AMENDMENT TO AND INCORPORATION IN THE MONROE COUNTY LAND DEVELOPMENT CODE; PROVIDING FOR AN EFFECTIVE DATE. (FILE 2023-099)**

(10:04 a.m.) Ms. Emily Schemper, Senior Director of Planning and Environmental Resources presented the staff report. This is an amendment to the Flood Ordinance. In November, the Board adopted a new

Flood Plain Ordinance that made the County's ordinance consistent with the State's model ordinance and compliant with the National Flood Insurance Program. When this ordinance was reviewed later, people saw that the downstairs enclosures for the VE Zone had been changed. After going back and looking at the history behind the ordinance, staff was not completely sure why or whether it had been intentional, but in April the Board asked staff to process an amendment to put the VE Zone enclosures back to what previously was allowed which was not only screen and lattice downstairs enclosures below flood but also opaque breakaway walls. 122-25(c)(1)(b) in coastal high hazard areas Zone B and coastal A Zones, not more than 299 square feet may be permitted to be enclosed by breakaway walls of opaque material. Additional area may be enclosed with screening or open lattice. Essentially, it is back to how it was before November. There are other criteria in the building code that must be complied with but it is otherwise a fairly simple amendment. Ms. Schemper had also communicated with Florida Division of Emergency Management who tweaked the wording a bit. More extensive wording had gone to the DRC but Emergency Management said that wording wasn't needed, preferring the simple wording. This is what staff has up for recommendation.

Commissioner Thomas asked what material a breakaway wall is made of. Ms. Schemper stated she wasn't sure she could answer that. Chair Scarpelli responded that it could be block or wood, it just has to be engineered to break away under flood load but it can't break away under wind load. Typically, it's hollow masonry walls with no concrete and rebar. Chair Scarpelli confirmed that elevators were also allowed under homes in VE Zones. Ms. Schemper stated that was correct, adding that she had been told it was not necessary to have language about that in this section of the code. Mr. Rick Griffin and Mr. Troy Winterfield have said that, as of today, the elevator may be put under a house in a VE Zone but it does have to meet certain construction requirements. Commissioner Neugent asked what "opaque" meant, and Chair Scarpelli responded that it is a solid wall that can't be seen through. Ms. Schemper added that it is to distinguish between a screened or lattice enclosure.

There were no further questions or comments from the Commission. Chair Scarpelli asked for public comment. There was none. Public comment was closed.

**Motion: Commissioner Demes made a motion to approve. Commissioner Ritz seconded the motion. There was no opposition. The motion passed unanimously.**

Items 3 and 4 were read together.

**3. AN ORDINANCE BY THE MONROE COUNTY BOARD OF COUNTY COMMISSIONERS AMENDING THE MONROE COUNTY FUTURE LAND USE MAP DESIGNATION FROM RESIDENTIAL MEDIUM (RM) TO MIXED USE/ COMMERCIAL (MC), FOR PROPERTY LOCATED AT 103301 OVERSEAS HIGHWAY, KEY LARGO, HAVING PARCEL IDENTIFICATION NUMBER 00472810-000000 AS PROPOSED BY JIM SAUNDERS ON BEHALF OF IRWIN HOLDINGS 103301, LLC; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL OF CONFLICTING PROVISIONS; PROVIDING FOR TRANSMITTAL TO THE STATE LAND PLANNING AGENCY AND THE SECRETARY OF STATE; PROVIDING FOR AMENDMENT TO THE FUTURE LAND USE MAP DESIGNATION (FLUM) MAP; PROVIDING FOR AN EFFECTIVE DATE. (FILE 2023-081)**

**4. AN ORDINANCE BY THE MONROE COUNTY BOARD OF COUNTY COMMISSIONERS AMENDING THE MONROE COUNTY LAND USE DISTRICT (ZONING) MAP FROM IMPROVED SUBDIVISION (IS) TO MIXED USE (MU), FOR**

PROPERTY LOCATED AT 103301 OVERSEAS HIGHWAY, KEY LARGO, HAVING PARCEL IDENTIFICATION NUMBER 00472810-000000 AS PROPOSED BY JIM SAUNDERS ON BEHALF OF IRWIN HOLDINGS 103301, LLC; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL OF CONFLICTING PROVISIONS; PROVIDING FOR TRANSMITTAL TO THE STATE LAND PLANNING AGENCY AND THE SECRETARY OF STATE; PROVIDING FOR AMENDMENT TO THE LAND USE DISTRICT (ZONING) MAP; PROVIDING FOR AN EFFECTIVE DATE. (FILE 2022-187)

(10:10 a.m.) Ms. Devin Tolpin, Principal Planner presented the staff report. These properties are currently located within the Improved Subdivision Zoning District with a masonry sub-district indicator and designated as Residential Medium on the FLUM map. The applicant is proposing to amend the Zoning and the FLUM to Mixed Use and Mixed Use Commercial. There is a structure currently in existence on the property that was permitted as a non-residential structure. At the time of permitting, the property was within the Light Business Zoning District prior to 1986. The building received its CO in 1984 as described in the relevant prior County actions section of the report. The code at that time permitted professional services in that zoning district. The adoption of the revised Land Use District Maps and Code in 1986 rendered this use non-conforming.

At some point between its original construction and around the time the new code was adopted, the structure was used as an office. The existing 2,279 square foot non-residential structure is permitted to continue to serve as an office. However, the current code does not allow for an expansion of non-residential or non-conforming floor area. The applicant states the reason for the proposed Zoning and FLUM amendments is that due to the present zoning, the owner cannot submit a building permit to fence the area under the existing structure. Zoning change requires FLUM to be consistent. These applications were presented to the DRC on June 27, 2023, where the chair of the DRC recommended approval to the Planning Commission and the BOCC. A community meeting was held on that day to provide for public participation and comment. Today, the Planning Commission will be making a recommendation to the BOCC on whether to approve or deny these amendments.

Ms. Tolpin presented a table noting that the proposed FLUM and Zoning amendments would result in a decrease of allocated market rate density on the property but would result in an increase in TDR market rate residential maximum net density, affordable residential maximum net density, transient density, and non-residential floor area. Any new residential or non-residential uses would require ROGO or NROGO allocations. The property does currently have that 2,279 square foot non-residential office use. Approval of the proposed amendments would render that existing use as conforming with up to 3,054 square feet of floor area available to expand provided the expansion remain limited still to an office use. The key difference between these Zoning districts and the FLUM categories is that the Improved Subdivision Residential Medium designation is primarily a residential zoning district with little to no non-residential uses, whereas the Mixed Use Zoning district does allow residential uses in addition to non-residential uses.

The applicant has submitted this request due to a new issue which is the applicant's intention to expand the non-residential intensity by means of enclosing the ground floor of the existing office building. In order to allow an expansion of the non-residential use, the property's FLUM and Land Use designations would need to be amended to a category and district that would allow for the increase in non-residential floor area. It should be noted that the property is one of multiple non-conforming, non-residential uses adjacent to U.S. 1 in the surrounding area, which means this proposed amendment would be compatible with the surrounding community character. Staff has found that the proposed map amendments are consistent with the Comprehensive Plan, the Key Largo Livable CommuniKeys Plan, the Principles for Guiding Development and Florida Statutes, and is recommending approval.

Commissioner Riz stated that he is trying to grasp the affect on the ROGO units. Ms. Tolpin responded that there is density on the property for either one or two platted lots in Improved Subdivision. However, the change to Mixed Use would still have residential density on the property but it only changes the maximum net, not allocated. Commissioner Ritz asked if when the County has to start buying ROGO units if this would be one or more less ROGO units they would have to buy. Ms. Schemper confirmed it would be a decrease in residential allocated, so the number that could be built on this property if they were to get a ROGO unit, is going down with this amendment. She would not say that this is a likely candidate to have a takings claim, period, because it already has a use on it, but for density rights that could be associated with takings claims, this is reducing those potential claims. Commissioner Ritz confirmed that this would be assisting the County's future potential liability, adding that it looks like there's three or four properties in a row that are all commercial uses zoned residential that fall under this exact same category.

Commissioner Ritz asked if back in maybe the 90s and 2000s the County went through and looked at uses and the County changed the FLUM and Zoning Map proactively. Mr. John Wolfe believed there were some changes when the maps were being adopted. Ms. Schemper clarified that after the '86 maps another round of changes were made within the first five or six years, maybe under the context of a challenge or DEO may have sent some things back. Commissioner Ritz stated that he has a recollection of the County going through and looking at this and having a sort of massive project to try to get reality to match maps and the maps match each other. Commissioner Neugent thought that may have been during the Tier system, and Mr. Wolfe agreed, but did not recall changes to the FLUM and Zoning. Commissioner Ritz stated that he is only bringing up the history to see if this is something that could be done now to reduce the County's liability in the future because he assumes the neighbors would prefer to have commercial properties over residential properties since they're on U.S. 1 and are being used for commercial. Chair Scarpelli did not know staff's capacity to change zoning without owners' notice. Mr. Peter Morris added that it might be a perilous path because the undercard for that is if it's not initiated by the property owners. Some property owners have relied on their FLUM category to establish what they're doing today and to shake the etch-a-sketch might upset their expectations that they're going to be able to continue the economically beneficial use, which is why the County typically relies on private landowners to apply for changes to their own property's FLUM. Commissioner Ritz thought it would be advantageous to the owner, increasing their values by going from residential to commercial, and it reduces the County's potential future liability while matching the current use of the property. Mr. Wolfe stated that though it seems intuitively logical, landowners may have a different view.

Commissioner Ritz added that the County eventually has to figure out that we don't want to buy up all of these ROGO units and they need to do something about it. As a taxpayer, he is not eager to be buying all of these ROGOS. Chair Scarpelli thought this was not the proper forum for this to be discussed during this applicant's item, but rather during General Discussion. Chair Scarpelli does not disagree with Commissioner Ritz, but does not want to hold up this applicant. Ms. Schemper added that the Board has adopted into the Planning Department's fee schedule a waiver of map amendment fees if there is an existing use on the property that is non-conforming which would apply to these neighboring properties, but it is decided property owner by property owner.

Chair Scarpelli agreed with Commissionr Ritz' point, that if there are a bunch of legally non-conforming commercial properties on the U.S. 1 corridor currently zoned IS, those property owners, even though they're utilizing a legal commercial use, technically have a takings claim for an IS unit. Mr. Morris stated that that was incorrect, that under takings jurisprudence as currently crystallized for some time he does not believe that claim would lie. Commissioner Ritz stated that that's an opinion and asked if it had been tested. Ms. Schemper interjected that this is not a discussion to have in public. Commissioner Ritz added that a closed meeting would eventually need to be scheduled. Ms. Schemper added that whether someone

has a takings claim should not be held in public and should be discussed with legal separately as it is case by case and extremely different in every case. Mr. Morris added that it is not an implicit admission of any kind of liability, rather it is in the heartland of what is considered attorney-client privileged with the BOCC. Commissioner Neugent added that it would be discussed a lot in 2026.

Chair Scarpelli then asked for public comment. There was none. Public comment was closed. Chair Scarpelli asked for a motion on Item 3. Commissioner Neugent moved approval. Commissioner Demes asked for further discussion as he had questions for the applicant. Commissioner Ritz seconded it for discussion.

Mr. Jim Saunders, representing the applicant, was then sworn in. Commissioner Demes stated that as he reads this and listens today it's somewhat confusing, that the language is written about the future expansion. Mr. Saunders explained that there is fence work that the owner wants a building permit for that they cannot get because it's a commercial use in residential zoning, so permits can't be pulled for any work the owner wants to do on the property. Commissioner Demes asked if work had been done without a permit. Mr. Saunders could not answer that as he was involved only in the zoning. Commissioner Demes stated that he agrees with Commissioner Ritz but if he'd had more time he would have looked into this more for credibility and the County's ability to manage the code and regulations. He often sees people being rewarded for non-compliance. Mr. Saunders stated that he had not worked on any development, only on the non-conforming zoning and FLUM change. Chair Scarpelli thought staff could speak on whether there was a code case. Ms. Schemper responded that there is a provision in the code that gets triggered at the time of building permit. If there is unlawful work being done on the property, building permits can be held up until that is resolved, but that will happen at the building permit stage.

**Motion: Commissioner Neugent made a motion to approve Item 3. Commissioner Ritz seconded the motion.**

**Roll Call: Commissioner Demes, Yes; Commissioner Thomas, Yes; Commissioner Neugent, Yes; Commissioner Ritz, Yes; Chair Scarpelli, Yes. The motion passed unanimously.**

**Motion: Commissioner Demes made a motion to approve Item 4. Commissioner Neugent seconded the motion.**

**Roll Call: Commissioner Demes, Yes; Commissioner Thomas, Yes; Commissioner Neugent, Yes; Commissioner Ritz, Yes; Chair Scarpelli, Yes. The motion passed unanimously.**

**5. STOCK ISLAND MARINA VILLAGE, STOCK ISLAND OWNER, LLC, 7025 SHRIMP ROAD, STOCK ISLAND, MILE MARKER 5 OCEAN SIDE: A PUBLIC HEARING CONCERNING A REQUEST FOR A 2COP ALCOHOLIC BEVERAGE USE PERMIT, WHICH WOULD ALLOW FOR BEER AND WINE FOR SALE BY THE DRINK AND IN SEALED CONTAINERS FOR PACKAGE SALES AND A 4COP ALCOHOLIC BEVERAGE USE PERMIT, WHICH WOULD ALLOW BEER, WINE, AND LIQUOR BY THE DRINK OR IN SEALED CONTAINERS FOR CONSUMPTION ON OR OFF THE PREMISES. THE SUBJECT PROPERTY IS DESCRIBED AS A PARCEL OF LAND IN SECTION 35, TOWNSHIP 67 SOUTH, RANGE 25 EAST, STOCK ISLAND, MONROE COUNTY, FLORIDA, HAVING PARCEL ID NUMBER, 00123761-000800 (FILE 2023-131)**

(10:31 a.m.) Ms. Liz Lustberg, Senior Planner, presented the staff report, explaining that this was one application for two different types of alcoholic beverage use permits. The site map was presented showing the two different locations for the two different alcoholic beverage use permits. The first application is only for unit two which is one of the two aggregated parcels which is proposed for the 2COP beer and wine on premises and package. The little area in red is the area where the sales are proposed and are limited to the existing lawfully-established restaurant bar and consumption is proposed basically anywhere on unit two which includes the water and walkways but not on the hotel property. The 4COP beer, wine, spirits for on premises and package sales is proposed to be sold and consumed only at the existing bar restaurant and the associated pool area. The criteria reviewed for all alcoholic beverage use permits have been met for both types of permits. Staff recommends approval with conditions which outline where the 4COP and 2COP would be approved. Condition three makes it clear that even if consumption of beer and wine is allowed anywhere on unit two, it does not in any way establish a restaurant use on any portion of the property that has not been established with that use by a permit. The rest of the conditions proposed are the standard alcohol beverage use permit conditions.

Commissioner Demes stated that he does not believe they've ever had anything like this for an aggregated parcel, that his understanding of these permits are that the 4COP is beer wine and liquor for both consumption on site and sealed container sales that can go anywhere. The 2COP is the same but just for beer and wine. He does not know why they need a 2COP for the rest of the property if it's private property. Ms. Lustberg explained that the application staff received had no specific requirement stated in terms of how the breakdown had to occur. Jess Goodall, agent for the applicant, was sworn in and stated that this stems from the change that occurred when the conveyance of the property happened. Unit two now incorporates the entire marina area and so the applicant's proposal allows beer and wine sales to boat users and commercial fishermen but restricts liquor sales to just the restaurant. Commissioner Demes confirmed there would be no pop-up beer sales throughout the rest of the property. Mr. Goodall stated all sales will occur at the same location at the restaurant. Mr. Morris clarified that Commissioner Demes was including no rolling bars and that sales would only take place in the red zone.

There were no further questions by the Commission. Chair Scarpelli asked for public comment. There was none. Public comment was closed.

**Motion: Commissioner Demes made a motion to approve. Commissioner Neugent seconded the motion. There was no opposition. Motion passed unanimously.**

#### **BOARD DISCUSSION**

Prior discussions regarding zoning were saved for another day.

#### **GROWTH MANAGEMENT COMMENTS**

None.

#### **RESOLUTIONS FOR SIGNATURE**

None.

#### **ADJOURNMENT**

The Monroe County Planning Commission meeting was adjourned at 10:40 a.m.