

**DEVELOPMENT REVIEW COMMITTEE**

**Monday, July 22, 2024**

**MEETING MINUTES**

The Monroe County Development Review Committee conducted a virtual meeting on **Monday, July 22, 2024**, beginning at 1:02 p.m. via Communications Media Technology (CMT).

**CALL TO ORDER** by Emily Schemper at 1:02 p.m.

**ROLL CALL** by Debra Roberts

**DRC MEMBERS PRESENT**

Emily Schemper, Senior Director of Planning and Environmental Resources  
Mike Roberts, Assistant Director, Environmental Resources  
Cheryl Cioffari, Assistant Director of Planning  
Devin Tolpin, Planning & Development Review Manager  
Rey Ortiz, Assistant Building Official  
Craig Marston, Fire Marshall  
Brian Oppenheimer, Deputy Fire Marshall  
Christina Gardner, Naval Air Station Key West  
Shereen Yee Fong, FDOT Representative  
Yazmin Valdez, Department of Economic Opportunity

**STAFF MEMBERS PRESENT**

Peter Morris, Assistant County Attorney  
Barbara Powell, Senior Policy Advisor  
Julie Cheon, Special Projects Administrator-Environmental Resources  
Debra Roberts, Senior Planning Commission Coordinator

**APPLICANTS & PUBLIC SPEAKERS PRESENT**

Item 1: Bart Smith, Agent for Applicant  
Dottie Moses  
Items 2 & 3: Bart Smith, Agent for Applicant

**CHANGES TO THE AGENDA**

Item 5 is being moved to the August 27, 2024 meeting.

**MINUTES FOR APPROVAL**

Approval of the meeting minutes for Tuesday, June 25, 2024, by Emily Schemper.

**MEETING**

**1. AN ORDINANCE BY THE MONROE COUNTY BOARD OF COUNTY COMMISSIONERS AMENDING THE MONROE COUNTY COMPREHENSIVE PLAN TO ESTABLISH GOAL 113, OBJECTIVE 113.1, AND SITE SPECIFIC SUBAREA POLICY**

113.1.1, TAVERNIER WORKFORCE HOUSING SUBAREA 1, WHICH INCLUDES CHANGES TO EXISTING COMPREHENSIVE PLAN POLICIES LIMITING DISPOSITION OF EARLY EVACUATION UNIT ALLOCATIONS TO 1-FOR-1 EXCHANGE PROGRAM FOR BANKING INTO ADMINISTRATIVE RELIEF POOL FOR TAKINGS AND BERT HARRIS ACT LIABILITY REDUCTION COUNTYWIDE AS PROPOSED BY CEMEX CONSTRUCTION MATERIALS, FLORIDA, 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 COMPREHENSIVE PLAN; PROVIDING FOR AN EFFECTIVE DATE. (FILE 2023-205)

(1:04 p.m.) Ms. Devin Tolpin, Planning and Development Review Manager, presented the staff report. This is an application for a privately-proposed text amendment to the County's comprehensive plan to establish a new goal, objective, and site-specific subarea policy. The applicants state that the reason for the requested amendment is to create and provide language for Goal 113, Objective 113.1 and Policy 113.1.1, Tavernier Workforce Housing Subarea, creating a site-specific area for workforce housing and to allow the property to receive 86 workforce housing early evacuation ROGO allocations, allocated from Monroe County, to permit construction of 86 much needed multi-family workforce housing dwelling units near a large employment center. The applicants' justification and explanation for the proposed amendment is included in the application file. The new proposed goal allows for the use of site-specific policies in the Upper Keys. The proposed objective is limited to provide for site-specific subarea policies within Tavernier, with the policy that's being proposed today being limited to only a portion of the property located at 92501 Overseas Highway in Tavernier. This property is currently located within the suburban commercial zoning district, the mixed use commercial FLUM category, and is located within Tavernier Creek to mile marker 97 U.S. Highway 1 or the TC Overlay District. The property is also subject to the policies and guidelines provided in the Tavernier Livable CommuniKeys Plan which is adopted as part of the County's comprehensive plan.

In addition to this request to amend the comp plan to establish a mechanism for site-specific land use policies to support the development of workforce housing in the Upper Keys and apply it to this property, the applicants have also pursued an amendment to the County's code to establish the Tavernier Commercial Overlay which was adopted by the BOCC but is not effective at this time. And, the applicants have also submitted a request to amend the land use map to apply that overlay to the property. Requests for a development agreement and major conditional use permit have also been submitted for the phased development of a commercial supermarket and 86 affordable dwelling units.

A concept meeting was held on March 15, 2024, where it was determined that the amendment will result in a countywide impact. On April 17, 2024, a BOCC impact meeting was held where county staff identified the countywide impacts of the proposed amendment in writing where the BOCC had the opportunity to offer their initial opinions, and the public had the opportunity to offer input. On May 20, 2024, a community meeting was held to discuss the proposed amendment. Concerns discussed included the intent of the adoption of the early evacuation ROGO units in 2021, takings liability, and the effectiveness of the adoption of the Tavernier

Commercial Overlay District. This file is being presented to the DRC to review the proposed amendment and make a recommendation to the Planning Commission. The amendment will be heard by the Planning Commission for recommendation to the Board, and the Board will consider the amendment for transmittal to the state land planning agency and eventually for adoption. The process for changing the text of a comprehensive plan shall follow the process established by Chapter 163, part two, of Florida Statutes.

Ms. Tolpin presented clips of the proposed amendment. Only new language is being proposed. The applicant is not proposing to edit or delete language elsewhere in the comp plan. The applicant is presenting a new Goal 113 which states that Monroe County shall manage future growth to enhance the quality of life and safety of county residents and prioritize the provision of workforce housing that is safe, code compliant and resilient. To incentivize the supply of workforce housing near employment centers, the County shall provide for the development of site-specific land use mechanisms and the allocation of workforce housing early evacuation rate of growth ordinances from Monroe County within the Upper Keys to address the inadequate availability of workforce housing in the Upper Keys. The applicant is also proposing a new Objective 113.1. Monroe County shall create site-specific subareas located in Tavernier which promote the allocation of workforce housing early evacuation rate of growth ordinances for developing workforce housing in suitable areas located in close proximity to an employment center (Islamorada). All site-specific areas located in Tavernier shall require a policy defining the development restrictions and allowances for the site. The applicant is also proposing Policy 113.1.1, Tavernier Workforce Housing Subarea 1, with the purpose being to implement applicable goals, objectives and policies of the comprehensive plan to promote and facilitate development of workforce housing to meet the needs of Monroe County.

Ms. Tolpin then presented the boundaries of the subarea, limited to the portion highlighted in red, noting that the text includes, by reference, the adjacent parcel not included in red on the submitted boundary survey. Number 2 of the Tavernier Workforce Housing Subarea has rate of growth ordinance allocations notwithstanding Comprehensive Plan Policy 101.3.12(a), footnote “i” and LDC Section 130A-24(e)(2)(a), footnote “ii”. Subarea one shall be eligible to receive 86 ROGO allocations by means of award of 86 workforce housing early evacuation building unit allocations from Monroe County pursuant to the Workforce Affordable Housing Initiative reserved by means of a BOCC resolution. The BOCC may, at its discretion, place conditions on the reservation. The proposed income categories for the 86 units have not been provided by the applicant. Once the 86 units are developed, the affordable housing income reconstructions may be reconfigured within the property to ensure occupants can meet the income requirements for the unit occupied. The applicant is proposing to utilize footnotes that reference the ordinances being adopted and the 300 early evacuation units, although footnotes are typically not traditionally utilized with the comprehensive plan.

A brief history of ROGO is included on pages 5 through 7 of the staff report. The affordable ROGO allocations that would be allocated through the proposed site-specific subarea policy were accepted by the County as part of the workforce housing initiative. On July 15, 2020, during a discussion item on potentially shifting market rate allocations to the affordable housing pool, the Board provided direction to staff on accepting the 300 workforce housing early evacuation unit building permit allocations, directing staff to accept the 300 allocations to be

used in exchange for existing affordable allocations at multi-family developments, and the affordable housing allocations would be returned to the County to be set aside and banked for takings cases or within the administrative relief pool. On April 21, 2021, the Board passed and adopted amendments to the comprehensive plan and code to establish a new building permit allocation category to accept and award the 300 workforce housing early evacuation unit building permit allocations pursuant to the workforce housing initiative.

Staff has reviewed the applicants' position and supporting documentation, and does agree that inadequate availability of affordable housing is currently a primary issue facing permanent residents in unincorporated Monroe County and in the Upper Keys. In 2022, the ALICE report was updated. The new information does affirm the trend of increased difficulty in being able to afford safe and well constructed affordable housing. The portion of the property within the boundaries of the proposed Tavernier Workforce Housing Subarea 1, the subject of this report, does appear to be an appropriate location for affordable housing. The property is located within the suburban commercial zoning district and is designated as mixed use commercial on the future land use map where attached and detached dwelling units designated as employee housing are permitted within both of these zoning categories. While it is evident that affordable housing is a pressing issue within Monroe County, staff must review the proposed amendment for internal consistency with the County's comprehensive plan, the Tavernier Livable CommuniKeys Plan and the land development code. The proposed amendment includes changes to existing comp plan policies limiting the disposition of early evacuation unit allocations to a one-for-one exchange program for banking into the County's administrative relief pool for reducing takings cases and Bert Harris liability countywide.

During the adoption hearing of the workforce initiative allocation awards eligibility and requirements, it was emphasized that the Board policy direction to utilize those 300 early-out allocations was to develop an exchange program that limits the use of the 300 early-evacuation allocations only for the exchange with existing affordable units and approved affordable allocations and not for the development of new units, thereby not creating new development potential. The applicants' proposal utilizing 86 workforce initiative allocation awards for new development with no exchange is inconsistent with the Monroe County Comprehensive Plan Policy 101.3.12(1)(a) as intended. It is apparent that the acceptance of the 300 units through the establishment of the workforce initiative was intended to result in a net zero increase of ROGO allocations in unincorporated Monroe County, except for those to be banked into the County's administrative relief pool to be used at a later time to reduce takings liability. As proposed, the amendment would result in a net decrease of 86 ROGO allocations from the County's administrative relief pool, and inversely a net increase of 86 dwelling units. The applicants have not proposed any mitigation measures that would offset this increase of 86 dwelling units within unincorporated Monroe County. Through this amendment, the property that is included within the boundaries of the subarea would only be exempt from the requirements of Comprehensive Plan Policy 101.3.12(a) and Land Development Code Section 138-24(e)(2)(a) through the utilization of the term "notwithstanding."

If adopted as proposed, all units within the Tavernier Workforce Housing subarea would still be required to comply with those items listed in (b) through (k) of the workforce housing initiative policies from the comprehensive plan and corresponding land development code section. Those

items include approval of a contract with the Board to confirm compliance with the initiative; a 99-year workforce housing deed restriction assuring occupants evacuate during phase one of a 48-hour evacuation; workforce housing early evacuation units will require onsite property management training and evacuation procedures; and, to the greatest extent practicable, a development utilizing workforce housing early evacuation unit allocations shall incorporate sustainable and resilient design principles, and be accessible to employment centers in Key West, Stock Island and Marathon. It is evident that the proposal as drafted is inconsistent with the rest of this policy. While consistent with a number of the policy's prioritization of developing affordable housing within the comprehensive plan and Tavernier Livable CommuniKeys Plan, staff has found that the proposed amendment is not consistent with those policies of the comprehensive plan, land development code, principles for guiding development, nor part two of Chapter 163 Florida Statutes, and staff is recommending denial of the proposed amendment to the Monroe County Comprehensive Plan to establish Goal 113, Objective 113.1, and the site specific subarea policy 113.1.1, Tavernier Workforce Housing Subarea 1.

Ms. Schemper asked if an applicant representative wished to speak. Mr. Bart Smith, agent for the applicant, thanked staff for the thorough report, stating that he would continue to work with staff to iron out some of the concerns as to compliance and hopefully get a recommendation of approval in the future. He sees places where edits need to be made and he will get those to staff shortly. Ms. Schemper then asked if DRC members or staff had any questions, comments or concerns. Mr. Mike Roberts, Assistant Director of Environmental Resources, asked if there was a conceptual site plan for the housing. Ms. Schemper responded that there may be something in the context of the conditional use permit, but not submitted as part of this application. Mr. Roberts wanted to verify the wetland setbacks because the only environmental issue with development of this site is the mangroves in the back portion of the property. Mr. Smith interjected that the mangrove setback requirements were being followed. Ms. Schemper then asked for public comment.

Ms. Dottie Moses asked if she had understood correctly that the text language did not match the red boundary on the site plan. Ms. Schemper responded that there was a parcel number included, a small triangle of land near the highway, that is part of the overall larger project under that overlay district that is not yet effective, but it is not actually part of the red boundary area. Staff would need to get with the applicant to clarify, and it may need to just come out. Ms. Moses then asked if this application relied on the Tavernier commercial overlay approval to go forward. Ms. Schemper explained that the text of this amendment does not reference the overlay and does not require the overlay. It is for a use that is already allowed within the property's zoning district without the overlay. This proposed amendment could, in theory, proceed without that being effective. Ms. Schemper needs to look at it one more time to figure out the site planning aspects of it as this is a part of a parcel, but she does not believe there is a conflict, though it may possibly require a different site layout. Ms. Moses believes many of the Upper Keys community does not necessarily object to the affordable housing, but they do have concerns about the early evacuation ROGO reach-around, and an objection to the commercial overlay part of it.

There was no further public comment. Public comment was closed. Ms. Schemper stated that this item is scheduled to go before the Planning Commission in August.

Items 2 and 3 were heard together.

**2. AN ORDINANCE BY THE MONROE COUNTY BOARD OF COUNTY COMMISSIONERS** AMENDING POLICY 212.3.2 OF THE MONROE COUNTY 2030 COMPREHENSIVE PLAN TO INCLUDE ADDITIONAL LANGUAGE TO PERMIT MARINAS AS AN ALLOWED USE WITHIN UNIT 57 OF THE COASTAL BARRIER RESOURCE SYSTEM AS PROPOSED BY JK YD, 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 INCLUSION IN THE MONROE COUNTY COMPREHENSIVE PLAN; PROVIDING FOR AN EFFECTIVE DATE. (FILE 2023-244)

**3. AN ORDINANCE BY THE MONROE COUNTY BOARD OF COUNTY COMMISSIONERS** AMENDING MONROE COUNTY LAND DEVELOPMENT CODE SECTION 118-15(5) MARINA SITING CRITERIA, TO INCLUDE ADDITIONAL LANGUAGE TO ALLOW MARINAS WITHIN UNIT 57 OF THE COASTAL BARRIER RESOURCE SYSTEM AND LOCATED WITHIN SAFE HARBOR COMMUNITY CENTER OVERLAY DISTRICT AS PROPOSED BY JK YD, 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 INCLUSION IN THE LAND DEVELOPMENT CODE; PROVIDING FOR AN EFFECTIVE DATE. (FILE 2023-245)

(1:26 p.m.) Ms. Barbara Powell, Senior Policy Advisor, presented the staff report. This application was submitted on behalf of JK YD, LLC, by Smith Hawks. The applicant states the reason for the requested amendment is the property is located within the entrance to the Safe Harbor Port, one of the most important ports in the Florida Keys, and is a deep-dredge port providing safe and secure mooring storage for vessels within the Lower Keys. It is surrounded by commercial marinas and businesses. The amendment will allow the property to be developed with a marina use which is in line with the community character and surrounding uses, and will provide additional safe and secure vessel storage for the residents of the Lower Keys. The property was errantly included in the Coastal Barrier Resource System unit which, in and of itself, is not a prohibition of development; however, the County's inclusion of the language in Comprehensive Plan Policy 212.3.2(5) prohibits the property from being developed with the use that's most beneficial to the area and residents.

Ms. Powell presented an aerial of the site with the current layout of the CBRS 57 showing half the parcel was covered, with the developed area included. Ms. Schemper asked if this proposed amendment would be to allow marinas, despite the marina siting criteria, within FL 57 but only for properties that are also within the Safe Harbor Overlay. Ms. Powell responded that this is limited to Section 57 and the Safe Harbor Overlay which only includes that parcel, for the most part. The historical photos were reviewed and included in the staff report. Much of the property was bay bottom. As it began to get filled towards the sixties, it was used mainly for storage. By the mid eighties, it was used for old cars and was outdoor storage with no habitat on it at all. The existing habitat is exotic. The size of the property is just over four acres. The current Existing

Conditions Report had been reviewed by Mr. Mike Roberts. The current designation is mixed use commercial with the maritime industry zoning, and is Tier III. Ms. Powell then presented the historical photographs. Staff had one suggested edit on the policy for the comprehensive plan, and no edits for the land development code modification. As presented by the applicant, this is inconsistent with Comprehensive Plan Policy 102.7.2, which is basically a discourage policy for any infrastructure related to the CBRS, and staff suggests adding that policy to the amendment. Otherwise, staff recommends approval on both.

Ms. Schemper added that the CBRS, FL 57, is a unique one, and in the nineties, after the CBRS was adopted by congress, just after that the BOCC adopted a resolution supporting requests to the federal government to remove what is known as Robbie's Safe Harbor Marina or the more developed properties at the entrance of the harbor. In 2020, they updated that resolution to also include the property in question. So, the Board already has a longstanding opinion that these two parcels should not be included in FL 57 because when they were put in there, it was almost like a mapping error that they were undeveloped properties. It does take an act of Congress to remove these from the maps, though it's somewhat understandable that they've never been removed, but this would be consistent with the Board's direction on that. Furthermore, the request to remove them is cited in the comprehensive plan, and there are policies where it talks about extension of infrastructure into the CBRS that specifically excludes the developed property at the entrance of Safe Harbor. The marina siting criteria does not include language to exclude these from the County's own prohibition in the CBRS, but Ms. Schemper would agree that it seems consistent with the overall intent of the Board that these should not be included. Ms. Powell added that Ms. Cheryl Cioffari had spoken with floodplain management staff to verify that amending this policy in the plan or the LDC would not affect the community rating system score.

Ms. Schemper asked if applicant wished to speak. Mr. Bart Smith, agent for the applicant, stated that the applicant accepts the proposed revision. This is difficult and he had three congressmen sponsor this removal of this parcel from the CBRS in 2012, but it went into a void, and then died on the vine. Mr. Smith thanked staff for their efforts to allow these properties to be able to do something. Ms. Schemper then asked if DRC members or staff had any questions or comments. There were none. Ms. Schemper then asked for public comment. There was none. Public comment was closed. This will go before the Planning Commission in August, and then will have two hearings at the Board.

**4. AN ORDINANCE BY THE MONROE COUNTY BOARD OF COUNTY COMMISSIONERS AMENDING MONROE COUNTY LAND DEVELOPMENT CODE SECTION 114-163 WATERFRONT LIGHTING, TO ALIGN WITH CHAPTER 62B-55 F.A.C. AND CHAPTER 12, ARTICLE V OF THE MONROE COUNTY CODE OR ORDINANCES.; 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 2024-066)**

(1:41 p.m.) Ms. Julie Cheon, Special Projects Administrator, Environmental Resources, presented the staff report. Amending Section 114-163 will achieve two things. It will remove some conflicting provisions with the recently adopted changes to Chapter 12, Section 5 of the Monroe County Code of Ordinances which went to the BOCC last week. Secondly, it will align this portion of the code with Chapter 62B-55 of the Florida Administrative Code which is the model lighting ordinance for marine turtle protections. In '94, the BOCC enacted new provisions for the protections of sea turtles. Those were updated in '98. In December of 2020, the State, through the Florida Department of Environmental Protection, adopted and updated the model lighting ordinance for sea turtle protections which was codified in the Florida Administrative Code. Those reflected significant advances in lighting technology and the understanding of sea turtle disorientations. The intent of that rule was to guide local developments in developing ordinances which will protect hatchling marine turtles from adverse effects of lighting and prevent further degradation of nesting habitat. Those guidelines were developed through stakeholder engagement and research of scientific data by the FDEP and FWC. Last week the BOCC approved the amendments to Chapter 12, Article V. There was a community meeting on July 2, 2024, there is this meeting today, and this is tentatively scheduled for the Planning Commission meeting in October, followed by the BOCC meeting in November. The three main revisions being requested specify that in Section 114-163, the waterfront lighting section, if there is an area where the lighting will be visible from the nesting area, then Section 12-116 of the Monroe County Code of Ordinances must be referred to. This is for outdoor lighting within 25 feet, and the same goes for the dock lighting section. The third change would be changing the light bulb source. The bulb lights in the code are not the most effective at reducing sea turtle disorientations. Long wavelength lights of 560 nanometers or more should be used. The tenants of the guidelines are to use long wavelength lighting, low mounted and low wattage lighting, and shielded lighting keeping light shielded from the beach.

Ms. Schemper asked about the current wording of the code about yellow bug-type lights or low-pressure sodium vapor lamps and whether that was originally there with a mind for the turtle nesting, because that section applies not only to nesting area lighting but all waterfront lighting within 25 feet, and whether the new type of bulbs were better not only for the turtles but also meet the goal that the bug-type lights were supposed to be meeting. Ms. Cheon responded that the long wavelength is the better type of lighting for sea turtles. The bug lighting that was previously recommended is no longer a current approved technology. Ms. Schemper asked if when the bug-type lighting was the current technology, if that was also required near water bodies because of sea turtles and nesting areas. Ms. Cheon stated that that is her understanding. Ms. Schemper also noted that adding this to Chapter 114, it makes it very clear that the sea turtle lighting provisions apply if near a nesting area. It is already the case that both Chapter 114 and Chapter 12 must be met. This makes it clearer that both chapters in the code must be adhered to.

Ms. Schemper asked if any DRC members or staff had any comments or questions. There were none. Ms. Schemper then asked for public comment. There was none. Public comment was closed.

**5. AN ORDINANCE BY THE MONROE COUNTY BOARD OF COUNTY COMMISSIONERS** AMENDING THE MONROE COUNTY TIER OVERLAY DISTRICT MAP FROM TIER III-A TO TIER III AS REQUESTED BY SPOTTSWOOD, SPOTTSWOOD, SPOTTSWOOD AND STERLING PLLC, ON BEHALF OF 21660 OVERSEAS HWY, LLC AND SAN MARCOS HOLDINGS 4790, LLC, FOR PROPERTIES LEGALLY DESCRIBED AS LOTS 10 THROUGH 16 SACARMA PLAT BOOK 2 PAGE 48 CUDJOE KEY, CURRENTLY HAVING PARCEL ID NUMBERS 00174740-000100; 00174770-000000; 00174780-000000; 00174790-000000; 00174800-000000 AND 00174810-000000; APPROXIMATE MILE MARKER 22. (FILE 2024-016)

**RESCHEDULED TO AUGUST 27, 2024**

**ADJOURNMENT:**

The Development Review Committee meeting was adjourned at 1:48 p.m.