

PLANNING COMMISSION
May 21, 2024

Meeting Minutes

The Planning Commission of Monroe County conducted a hybrid virtual and in-person meeting on **Tuesday, May 21, 2024**, beginning at 10:00 a.m.

CALL TO ORDER by Chair Scarpelli

PLEDGE OF ALLEGIANCE

ROLL CALL by Ilze Aguila

PLANNING COMMISSION MEMBERS

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| Joe Scarpelli, Chair | Present |
| Ron Demes, Vice Chair | Present |
| George Neugent, Commissioner | Present |
| David Ritz, Commissioner | Absent |
| 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
Michael Roberts, Assistant Director, Environmental Resources
Cheryl Cioffari, Assistant Director of Planning
Devin Tolpin, Planning and Development Review Manager
Tiffany Stankiewicz, Development Administrator
Stephanie Reed, Planner
Melanie Cabanas, Planning Technician/Vacation Rental Coordinator
Peter Morris, Assistant County Attorney
Dirk Smits, Planning Commission Counsel
Ilze Aguila, Sr. Administrator, Operations, Planning and Environmental Resources

COUNTY RESOLUTION 131-92 APPELLANT TO PROVIDE RECORD FOR APPEAL

County Resolution 131-92 was read into the record by Mr. Dirk Smits.

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. Dirk Smits.

CHANGES TO THE AGENDA

None.

APPROVAL OF MINUTES

Motion: Commissioner Demes made a motion to approve the April 24, 2024 meeting minutes. Commissioner Thomas seconded the motion. There was no opposition. The motion passed unanimously.

DISCLOSURE OF EX PARTE COMMUNICATIONS

None.

MEETING

AGENDA ITEMS

1. A PUBLIC HEARING TO CONSIDER AND FINALIZE THE RANKING OF APPLICATIONS IN THE DWELLING UNIT ALLOCATION SYSTEM FOR JANUARY 13, 2024, THROUGH APRIL 12, 2024, ROGO (Quarter 3, Year 32). ALLOCATION AWARDS WILL BE ALLOCATED FOR ALL UNINCORPORATED MONROE COUNTY. (File 2023-183)

(10:09 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 7 recommended for allocation awards. All other applications roll over to the next quarter.

There were no comments or questions by the Commissioners. Chair Scarpelli then asked for public comment. There was none. Public comment was closed.

Motion: Commissioner Thomas made a motion to approve. Commissioner Demes seconded the motion. Motion passed unanimously.

2. A PUBLIC HEARING TO CONSIDER AND FINALIZE THE RANKING OF APPLICATIONS IN THE NONRESIDENTIAL ALLOCATION SYSTEM FOR JANUARY 13, 2024, THROUGH APRIL 12, 2024, NROGO (Quarter 3, Year 32). ALLOCATION AWARDS WILL BE ALLOCATED FOR ALL UNINCORPORATED MONROE COUNTY.

(10:10 a.m.) Ms. Tiffany Stankiewicz, Development Administrator, presented the staff report for the one applicant for NROGO. The Planning Department recommends approval for the one applicant.

There were no comments or questions by the Commissioners. Chair Scarpelli then asked for public comment. There was none. Public comment was closed.

Motion: Commissioner Demes made a motion to approve. Commissioner Thomas seconded the motion. Motion passed unanimously.

3. BUFFALO STEAKHOUSE AND SEAFOOD, 103360 OVERSEAS HIGHWAY, KEY LARGO, MILE MARKER 103: A PUBLIC HEARING CONCERNING A REQUEST FOR A 2COP ALCOHOLIC BEVERAGE USE PERMIT, WHICH WOULD ALLOW FOR THE SALE OF BEER AND WINE BY THE DRINK (CONSUMPTION ON PREMISES) AND IN SEALED CONTAINERS FOR PACKAGE SALES WITHIN THE INTERIOR PORTION OF AN EXISTING RESTAURANT. THE PROPERTY IS DESCRIBED AS A PORTION OF TRACT "A" OF CROSS KEY WATERWAY ESTATES, TOGETHER WITH A PORTION OF STATE ROAD 5 (U.S. HIGHWAY NO. 1) BEING 50.00 FEET IN WIDTH AND LYING SOUTHEAST OF AND CONTIGUOUS TO THE NORTHEAST 120 FEET OF THE SOUTHWEST 820 FEET OF TRACT "A", SECTION TWO, ACCORDING TO THE PLAT THEREOF, AS RECORDED IN PLAT BOOK 6, AT PAGE 60, OF THE PUBLIC RECORDS OF MONROE COUNTY, FLORIDA, HAVING PARCEL IDENTIFICATION NUMBER 00468472-009711. (File 2023-241)

(10:12 a.m.) Ms. Stephanie Reed, Planner, presented the staff report for the 2COP alcoholic beverage permit request. Ms. Reed presented the current site plan for the property submitted with the application. The current approved use of the site is restaurant. No change or expansion of this use is proposed at this time. The applicant is requesting approval of the 2COP alcoholic beverage use permit to allow the sale of beer and wine for consumption on premises and for package sales, for use only within the interior portion of the existing restaurant. The site is 24,951 square feet, the land use district is suburban commercial, the FLUM designation is mixed use commercial, and it is designated Tier III. The application was reviewed for compliance with Section 3-7 of the Code. Staff finds compliance and does not find that approval of this permit will have an impact on traffic, parking, surrounding properties, utilities or public services, and there are no open code compliance cases. Staff recommends approval with standard conditions, noting that outdoor restaurant seating and outdoor service sales are not included as part of this approval.

Chair Scarpelli asked for questions or comments from Commissioners. There were none. Chair Scarpelli thought the second condition may be hard to enforce. Ms. Schemper interjected that there is currently no approved outdoor seating at the site, which is why the alcoholic beverage permit will be for indoor seating only. The applicant is planning to come back for approval for the outdoor seating at a later date after site plan and permit approval.

Commissioner Demes asked, if the outdoor seating isn't approved, what it is doing there. Ms. Schemper responded that if the applicant does not come for the site plan approval in a timely manner, it will be referred to Code Compliance. But, at this point, Staff is trying to work with the applicant and they are submitting the documents required for that approval. Mr. Peter Morris, Assistant County Attorney, added that any approval by this panel or recommendation of approval by the department would not function as forfeiture, or waiver, or estoppels for detrimental reliance of the property owner business entity to rely upon the lack of a charged violation at this stage in the event there is one yet to come as some sort of get-out-of-jail-free card. Any permit approval here is very narrow to the request before the panel. There remains

prosecutorial discretion. No land owner can detrimentally rely on the fact that they got a permit for a front yard fence but they had an illegal dwelling unit in the rear that happened not to be caught or charged at the time of approval. Chair Scarpelli clarified that the applicant was working with staff to get everything on the up and up. Commissioner Thomas added that this site has been multiple restaurants. Ms. Reed confirmed it had been a restaurant since 2006. Chair Scarpelli then asked for public comment. There was none. Public comment was closed.

Motion: Commissioner Thomas made a motion to approve. Commissioner Demes seconded the motion. Motion passed unanimously.

BOARD DISCUSSION

Mr. Peter Morris stated that he had just asked Information Technology if any members of the Contractors Examining Board were on the Zoom world because they occasionally have questions regarding the separate and distinct legal remit of the Planning Commission regarding the administration of the Land Development Code and Comp Plan, but he has been informed by IT that there are no members of the CEB here. In the event they ever wish to participate in the administration of the LDRs or Comp Plan, they are welcome to come or send the department an email. Chair Scarpelli agreed it wouldn't be bad to get that kind of stuff on the record. Mr. Morris stated that it would be consistent with Florida general law. Florida Statute 163.3174(1) provides there is only one solitary local planning agency. The code is very clear that the only local planning agency for Monroe County, which is consistent with the other 66 counties of the State, is the Planning Commission. Chapter 6-270 of the Code of Ordinances makes pretty clear that the Contractors Examination Board functions as something like a miniature Code Enforcement Board, specific to adjudicating violations involving the Florida Building Code or Chapter 6 of the Code of Ordinances which is the local building code by a specified category of violators. Not just any property owner but, essentially, a licensed, certified, registered contractor. That point is also reinforced by other subsections.

Commissioner Demes stated that he is curious about the Department of Commerce's final order rejecting County Ordinance 004-2024, and where the County was going to go with that, or the way ahead, or thoughts on the final order. Ms. Schemper responded that this was regarding the adoption of the Tavernier Community Center overlay for the Cemex property. The Planning Commission did review that and recommended denial, staff had recommended denial, and then the BOCC did adopt that ordinance on February 15. Those types of ordinances then go to Florida Department of Commerce for their review for consistency with the Comp Plan. Department of Commerce rejected that ordinance based on inconsistencies with the Monroe County Comp Plan, the Liveable CommuniKeys Plan, the Land Development Code, and the Principles for Guiding Development. A lot of what they cited is consistent with what staff had cited in the staff report, and what the Planning Commission had based their recommendation on. At this point, the Planning Department still considers that their official position on it. With a rejected ordinance by Florida Commerce, the ordinance does not become effective. There is a 21-day challenge period to that final order, so any interested party could file a petition to appeal or challenge the final order, or file a position in support of the final order. That 21-day challenge period is still ongoing. There are related applications to that ordinance, such as a Comp Plan amendment regarding affordable housing on the site that is in the works and that community meeting was last night. That Comp Plan text amendment on its own does not state that it's

reliant on the commercial development associated with the overlay so the community meeting last night was not postponed based on that final order. Staff is still in the early stages of doing analysis of that amendment through the lens of that final order rejecting the other ordinance.

Mr. Morris added that, subject to Commission's counsel's course correction if he's misspeaking, there are other applications that are in some ways textually tethered to that final order, in other ways it appears not to be, for example, the one that was referenced for which there was a community meeting last night. But, because there may be litigation or adversarial proceedings that ensue, the type of case that would likely be filed appears to authorize some level of discovery. Because there are other applications that may come before the Commission, ex parte communications really ought not to happen regarding this project as a whole. And, in addition, because there is an index of probability that litigation will ensue after this final order, an additional reason not to communicate regarding that ordinance or any associated subject matters is because any of the Commissioners could be potentially called in as witnesses to testify. Mr. Smits concurred with Mr. Morris. If there is a threat of litigation, silence is golden. He instructed the Commissioners to call him if someone calls them and he will handle it, and to also forward him any subpoenas.

Commissioner Neugent, who arrived after the meeting had begun, had a question regarding Item 3 and why the applicant had not requested outside seating with the 2COP permit, and whether the County knows that there are many restaurants with outside seating in the municipalities and the County. Ms. Schemper responded that there is no prohibition against outdoor seating, the applicant just has never gotten approval for that outdoor seating. It came to the County's attention when they came in for the alcoholic beverage permit. The original request was for the whole area. The options were to get the alcoholic beverage permit for the indoor seating immediately, and they will have to come back to the Planning Commission again after getting approvals for the outdoor seating area, or they could wait and get the approvals for the outdoor seating area first and go to the Planning Commission once, but it would take several months to do that. So, that was the applicant's choice.

GROWTH MANAGEMENT COMMENTS

None.

ADJOURNMENT

The Monroe County Planning Commission meeting was adjourned at 10:29 a.m.