

RESOLUTION NO. 438 - 2018

A RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS OF MONROE COUNTY, FLORIDA, AMENDING *RESOLUTION 175-2018*, WHICH CREATED THE LESS THAN FEE ACQUISITION PROGRAM FOR THE PURPOSE OF RETIRING RESIDENTIAL DEVELOPMENT RIGHTS ON PROPERTY LOCATED IN THE (IS), (IS-M), AND (URM) LAND USE DISTRICTS FROM WILLING SELLERS; TO CLARIFY THE PRIORITY CRITERIA WITH RESPECT TO LOTS ON BIG PINE KEY AND NO NAME KEY; TO PRIORITIZE THE PURCHASE OF DEVELOPMENT RIGHTS OF LOTS WITH AN AGREED UPON PURCHASE PRICE OF LESS THAN \$100,000; TO AUTHORIZE A BASIS FOR MAKING A PURCHASE OFFER FOR OTHERWISE ELIGIBLE LOTS THAT HAVE BEEN COMBINED INTO ONE PARCEL NUMBER FOR TAX PURPOSES; AND TO CLARIFY THAT THE COUNTY DOES NOT WAIVE ITS RIGHT TO PROSECUTE CODE VIOLATIONS IN EXISTENCE BUT UNDISCOVERED AT THE TIME OF THE TRANSACTION; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Board of County Commissioners of Monroe County, Florida (hereinafter "BOCC") adopted *Resolution 175-2018* on June 20, 2018, which created the Less Than Fee Program that is designed to purchase residential development rights from willing sellers that own a vacant parcel that is located immediately adjacent to their homes and which are located in the Improved Subdivision (IS), Improved Subdivision - Masonry (IS-M), Urban Residential- Mobile Home (URM) land use districts; and

WHEREAS, the goal of the Less Than Fee Program is to reduce ongoing development pressures on hurricane evacuation clearance times and demands on public facilities and infrastructure while protecting property owner rights and avoiding unnecessary costs associated with defending property rights claims; and

WHEREAS, the Less Than Fee Program is consistent with Policies 102.4.3 and 102.4.6 of the 2030 Monroe County Comprehensive Plan; and

WHEREAS, in adopting *Resolution 175-2018*, the BOCC found that a less than fee acquisition program was an appropriate alternative to costlier fee simple acquisitions; and

WHEREAS, the BOCC and the Monroe County Land Authority (hereinafter "MCLA") entered into an interlocal agreement on October 19, 2016 regarding the acquisition of infill property for density reduction, among other government purposes; and

WHEREAS, F.S. 125.355 authorizes the BOCC to exempt any purchase of an interest in realty valued at under \$100,000 from the requirement of obtaining an appraisal; and

WHEREAS, the BOCC agreed to use dollars raised through the local option infrastructure sales surtax as authorized in F.S. 212.055(2)(d), which the County has budgeted in Fund 316 to cover costs associated with this program; and

WHEREAS, the MCLA and County staff have been working together to develop and implement the Less Than Fee Program; and

WHEREAS, due to additional growth limits on Big Pine Key and No Name Key, which are imposed as a result of the Incidental Take Permit, both islands are closer to build out than the rest of the County; and

WHEREAS, County staff has determined that a significant number of otherwise eligible parcels have been combined by the Property Appraiser, at the request of the owner, into a single parcel for tax purposes, thus rendering it impossible to use the methodology for making an offer as set forth in *Resolution 175-2018*; and

WHEREAS, County staff has received inquiries from property owners whose properties have been valued by the Property Appraiser as having a market land value in excess of \$100,000 but who are willing to accept less than \$100,000 for the purchase of the development rights to expedite the process; and

WHEREAS, MCLA and County staff have recommended minor adjustments to the Less Than Fee Program as set forth in *Resolution 175-2018*, to wit:

a) to prioritize any otherwise eligible lot on Big Pine Key and No Name Key, regardless of tier designation;

b) to permit the use of the market land values on comparable vacant lots as the basis for making a purchase offer to purchase and retire the development rights from lots that have been combined with another lot for tax purposes only;

c) to prioritize transactions where the purchase price for the development rights is less than \$100,000; and

d) to clarify that despite the purchase of development rights, the County does not waive its right to prosecute code violations on the subject parcels in existence but undiscovered at the time of the transaction;

NOW THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MONROE COUNTY, FLORIDA:

Section 1. The recitals set forth above are incorporated herein as findings of fact by the Board.

Section 2. Section 3. of *Resolution 175-2018* is hereby amended to read as follows:

To be eligible to participate in the program, subject parcels must be:

- a) Located within an Improved Subdivision (IS), Improved Subdivision – Masonry (IS-M), or Urban Residential-Mobile Home (URM) Land Use District;
- b) Consist of a lot with at least one (1) buildable unit or Transfer of Development Right (TDR). Priority shall be given to Tier III properties and to otherwise eligible lots located on Big Pine Key and No Name Key regardless of the lot's Tier designation. Priority shall also be given to properties with an agreed upon purchase price of less than \$100,000;
- c) Be held in common ownership with an immediately adjacent parcel that contains a residential structure as its principal structure;
- d) Eligible to receive a building permit for construction of a new residential dwelling unit under the current Monroe County Comprehensive Plan and Land Development Code, and not prohibited by deed restriction or other instrument or legal impairment from receiving such a building permit;
- e) Free of all code compliance liens and not the subject of a current code compliance case or other enforcement proceeding by the County or other regulatory agency; however, the property owner should be notified that the County does not waive its right to prosecute existing but undiscovered code violations at the time of the transaction; and
- f) Owned by a seller who is willing to convey the building rights to the County under the terms and conditions set forth herein.

Section 3. Section 4. of *Resolution 175-2018* is hereby amended to read as follows:

The MCLA and County Attorney are authorized to make offers to purchase the right to build a separate residential unit on the subject property at the most recent "Market Land Value" indicated on the Monroe County Property Appraiser's website in exchange for the retirement of that development right and execution of a title restriction, unity of title instrument, and other

documents prepared by the County Attorney and/or MCLA legal counsel which are necessary to implement this program subject to the limitation that no purchase shall be made for more than \$99,999.00 without an appraisal, in a form that is acceptable to the County, which is paid for by the property owner. In the event an otherwise eligible vacant parcel of property has been combined for tax purposes only by the Property Appraiser into a single parcel with another lot with a residential principal structure on it, MCLA staff is authorized to use the market land value from a comparable vacant lot in the vicinity as the basis for the offer to purchase the remaining, unused development rights.

Section 4. This resolution shall take effect upon adoption and the additional criteria may be applied to applications already submitted for consideration.

Section 5. Except as amended above, *Resolution 175-2018* shall remain in full force and effect. For purposes of clarity, the new language amending *Resolution 175-2018* appears as underlined.

PASSED AND ADOPTED by the Board of County Commissioners of Monroe County, Florida, at a regular meeting held on the 19th day of December, 2018.

Mayor Sylvia Murphy	<u>Yes</u>
Mayor Pro Tem Danny Kolhage	<u>Yes</u>
Commissioner Heather Carruthers	<u>Yes</u>
Commissioner Michelle Coldiron	<u>Yes</u>
Commissioner David Rice	<u>Yes</u>

FILED FOR RECORD
 2018 JAN - 8 AM 9:34
 CLERK CIR. CT.
 MONROE COUNTY, FL



ATTEST: KEVIN MADOK, CLERK
 By: Kevin Madok
 Deputy Clerk

**BOARD OF COUNTY COMMISSIONERS
 OF MONROE COUNTY, FLORIDA**

BY: Sylvia J. Murphy
 Mayor Sylvia Murphy

MONROE COUNTY ATTORNEY
 APPROVED AS TO FORM:
Robert B. Shilling JR.
 COUNTY ATTORNEY
 Date 12-3-18 RPT