



Islamorada, Village of Islands

SPECIAL CALL LAND USE COUNCIL MEETING

September 21, 2023 - 5:30 PM
Founders Park Community Center
87000 Overseas Highway
Islamorada, FL 33036

MINUTES

I. CALL TO ORDER / ROLL CALL

Mayor Pinder called the meeting to order at 5:30pm

PRESENT: Council Member Mark Gregg, Council Member Elizabeth Jolin,
Council Member Henry Rosenthal, Vice Mayor Sharon Mahoney,
Mayor Joseph B. Pinder III

ABSENT:

II. PLEDGE OF ALLEGIANCE

Dave led the Pledge of Allegiance and Mayor Pinder said a prayer to start the meeting.

III. AGENDA: Requests for Deletion / Emergency Additions

Council Member Henry Rosenthal requested switching the order of tabs 2 and 3.

Council Member Mark Gregg requested moving Tabs 6 and 7 to be heard before tabs 3 and 2

IV. REPORTS, PRESENTATIONS AND ANNOUNCEMENTS

A. Local Planning Agency Report -Deb Gillis, Chair **TAB 1**

Chair Deb Gillis presented the report summarizing the LPA's recommendations.

Council Member Jolin asked for clarification on the deferral of an item that was on LPA's agenda. It was noted the Code allows the applicant to request one deferral, which can be granted at the discretion of the Planning Director.

V. MAYOR / COUNCIL COMMUNICATIONS

There were no items added.

VI. VILLAGE ATTORNEY / VILLAGE MANAGER COMMUNICATIONS

There were no items added.

VII. PUBLIC COMMENT

(This is general public comment. It provides an opportunity for the public to speak about matters not scheduled elsewhere on the agenda. The mayor opens public comment on agenda items throughout the meeting.)

Mayor Joseph B. Pinder III opened public comment.

Speakers included:

Van Cadenhead
David deHaas-Grosbeck
Joe Wischmeier
Pete Bacheler

There being no one else wishing to speak, Mayor Pinder closed public comment.

IX. **QUASI-JUDICIAL**

- A. Administrative Appeal - 186 S. Airport Road **TAB 6** (Daniel Parabok, Environmental Planner)

A RESOLUTION OF THE VILLAGE COUNCIL OF ISLAMORADA, VILLAGE OF ISLANDS, FLORIDA, CONSIDERING THE ADMINISTRATIVE APPEAL FILED BY SMITH HAWKS, PL ("AGENT") ON BEHALF OF BRANDON J. DAVIS (OWNER) RELATING TO THE ENVIRONMENTAL PLANNER/BIOLOGIST'S DETERMINATION REGARDING HABITAT CLASSIFICATION; FOR PROPERTY LOCATED AT 186 S AIRPORT RD, ON PLANTATION KEY HAVING PARCEL NUMBER 00437493-005100; AND PROVIDING FOR AN EFFECTIVE DATE

Council disclosed ex-parte communications:

Mayor Joseph B. Pinder III - Brandon Davis, Bobby Vaughn, and Village staff
Council Member Mark Gregg - Brandon Davis, Bobby Vaughn, and Village staff
Vice Mayor Sharon Mahoney - Brandon Davis, Bobby Vaughn, and Village staff
Council Member Henry Rosenthal - Brandon Davis
Council Member Elizabeth Jolin - Village staff

Environmental Biologist Daniel Parabok introduced the item as Planning Director DeBoisbriand cited a conflict of interest.

Staff denied the request due to field verification which confirmed the Planning Department's determination of low quality hammock.

Attorney Bart Smith argued that the property was disturbed hammock. He noted former Village Manager Greg Oravec stated the Village relied on the 2005 map, and that the applicant purchased the property based on that map. He indicated the 2005 map reflected the property as not being hammock, although if it were, the appropriate hammock designation should be 'disturbed with hammock' not 'low quality hammock.'

Applicant Brandon Davis noted he wants to build a hangar home on the property. Environmental Consultant Julie Cheon called as an expert witness, referenced the Monroe County 1985 habitat map in which county code states condition of the habitat in 1986 will be the prevailing designation, and that the property was

disturbed with hammock.

Mr. Parabok noted his reliance upon the Village code, which does not include a designation of 'disturbed with hammock.'

Mayor Pinder opened public testimony.

Public in favor of the request:
None

Public in opposition:
Van Cadenhead

Public testimony was closed

Mr. Parabok noted they can clear up to 50% of the lot as low-quality hammock and that the lot is developable.

Attorney Bart Smith closed noting they were not asking for a variance, but for Council to agree this lot was disturbed with hammock.

During Council deliberation, it was noted the position of the staff was presumed correct and that the applicant did not prove an error of fact.

ACTION:	Motion to deny the appeal item IX.A. by Mark Gregg second by Henry Rosenthal; Motion passed with a 3:2
AYES:	Mark Gregg, Elizabeth Jolin, Henry Rosenthal
NAYS:	Sharon Mahoney, Joseph B. Pinder III
ABSTAIN:	None

- B.** Administrative Appeal - 222 Biscayne Blvd **TAB 7** (Jennifer DeBoisbriand , Planning Director)

A RESOLUTION OF THE VILLAGE COUNCIL OF ISLAMORADA, VILLAGE OF ISLANDS, FLORIDA, CONSIDERING ADMINISTRATIVE APPEAL FILED BY JOANNE M. PEREIRA, ESQ. (AGENT) ON BEHALF OF FREDERICK SCHMID AND DARCY PARKER (APPELLANT'S), RELATING TO THE DIRECTOR OF PLANNING'S NOTICE OF INTENT TO DENY AN ADMINISTRATIVE VARIANCE FOR AN AFTER-THE-FACT TIKI HUT CONSTRUCTED WITHIN THE REQUIRED 10' (TEN FOOT) SETBACK FROM MEAN HIGH WATER LINE (MHWL), FOR PROPERTY LOCATED AT 222 BISCAYNE BLVD, HAVING REAL ESTATE NUMBER 00394489-008400, ON LOWER MATECUMBE KEY, ISLAMORADA, VILLAGE OF ISLANDS, FLORIDA, AS LEGALLY DESCRIBED HEREIN; AND PROVIDING FOR AN EFFECTIVE DATE.

Council disclosed ex-parte communications:

Mayor Joseph B. Pinder III - Village staff

Council Member Mark Gregg - Village staff and a phone call with past HOA president David Webb

Vice Mayor Sharon Mahoney - Village staff

Council Member Henry Rosenthal -None

Council Member Elizabeth Jolin - None

Planning Director Jennifer DeBoisbriand introduced the Village's position and shared the standards which led to the Village's denial of the variance. She noted it was a self-created hardship by building the tiki hut without permission and cited a 2012 map showing that the tiki hut was not there. It was noted that neighbors had preexisting non-conforming tiki huts that were installed prior to incorporation. The applicant claimed there was a tiki hut there that was destroyed by Irma. Planning Director DeBoisbriand cited the Comp Plan requirements and that the variance was inconsistent with the Comp Plan, therefore the staff recommended denial.

Attorney Joanne Pereira, on behalf of applicants Frederick Schmid and Darcy Parker, argued it should be classified as a legal non-conforming structure and that her clients bought the home in 2017. One of the existing features was a gazebo that was damaged during Hurricane Irma, and left the same until 2019 when a tiki hut was built on the footprint of the previous structure. The applicants were under the impression the existing structure had been properly permitted. A code violation brought the situation to the Village's attention.

Ms. Pereira noted that during the Code Enforcement hearing it was stated that Council could grant a setback variance. She indicated the only part of the property her clients wanted a setback for was where the tiki hut was and that it was unfair not to have the same rights as their neighbors.

Mayor Pinder opened public testimony.

Public in favor of the request:
None

Public in opposition:
Van Cadenhead

Public testimony was closed.

Attorney Pereira contended that permitting the variance would not create precedence, that the structure was built in 2000, and that there was not sufficient space to move the structure and it would have to be removed.

Planning Director DeBoisbriand noted she doesn't recall telling the applicants that a use variance could be requested and that kind of request would not be pertinent to this case. Interim Village Attorney John Quick noted this would not be a use variance, but a setback variance.

Ms. Pereira asked for 30 days after the hearing for her clients to remove the tiki

hut if necessary.

ACTION: Motion to postpone to the 03/14/24 Land Use Meeting and request the Magistrate to toll the case - item IX.B. by Elizabeth Jolin second by Mark Gregg;
Motion passed with a 5:0

AYES: Mark Gregg, Elizabeth Jolin, Henry Rosenthal, Sharon Mahoney, Joseph B. Pinder III

NAYS: None

ABSTAIN: None

VIII. ORDINANCES

- A. Moratorium on Building Permit Allocations (BPAS) **TAB 3** (John Quick, Interim Village Attorney)

AN ORDINANCE OF ISLAMORADA, VILLAGE OF ISLANDS, FLORIDA, ESTABLISHING A TEMPORARY MORATORIUM, WITHIN THE VILLAGE, ON THE ACCEPTANCE OF MARKET RATE RESIDENTIAL BUILDING PERMIT ALLOCATION SYSTEM (BPAS) APPLICATIONS, ACCEPTANCE OF NONRESIDENTIAL BUILDING PERMIT ALLOCATION SYSTEM (BPAS) APPLICATIONS, ACCEPTANCE OF BPAS LAND DEDICATIONS; PROVIDING FOR EXEMPTIONS; PROVIDING FOR PROCEDURES FOR VESTED RIGHTS AND JUDICIAL REVIEW; PROVIDING FOR A TERM; PROVIDING FOR SEVERABILITY; PROVIDING FOR CONFLICTS; PROVIDING FOR THE TRANSMITTAL OF THIS ORDINANCE TO THE STATE DEPARTMENT OF ECONOMIC OPPORTUNITY; AND PROVIDING FOR AN EFFECTIVE DATE UPON THE APPROVAL OF THIS ORDINANCE BY THE STATE DEPARTMENT OF ECONOMIC OPPORTUNITY.

Mayor Pinder recessed the meeting for a short break at 8:35 p.m.
The meeting was reconvened at 8:50 p.m.

Village Attorney John Quick noted he created the draft ordinance in response to a request from the Council in July; that it was drafted for new applications and does not include TDRs administrative relief, and affordable housing.

During Council deliberations, it was noted that there would be a six-month renewable moratorium to give the Village time to do the work on addressing the issue without new applications to consider.

Mayor Pinder opened public comment.

Speakers included:
Van Cadenhead
Ty Harris
Joe Wischmeier
Deb Gillis

There being no one else wishing to speak, Mayor Pinder closed public comment.

ACTION: Motion to approve moratorium on market rate BPAS with or without land dedications item VIII.A. by Mark Gregg second by Sharon Mahoney;
Motion passed with a 3:2

AYES: Mark Gregg, Sharon Mahoney, Joseph B. Pinder III

NAYS: Elizabeth Jolin, Henry Rosenthal

ABSTAIN: None

- B.** Amending Administrative Relief Under the Building Permit Allocation System (BPAS) - **TAB 2** (John Quick, Interim Village Attorney)
AN ORDINANCE OF ISLAMORADA, VILLAGE OF ISLANDS, FLORIDA, AMENDING ARTICLE IV, "ADMINISTRATIVE PROCEDURES," OF CHAPTER 30, "LAND DEVELOPMENT REGULATIONS," OF THE VILLAGE CODE RELATING TO ADMINISTRATIVE RELIEF AVAILABLE TO APPLICANTS UNDER THE BUILDING PERMIT ALLOCATION SYSTEM (BPAS); PROVIDING FOR THE REPEAL OF ALL CODE PROVISIONS AND ORDINANCES INCONSISTENT WITH THIS ORDINANCE; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN THE CODE; PROVIDING FOR THE TRANSMITTAL OF THIS ORDINANCE TO THE FLORIDA DEPARTMENT OF ECONOMIC OPPORTUNITY; AND PROVIDING FOR AN EFFECTIVE DATE
Mayor Joseph B. Pinder III opened public comment.

Speakers included:
Gary Nichols II
Gary Nichols Sr.
George Perez
Ty Harris
Joe Wischmeier
Donna Cabrera
David Helker

There being no one else wishing to speak, Mayor Pinder closed public comment.

At 10:28 p.m. Council Member Mark Gregg moved to extend the meeting until 11:00 p.m.

ACTION: Motion to continue the item to the 10/10/23 agenda item VIII.B. by Mark Gregg second by Elizabeth Jolin;
Motion passed with a 5:0

AYES: Mark Gregg, Elizabeth Jolin, Henry Rosenthal, Sharon Mahoney, Joseph B. Pinder III

NAYS: None

ABSTAIN: None

- C. Ordinance of Islamorada, Village of Islands, Florida amending Chapter 30 Land Development Regulations relating to the Historic Preservation Commission **TAB 4** (John Quick, Interim Village Attorney)

AN ORDINANCE OF ISLAMORADA, VILLAGE OF ISLANDS, FLORIDA, AMENDING CHAPTER 30 "LAND DEVELOPMENT REGULATIONS", ARTICLE VII "ENVIRONMENTAL REGULATIONS", DIVISION 7 "HISTORIC AND ARCHAEOLOGICAL SITES", SECTION 30-1693 RELATING TO THE HISTORIC PRESERVATION COMMISSION; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN THE CODE; AND PROVIDING FOR AN EFFECTIVE DATE.

Mayor Joseph B. Pinder III opened public comment.

Speakers included:
Van Cadenhead

There being no one else wishing to speak, Mayor Pinder closed public comment.

ACTION: Motion to approve item VIII.C. by Sharon Mahoney second by Elizabeth Jolin;

Motion passed with a 5:0

AYES: Mark Gregg, Elizabeth Jolin, Henry Rosenthal, Sharon Mahoney, Joseph B. Pinder III

NAYS: None

ABSTAIN: None

- D. Ordinance Amending Policy 1-3.1.1, Establish a Building Permit Allocation System **TAB 5** (Jennifer DeBoisbriand , Planning Director, Rebecca Jetton, Village Consultant)

AN ORDINANCE OF ISLAMORADA, VILLAGE OF ISLANDS, FLORIDA, AMENDING POLICY 1-3.1.1, ESTABLISH A BUILDING PERMIT ALLOCATION SYSTEM, OF THE VILLAGE COMPREHENSIVE PLAN RELATING TO ESTABLISHING ADDITIONAL NON-RESIDENTIAL BUILDING PERMIT ALLOCATIONS; PROVIDING FOR THE TRANSMITTAL OF THIS ORDINANCE TO THE STATE DEPARTMENT OF ECONOMIC OPPORTUNITY; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE UPON APPROVAL OF THIS ORDINANCE BY THE STATE DEPARTMENT OF ECONOMIC OPPORTUNITY.

Rebecca Jetton presented the item via Zoom.

Mayor Joseph B. Pinder III opened public comment.

Speakers included:
Van Cadehead

There being no one else wishing to speak, Mayor Pinder closed public comment.

Council Member Mark Gregg moved to extend the meeting until 11:15 p.m.

During Council deliberations, a request was made for an analysis from Planning and Legal for the second reading.

ACTION:	Motion to approve item VIII.D. by Mark Gregg second by Sharon Mahoney; Motion with a 5:0
AYES:	Sharon Mahoney, Elizabeth Jolin, Mark Gregg, Henry Rosenthal, Joseph B. Pinder III
NAYS:	None
ABSTAIN:	None

X. RESOLUTIONS

- A.** Remaining 2023 Allocation Periods for Market Rate Building Permit Allocation System (BPAS) **TAB 8** (Jennifer DeBoisbriand , Planning Director)

A RESOLUTION OF THE VILLAGE COUNCIL OF ISLAMORADA, VILLAGE OF ISLANDS, FLORIDA, QUARTERLY ALLOCATION PERIODS FOR MARKET RATE BUILDING PERMIT ALLOCATION SYSTEM (BPAS) FOR REMAINDER OF 2023; AND PROVIDING AN EFFECTIVE DATE

Mayor Joseph B. Pinder III opened public comment.

Speakers included:
Deb Gillis

There being no one else wishing to speak, Mayor Pinder closed public comment.

ACTION:	Motion to approve item X.A. by Mark Gregg second by Elizabeth Jolin; Motion passed with a 5:0
AYES:	Mark Gregg, Elizabeth Jolin, Henry Rosenthal, Sharon Mahoney, Joseph B. Pinder III
NAYS:	None
ABSTAIN:	None

XI. ADJOURNMENT

Moved by Council Member Henry Rosenthal to adjourn the meeting at 11:06 p.m.