

PLANNING COMMISSION
February 22, 2023

Meeting Minutes

The Planning Commission of Monroe County conducted a hybrid virtual and in-person meeting on **Wednesday, February 22, 2023**, beginning at 10:02 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	Absent
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
Cheryl Cioffari, Assistant Director of Planning
Mike Roberts, Assistant Director of Environmental Resources
Brad Stein, Development Review Manager
Jay Berenzweig, Principal Environmental Planner
Devin Tolpin, Principal Planner
Tiffany Stankiewicz, Development Administrator
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

Applicants for Agenda Items 2 and 4 requested a continuance to the March 29, 2023 meeting.

Motion: Commissioner Demes made a motion to approve the continuances. Commissioners Thomas seconded the motion. There was no opposition. The motion passed unanimously.

DISCLOSURE OF EX PARTE COMMUNICATIONS

None.

APPROVAL OF MINUTES

Motion: Commissioner Demes made a motion to approve the January 25, 2023 meeting minutes. Commissioners Thomas 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 OCTOBER 13, 2022, THROUGH JANUARY 12, 2023, ROGO (Quarter 2, Year 31). ALLOCATION AWARDS WILL BE ALLOCATED FOR ALL UNINCORPORATED MONROE COUNTY. (FILE 2022-140)

(10:05 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 subarea. The Planning Department is recommending approval of the following market rate rankings: Lower Keys applicants ranked 1 through 7 recommend for allocation award; Big Pine/No Name applicant ranked 1, recommend for allocation award subject to mitigation availability at the time of permitting; Upper Keys applicants ranked 1 through 8 recommend for allocation award. There were no other applications recommended for allocation, they all roll over to the next quarter.

Chair Scarpelli asked for public comment. There was none. Public comment was closed.

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

3. DBA PINFISH ENTERTAINMENT, FLORIDA KEYS ENTERTAINMENT, LLC, UNITS 19-21, 91200 OVERSEAS HIGHWAY, TAVERNIER, MILE MARKER 91 BAY SIDE: A PUBLIC HEARING CONCERNING A REQUEST FOR A 2COP ALCOHOLIC BEVERAGE USE PERMIT, WHICH WOULD ALLOW FOR THE SALE OF BEER AND WINE FOR ON PREMISES CONSUMPTION OR PACKAGE SALES WITHIN UNITS 19-21 OF AN EXISTING SHOPPING CENTER. THE SUBJECT PROPERTY IS DESCRIBED AS A PARCEL OF LAND IN SECTION 33, TOWNSHIP 62 SOUTH RANGE 38 EAST, TAVERNIER, FLORIDA, HAVING PARCEL IDENTIFICATION NUMBER 00089910-000100. (FILE 2022-247)

(10:06 a.m.) Ms. Devin Tolpin, Principal Planner, presented the staff report. This is a request for a 2COP alcoholic beverage special use permit for a business doing business as Pinfish Entertainment that will be located in Units 19 through 21 of the Tavernier Towne Shopping Plaza. The property has an existing shopping center with a variety of commercial, retail, office and restaurant uses with an attached movie theater. The applicant is proposing to change the use of one of the units from commercial retail to commercial recreation to be a bowling alley with arcade. The proposed floor plan also shows a bar area so the applicant is requesting approval of the 2COP alcoholic beverage use permit to serve beer and wine for on-premises consumption or package sales. Standards include the effect of use on surrounding properties, suitability of premises regarding location, site characteristics and intended purpose of the property, including lighting, to make sure there is compliant access, traffic generation requirements, road capacities and parking requirements, evaluate demands on utilities, community facilities, public services, and compliance with the County's restrictions or requirements and any other valid regulations. When a use changes such as this, going from commercial retail to commercial recreation, a building permit is required to document and allow staff to review and ensure compliance with all requirements, specifically lighting and parking. Staff recommends approval with an added condition that the necessary state forms will not be signed until a County building permit is issued and closed documenting that the site is in compliance with all requirements. Alcoholic beverage permits run with the land and sales shall occur only within areas where the use is allowed.

There were no Commission questions or comments. The applicant was present but did not wish to speak. Chair Scarpelli asked for public comment. There was none. Public comment was closed.

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

5. A RESOLUTION BY THE MONROE COUNTY PLANNING COMMISSION
ADOPTING A RULE OF PROCEDURE PROVIDING THAT FAILURE TO FILE A TIMELY MOTION FOR REHEARING WITH THE PLANNING COMMISSION, IN ITS CAPACITY AS THE LOWER TRIBUNAL IN ADMINISTRATIVE AND/OR JUDICIAL APPEALS, PROCEEDINGS, OR ACTIONS, BRINGING TO ITS ATTENTION ANY AND ALL PUTATIVE INSUFFICIENCIES IN THE FINDINGS OF FACT, SUMMARIES, CLEAR STATEMENTS, OR CONCLUSIONS OF LAW ENTERED IN ITS WRITTEN DECISION BY EXHAUSTIVELY IDENTIFYING ANY AND ALL SUCH PUTATIVE INSUFFICIENCIES AND REQUESTING ENTRY OF A MORE COMPLETE ORDER FULLY ADDRESSING SUCH INSUFFICIENCIES, IS AND SHALL BE DEEMED A BINDING WAIVER OF SUCH ISSUE(S) AND IRREDEMIABLE FAILURE TO PRESERVE ERROR ON SUCH GROUND(S) IN ANY APPEAL, PROCEEDING, OR ACTION, THAT SEEKS ADMINISTRATIVE OR JUDICIAL RELIEF FROM SAID WRITTEN DECISION. (FILE 2023-031)

(10:11 a.m.) Mr. Peter Morris, Assistant County Attorney, stated that this rule mercifully speaks for itself and there is not a lot of extra add. The purpose is prophylactic. We have seen with increasing frequency a lot of enterprising theories of relief sort of retrospectively taking a shot at

the Planning Commission in appeals to DOAH or the circuit court appellate division of the decisions of this administrative tribunal, whether in the context of appeals or decisions on development applications, such as blame casting that the findings of fact aren't sufficiently specific, although this tribunal works very hard, as do the professional staff, to exhaustively articulate the bases for its decisions. These are not particularly good faith arguments and this is a way to short circuit those arguments from wasting the court's and legal staff's time. Mr. John Wolfe, Planning Commission Counsel, asked if this was also to prevent the applicant or appellant from bringing up new theories all of a sudden and surprising everybody. Mr. Morris stated that that was correct as well. If a legal issue or fact issue isn't raised to this tribunal then the Planning Commission shouldn't be disrespectfully treated. This is a legal body, whether sitting as an appellate or administrative tribunal, reviewing a development application. If an appellant or other party elects not to raise a legal theory of relief or a fact-bound basis for relief then this body shouldn't be treated like a dress rehearsal for a spring training game only for the regular season to begin at the circuit court. This is in order to ensure adequate legal respect for this tribunal and so we don't see such legal frivolities such as unveiling new theories of relief for the first time on appeal. That's not how this is supposed to work and this rule will address that.

There were no questions for Mr. Morris from the Commission. Chair Scarpelli asked for public comment. There was none. Public comment was closed.

Motion: Commissioner Thomas made a motion to adopt the rule of procedure. Commissioner Demes seconded the motion. There was no opposition. Motion passed unanimously.

BOARD DISCUSSION

Commissioner Demes noted that his favorite part of the meeting is listening to Mr. Morris expound on the law.

GROWTH MANAGEMENT COMMENTS

None.

ADJOURNMENT

The Monroe County Planning Commission meeting was adjourned at 10:14 a.m.