

Monroe County Board of County Commissioners Special Meeting

Tuesday, October 7, 2014

Height Exceptions

Then the next change is on page 43...

You have a couple of new policies here, you all directed staff to take a look at how to possibly raise the height limit for architectural features that really just apply to Ocean Reef and so we've also come up with some criteria and you'll see that on those two policies 5.31 and 5.32

Mayor Murphy: Do we have a public speaker on this Lindsay?

Lindsay Ballard: We do. Joel Reed.

Mayor Murphy: Debbie, are you ready for public speakers?

Debbie: Yes mam on this particular topic.

Joel Reed: Good morning Mayor, Commissioners, Joel Reed. I'm here today on behalf of Ocean Reef Club and Ocean Reef Community Association in regard to this issue. First of all I want to thank you for the support. As you know Ocean Reef is a distinct community. It's a private gated community of about twenty five hundred acres, about seventeen hundred units up there. We have a lot of additional amenities up there, public buildings or quasi, kind of public buildings that are for the club purpose as well. Ocean Reef also has a Community Association which has its own architectural board, its architectural committee that kind of makes going through DRC and Planning Commission a day at the beach compared to their architectural committee. They are very stringent. They impose a lot of times additional requirements and regulations on their projects. Their whole community is very involved with the process. They're all notified as far as any changes that happen up there. So the five foot, we appreciate the support and the language in there a lot of times, some of the single family homes and the commercial buildings as well bump up as far as making them more architecturally attractive to need this section to allow for that. We also have had a lot of discussions the last couple of weeks internally as well. I'm going to pass out, I guess to the clerk and to you guys, additional language we would like you guys to consider. But we have been talking to staff about(passes out additional language considerations) So not to confuse the issue, there are two specific issues. First is allowing for some additional architectural features that the five foot would do. As we went through the club, as I said, owns a lot of buildings. Some of those buildings are the hotels that are near Buccaneer Island, if you've been up there before. The Amberjack, The Dolphin, The Marlin, these buildings are aging, they're coming to the end of their life. We have done quite a few renovations to them. At this point there is not really many more renovations that can be done in order to continue to maintain and operate them. As you know, that function of the club as well is essential to maintaining a Class A club up there, continuing to provide for the tax base that comes out of Ocean Reef is by having an attractive club where we can continue to attract, to maintain current members and attract new members. A lot of those buildings, I have some data, it's not all there, The Amberjack for example is three levels of living. Just to give an

example, the couple, I'm not going to go into all of them, but we said look if these things were substantially damaged through a hurricane, or they had to come down, or we had to rebuild, we wouldn't be able to build back those units to those heights that are there today. We have several. We have The Harbor House which is a condominium, its over fifty four feet right now in Ocean Reef Club. We have The Marlin, which is one of the hotel buildings, that's at forty two feet. We got the Dolphin Hotel at forty seven feet and The Creek House. We didn't have the number on it but we know that's well over forty feet as well. That's another condominium building up there. We came up with the boat barn, that's at thirty seven feet, the boat barn that we have up there. But there is about seven or eight buildings specifically that we thought it would be greatly impacted as we try to redevelop these properties or if we have to due to a hurricane or other issues. Some of the other issues we face is that although these are three stories and they are just pushing the height limit right now. You know, if you get three stories up there you're at thirty feet and then you have an architectural roof element you're at thirty seven feet or something like that. A lot of these buildings are built below flood right now so if we go to build them back, obviously we're talking about sea level rise, we want to encourage those buildings to be brought back up to flood. What happens is we lose a whole top level that we currently have today. We would lose almost a whole floor there out of those developments and that's just not possible to happen. So we proposed some additional policy language to put in there to protect these existing buildings that are there to be able to be built back. We haven't thoroughly vetted with staff yet at this point we have just proposed talking about the issue that I just explained. We would like and hope to support and to continue to work with staff to tweak some of this language to get into the Comp Plan to protect us on some of these issues. And the language, it exempts, it doesn't exempt, it doesn't include single family homes so this is only for the multi-family and commercial structures that are up there, so it doesn't include any of the single family homes and what it says is, "lawfully established structures that exclude single family homes that exceed this height limit may be replaced with their existing height plus any additional height required to elevate the first finished floor two feet above the FE" so encouraging them to go, you know, those extra two feet as well above that base flood elevation to account for future sea level rise as well. And then also that the height limit applicable to Ocean Reef and this would be an exemption for their community center building. The community center building up there right now puts on productions and theater productions and when it was built, they aren't able to attract and have the top of the line theater groups that come in there because a lot of the sets that they have, they change throughout the production. They actually lift that whole set up to lift that whole backdrop up into the ceiling and then they drop down the new one and their theater wasn't able to be designed to that because of the height and so they also want that as an exclusion so that they can look to enhance that building at some point to be able to attract those types of productions there. I'm here for any questions. Thank you for considering.

Mayor Murphy: So the proposed additional language, Joel, is what you want, not the existing language?

Joel Reed: We support the Club and the Community Association both support that existing policy language that's in there ...

Commissioner Carruthers: the institutional language ...

Joel Reed: Yeah. This is additional language, as we were talking about that five foot that was in there, that we were supportive of. You know, we started to talk about the hotels and the aging and the issues and if we did try and rebuild them back, what that would look like in the loss of rooms and the development that's there.

Mayor Murphy: Do we have a public speaker on this?

Lindsay Ballard: We do.

Mayor Murphy: Let's hear the public speaker. Another one.

Lindsay Ballard: D.A. Aldridge

D.A. Aldridge: I'm D.A. Aldridge. I live on Tavernier which is part of Kay Largo. Here we are at the last minute, a breath away from sending the Comp Plan and all of a sudden we see a very important change being requested by our Northern neighbors. The Federation of Homeowner's Association has been very adamant about height restrictions for many years and we have continually fought for thirty five feet. We are asking at this time, I am asking at this time to have you not vote on this. We have not had the opportunity to look at the language that has been just handed to you and we feel that it needs to be reviewed very closely by the staff and by you because this is a huge change that they are requesting. Thank you.

Mayor Murphy: ... That's it

Commissioner Kolhage: What does the, in the final sentence when they talk about assembly group A1 and so forth, what does that mean?

Christine Hurley: We don't know.

Mayor Murphy: Well they haven't seen it yet. This is the problem with this.

Christine Hurley: Well we have seen that he emailed it but we asked questions. We didn't know what he meant by that.

Commissioner Kolhage: Well but we're going to have to be more specific on that. We'll have to have language that says exactly what it means. I think anyway.

Commissioner Rice: Could we not deal with this today and deal with it in January?

Christine Hurley: If you want us to address his comments, I just say get direction from the board at this point. We work on some type of language to bring back to you in January.

Commissioner Rice: I think that's what we should do.

Mayor Murphy: And what happens if we then want to make changes in January? Do we hold up the whole process?

Christine Hurley: I think you can legally make changes on the floor by motion before we transmit.

Bob Shillinger: As long as you're not changing the general substance of it. The general tone of it.

Mayor Murphy: Well that's what I am worried about. If we let this go til January and then begin to, ya know, flesh it out and the public speaks and we all get confused and then what happens to the rest of Comp Plan because we are supposed to vote on that in January.

Commissioner Neugent: I would ask on issues like this because I very much agree with what was said that we just got this and I think we need some information and my question is, and there may be some more issues very similar to this that come up. Can we have another meeting discussing those particular issues before the January transmittal?

Christine Hurley: Sure. We could do that.

Mayor Murphy: That would be helpful.

Commissioner Rice: That may be the way to approach it.

Christine Hurley: The problem with holding it in November or December is the calendars are already a mess from the holidays.

Commissioner Neugent: Oh my gosh we might have to do a little work.

Christine Hurley: No, that's not what I meant. It's just that even your regular board meetings got all shifted around.

Commissioner Neugent: Have it at the board meeting. End of the item discussion for a board meeting.

Christine Hurley: Okay. We can do that.

Mayor Murphy: We can do that.

Commissioner Neugent: Another things that's in this right here as I read it, for clarification purposes, "architectural decorating features that exceed the thirty five foot height limit but such features shall not exceed five feet above the structures roof line" Joel also mentioned that some of these buildings are already, I guess they would be legal non-conforming because they are above the height limit, so when you say "features shall not exceed five feet above the structures roofline" what roofline are we talking about? The one that's already non-conforming? Or thirty five feet, shall not exceed five feet above thirty five feet? That's not the way I necessarily interpret that.

Mayor Murphy: Because if it's the fifty four foot building, we're now at fifty nine...

Christine Hurley: It's not though. This is meant for new development that cannot exceed thirty five feet.

Commissioner Neugent: Well what happens ...

Christine Hurley: Joel has added in and what he is really asking you to do, is in simple terms, and I think it could be very simplified, is agree that existing, non-conforming buildings that are at a height greater than thirty five feet, be allowed to rebuild to that height plus...

Commissioner Neugent: I didn't hear anybody bring that up...

Christine Hurley: That's really what he is asking though.

Commissioner Rice: Well that's what this really says

Mayor Murphy: Plus what?

Christine Hurley: plus, let him adjust, like we already have a provision in here, for another five feet, if they need to raise the elevation for FEMA floodplain issues.

Mayor Murphy: Fine, but not for decorative features.

Christine Hurley: Well he talked about decorative also, but he definitely spoke about ...

Mayor Murphy: Well let's get it down pat.

Christine Hurley: Well we will try to but we got his language a couple days ago and...

Mayor Murphy: Well his language is kind of going in a figure eight.

Commissioner Kolhage: I understand what they are saying. In other words, he wants to maintain what they have now with an adjustment.

Christine Hurley: Yes. I think that's what he is asking.

Commissioner Kolhage: And I think that is reasonable.

Mayor Murphy: To replace a building, an older building that was built over thirty five feet, have a problem with that anywhere in Monroe County. It is what it is, we're all used to it, it's part of the landscape.

Commissioner Neugent: Clarification on what you just said

Mayor Murphy: I do not object to any of the older buildings that were built above thirty five feet. We all have them in our neighborhoods. If they need to be replaced or have to be replaced, I don't have a problem with them maintaining the height.

Commissioner Neugent: Hold on a minute there. Is there anything in our code, and I would use this as an analogy, FEMA's description of it, if its damaged by more than fifty percent, it has to be rebuilt, that is there anything in our code or Comp Plan that says that it then can be built over thirty five feet?

Mayor Murphy: No, No.

Christine Hurley: Okay, today, don't mix apples and oranges. Today our code does not allow us to approve a building permit above thirty five feet. If the structure is destroyed beyond fifty percent, they then have to conform to the new code, which is the thirty five foot height limit. And if it's destroyed beyond fifty percent under the floodplain rules, they have to raise the elevation and that's why they added this other position.

Commissioner Neugent: I understand the apples and oranges thing that I just plugged into it as an analogy but what I am saying is, have we had that discussion? You just said, at least my interpretation, that you can't build what Commissioner Murphy just said ...

Christine Hurley: You can't. That is what Joel is asking you to change.

Commissioner Neugent: So we need to have that discussion.

Commissioner Carruthers: And that's why we have the further thing about flood protection and height exceptions. Go to 105.5.32. We added that so that we would allow people to exceed the thirty five feet when they have to, to create enough free board to comply with FEMA regulations.

Commissioner Neugent: I'm not talking about base flood elevation.

Commissioner Carruthers: but that is the crunch that you are getting into. When the Mayor says that you can rebuild a building at the height it is today, but we have a thirty five foot limit and FEMA says you gotta raise your building five feet, you lose a story.

Commissioner Neugent: that addresses one part of it. The other part that is not being addressed in my opinion, is do we have anything, are we proposing that then a fifty four foot high building could be rebuilt to fifty four feet.

Christine Hurley: Joel is proposing that.

Commissioner Neugent: And that's what I am asking this Commission. Is that where we want to go with that?

Commissioner Carruthers: Well, I mean, if we don't allow people to do that, isn't that essentially a taking? I mean you would be ... think about the real life economic consequences of...

Bob Shillinger: There may be some Bert Harris implications but it's a different analysis.

Commissioner Kolhage: What we are considering here is because of the isolated and specific nature of Ocean Reef, do we want to make an exception here?

Commissioner Neugent: And can I tag onto that Commissioner Kolhage? Municipalities have the right, if I misspeak correct me, to go above thirty five feet if they choose to. Marathon has gone above thirty five feet, I think Key West has a height limit above thirty five feet, but based on what Commissioner Kolhage just said, and I want to hear some arguments otherwise, Ocean Reef is an isolated area, miles away from anyone else and a gated community, albeit in unincorporated Monroe County, they're very similar to a municipality with a city type manager, that do we want to be so parental if they have no objections internally amongst themselves to keep them from rebuilding above thirty five feet or changing some things that they have gone through the public input locally with their gated community. Do we want to impose our thoughts on how Ocean Reef should be run?

Commissioner Rice: I don't think we are trying to do that.

Mayor Murphy: I don't either. But I will tell you, my feeling is, in many, many instances, what Ocean Reef wants to do up there because they are away from everyone, I've agreed with. They've had good ideas, no problem and they do it. However when it comes to things like the height limit that everyone in this county is interested in, every developer is watching, and a lot of the homeowners are watching. I can't do something for them that I won't do for the rest of the county. And I will go to the extent that these buildings that Joel is talking about, were built when there was no height limit actually. If this comes down either in a hurricane or they want to

remodel it, I don't have a problem with them rebuilding to the height it was. I don't think it ruins the landscape because we have had thirty/forty years of looking at it. And therefore, everyone else in the county can also rebuild the over thirty five feet structures they have. Most of them are commercial structures.

Commissioner Kolhage: Okay can I ask you a question Mayor so I can more or less understand your position? So you're saying, you don't have a problem with them rebuilding to the height that they are now but you mean without the adjustment for base flood elevation or with it?

Mayor Murphy: No, because everyone in the county is going to get that adjustment.

Commissioner Kolhage: So you don't have an objection to it?

Mayor Murphy: Not to that. I have an objection to the decorative features.

Commissioner Kolhage: Okay but look, if it's, if they got a fifty foot building and there is a five foot adjustment for base flood elevation, you don't have a problem with them going to fifty five feet?

Mayor Murphy: No.

Commissioner Kolhage: Okay.

Mayor Murphy: They are going to what they were before the remodel ...

Christine Hurley: and you want it county wide not just for Ocean Reef?

Mayor Murphy: Yes.

Commissioner Carruthers: But only for flood mitigation...

Mayor Murphy: That's it, no decorative stuff.

Christine Hurley: Well right now the decorative is in, the flood is in...

Commissioner Carruthers: Well the decorative is in for Ocean Reef only, the flood is in for everyone. Right?

Christine Hurley: Yeah and the decorative is not so much what Joel is talking about relative to the bigger commercial buildings, its more for the single family homes that want the decorative features on top of the roof. They are separate issues really. So right now in the draft policy you have included an extra five feet in Ocean Reef for the decorative architectural features, you've included for the whole county up to five feet adjustments for flood protection, raising your elevations, and Joel is asking you to also include, for Ocean Reef, but it sounds like you at least have one Commissioner who wants to do it county wide for grandfathering existing buildings that are higher than thirty five feet and allowing them to get the flood adjustment.

Bob Shillinger: You'd want to vest them for that height is what I'm hearing.

Christine Hurley: Yup. But I don't know the Commissions, I'm not getting...

Commissioner Neugent: Well first of all the staff is supposed to review what the request is and bring it back the staff recommendation

Christine Hurley: But I'd like to know what the board, county wide or Ocean Reef for this vesting of existing buildings at least.

Commissioner Rice: Well let me help you out, if we don't do that, the economic impact, eventually we will destroy what we know down here. I don't feel that we have any choice.

Commissioner Carruthers: I don't think it's fair...I don't think it's fair to not let somebody rebuild what they got. As it is when they do rebuild they have to meet standards that exist today that did not, and codes that exist today that did not exist then.

Christine Hurley: I understand what you all are asking for so if you want to just move on without voting, we will draft language and bring it back for discussion on one of your regular agendas.

Commissioner Neugent: Let me point this out, as someone who operated out of an illegal non-conforming building, if you think that it is something that is, it was called Porky's restaurant, and if would have been destroyed by a storm, I would have had a very difficult time, if not impossible time to rebuild with the same amount of square footage because of setbacks that came into play after Porky's was built eons ago. So if you think that there is a fairness level here, there is really a lot of situations where you can't rebuild.

Commissioner Carruthers: but wouldn't you have been able to apply for variances and exceptions to those setbacks...

Christine Hurley: No.

Commissioner Neugent: You still would have had to meet the setback requirements.

Christine Hurley: You could apply for variance for a setback but not height.

Mayor Murphy: See well all we are talking about is height. Not their setbacks. Not anything else.

Commissioner Kolhage: We're talking about changing the whole concept of the fifty percent rule.

Christine Hurley: No I understand ...

Commissioner Kolhage: How does it work? For height...we're saying we're washing away the fifty percent rule.

Christine Hurley: Well other things enter intofor height you would be washing it away.

Bob Shillinger: As a trigger for bringing it into compliance with current code

Christine Hurley: There are still other things that apply to that but most of those can be remedied by a variance.

Commissioner Carruthers: and just to clarify what you are eluding to I think, Commissioner, is that someone can elevate their building now. And that's not necessarily fifty percent improvement. Right?

Christine Hurley: I mean if you are elevating a building, you're usually triggering that price...

Commissioner Carruthers: Well it depends on the building and the cost

Commissioner Kolhage: and the whole destruction issue and the fifty percent and that's.... I'm not necessarily saying I have a problem with that but that's what we're doing

Christine Hurley: And I will say the examples that Joel gave of the condominiums, when you, let's say have eight units per floor and now you have a storm that destroys more than fifty percent of that building, you are eliminating the possibility of one of those floors, because you are going to have to elevate it and that means eight condo owners don't get a unit and so that's related to the Bert Jay Harris that Bob referred to

Commissioner Carruthers: Everybody gets a smaller unit which is still going to be an issue so ...

Christine Hurley: That's under our current rules.

Commissioner Rice: And what we're trying to do is validate, you don't want to build a fifty year building or sixty year building without accommodating expected sea level rise

Commissioner Carruthers: I guess my only other comment is that I know that this is going to be controversial and people are going to be concerned about character and things like that...

Mayor Murphy: But it's already there.

Commissioner Carruthers: Well it is already there...

Mayor Murphy: So it's not changing the landscape...

Commissioner Carruthers: It's not but trust me from dealing with this in Key West people have the perception that overnight the character of our communities is going to change and that's not what we're talking about...Over fifty years it probably will to some extent but it's going to have to if we want to continue to live here.

Mayor Murphy: Alright listen we're going to take a break

.....

Mayor Murphy: And what I realized is we neglected to give Christine a head nod one way or the other on the non-habitable architectural decorative features. My comment was, I will vote for the increase in height but not for the decorative features. Discuss it and let her know which direction you would like her to take when she does her staff report.

Commissioner Carruthers: Are you talking about within Ocean Reef or County wide?

Mayor Murphy: They are the only ones that asked for it.

Commissioner Carruthers: I don't really care.

Commissioner Neugent: We'll put together something that is going to be in place for twenty years or at least supposedly it should be put in place so this is going to be hard and complex so I would say that the data and information on it being done county wide.

Mayor Murphy: But the point is, what county wide? I don't care if its county wide, in fact it has to be. For me to vote for a height limit, it has to be county wide. Otherwise, I'm not going to vote for it.

Christine Hurley: Okay wait a minute, no one has proposed, maybe that's where you're going next I don't know, right now what's in your draft is flood for everybody ...

Mayor Murphy: Base flood elevation...

Christine Hurley: They have talked about it, I am very clear, everyone is okay with that. Ocean Reef only, decorative features, five additional feet. And I didn't hear, I heard Murphy say she's opposed to it but I didn't hear what any of you other Commissioners thought of that.

Mayor Murphy: And that's what I am trying to bring out so that she knows where to go with it.

Commissioner Neugent: I thought I heard you ask, you wanted a head nod whether this was going to be proposed just for Ocean Reef or all of unincorporated Monroe County.

Christine Hurley: I had never heard that the decorative features was proposed for all of Monroe County from you all.

Commissioner Rice and Commissioner Kolhage respond in unison: No, no...

Commissioner Neugent: Okay but I also heard Commissioner Mayor Murphy say, I'm not going to treat them any different than the rest of the County.

Commissioner Rice: Well that gives you a slight clue as to how she might vote.

Christine Hurley: So what I think I've gotten clarity on is everybody's okay allowing the people to get five of the five feet to adjust the floodplain if they are demolished. The board wants us to draft language to address existing structures that are already over thirty five feet to be able to be replaced with the five foot flood adjustment. What I don't have any clarity on is whether or not the board wants us to keep in Ocean Reef allowance for five foot additional architectural decorative features or not. Or if you want to expand that County wide, which I had never heard as an option to this moment.

Commissioner Kolhage: Let me just state my position on this and you can go down the line I guess but I really don't care about the architectural features of Ocean Reef. I've tried to care but I just can't. But I am a little concerned, I'm a little concerned about doing away with our fifty percent rule on the rest of the County and I'm not saying that I am going to support that.

Commissioner Neugent: I'm not saying that I am going to support anything. I'm saying I just want the information to be able to make the decision, have the discussions with the people who are going to speak for and against it.

Mayor Murphy: And my only point with the architectural features, I don't think they are necessary, but if just for Ocean Reef, I don't want them certainly spread all over Monroe County and if you do that you are guaranteeing somebody an extra ten feet. Five feet for the base flood elevation, up to five feet, and then up to another five feet for their decorative stuff, plus what they'll be rebuilding is something that is you know, fifty feet, fifty four feet, whatever. Its adding ten feet to it instead of five. I think that's a bit much.

Commissioner Neugent: At what point in time do we bring up what was brought up previously about addressing affordable housing, increasing the height limit ...This is all about bringing information back to us.

Christine Hurley: This is the time to bring that up if you want to.

Commissioner Neugent: And I just, looking back in history a little bit here, there were some comments that Meridian West could have had another floor which would have increased the housing if they had gone up an additional foot or so. So again, more information to discuss that strictly for affordable housing.

Christine Hurley: Yes and at the meeting that State Representative Raschein held, you all discussed that. We do not have anything included right now in this policy for increased height for affordable housing. We have discussed it as staff after you had that meeting. It's our opinion that if you are going to incentivize affordable housing development by giving them a higher height limit that you should restrict that to very low and low maybe median, but the moderate income level is something that we do not think should be incentivized with a height increase.

Commissioner Neugent: One of the biggest problems in dealing with affordable housing is the property to build them on. Another reason why I think the discussion should take place for affordable housing to go up is that if you can build more on that specific site as opposed to trying to find other properties to build affordable housing on. It helps resolve that part of the equation.

Commissioner Kolhage: So what are you going to do with that Christine? Between now and January?

Christine Hurley: Do you want us to include something for you to consider relative to affordable in the next version that we bring to you at your regular meeting for discussion?

Commissioner Rice: I do.

Commissioner Carruthers: I do.

Christine Hurley: Okay.

Commissioner Kolhage: I remain to be convinced...

Commissioner Rice: I'm not sure how I feel about it but I think we do need to have the discussion.

Christine Hurley: And I'm going to have some diagrams for you all by the next meeting with each policy so you can see what that means.

Commissioner Carruthers: Will you also, related to this policy with affordable, that would have to be in very specific tiered areas obviously.

Christine Hurley: I understand. I will bring that also.

Commissioner Kolhage: It's all about potential serious community character issues here.