

BOARD OF COUNTY COMMISSIONERS

AGENDA ITEM SUMMARY

Meeting Date: March 19, 2008 Division: Growth Management

Bulk Item: Yes No Department: _____

Staff Contact: Susan Grimsley

AGENDA ITEM WORDING: Approval of an ordinance of the Monroe County Board of County Commissioners amending Section 9.5-251 concerning appeals from administrative actions to change the appeal period from thirty (30) working days to thirty (30) calendar days.

ITEM BACKGROUND: The use of working days for an appeal period is inconsistent with usual legal practices and provides different numbers of days for an appeal to different appellants, which is not fair to those who have the shorter period. This amendment provides the same time period for everyone. It also allows a longer time period to forward the appeal, which is necessary given the increasing workload and number of appeals filed.

PREVIOUS RELEVANT BOCC ACTION: N/A

CONTRACT/AGREEMENT CHANGES: N/A

STAFF RECOMMENDATIONS: Approval

TOTAL COST: N/A **BUDGETED:** Yes No

COST TO COUNTY: N/A **SOURCE OF FUNDS:** _____

REVENUE PRODUCING: Yes No **AMOUNT PER MONTH** _____ **Year** _____

APPROVED BY: County Atty OMB/Purchasing Risk Management

DOCUMENTATION: Included Not Required

DISPOSITION: _____ **AGENDA ITEM #** _____

ORDINANCE -2008

AN ORDINANCE BY THE MONROE COUNTY BOARD OF COUNTY COMMISSIONERS AMENDING SECTION 9.5-521 CONCERNING APPEALS FROM ADMINISTRATIVE ACTIONS TO CHANGE THE APPEAL PERIOD FROM THIRTY (30) WORKING DAYS TO THIRTY (30) CALENDAR DAYS; CHANGING THE TIME PERIOD FOR FORWARDING APPEALS TO THE PLANNING COMMISSION AND MAILING NOTICES TO OTHER DESIGNATED PERSONS; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL OF INCONSISTENT PROVISIONS; PROVIDING FOR INCLUSION IN THE MONROE COUNTY CODE OF ORDINANCES; PROVIDING FOR FILING WITH THE SECRETARY OF STATE AND THE DEPARTMENT OF COMMUNITY AFFAIRS; PROVIDING AN EFFECTIVE DATE

WHEREAS, the Board of County Commissioners makes the following Findings of Fact:

1. The current provisions of the Monroe County Code allow thirty (30) working days to appeal from administrative actions of officials acting pursuant to the Land Development Regulations in Chapter 9.5.
2. The calculation of the number of working days leads to uncertainty in the appeal process for the applicants, the public and staff and unfair advantage and unequal treatment by granting additional days to file to some appellants.
3. Applicants, members of the public, and staff cannot easily determine the number of actual days of the appeal period when working days are used to calculate the appeal time.
4. There is a five (5) working day time period for the transmission and mailing of records and notices concerning appeals to designated recipients, and this time is insufficient given the number of staff and budget constraints.
5. Thirty (30) days to appeal a decision of an administrative decision is sufficient time and is consistent with other appellate actions in the Code and other appellate proceedings.
6. The Planning Commission held a public hearing at its regular meeting on February 19, 2008, and recommended by a vote of 4-0 the version of the ordinance as set forth below, changing the organization of the paragraph and changing the proposed amendment from 10 working days for notice to be forwarded to 15 calendar days, in order to maintain consistency with the use of calendar days.

NOW, THEREFORE, BE IT ORDAINED by the Board of County Commissioners of Monroe County:

Section 1. Section 9.5-521 is amended as follows:

Sec. 9.5-521. Appeals.

* * * * *

(c) *Procedures:* A notice of appeal in the form prescribed by the director of planning must be filed with the county administrator and with the office or department rendering the decision, determination or

interpretation within thirty (30) ~~working~~ calendar days of the decision. Failure to file such appeal shall constitute a waiver of any rights under this chapter to appeal any interpretation or determination made by an administrative official. Such notice shall be accompanied by the names and addresses of the owner, applicant, property owner, and adjacent property owners. The filing of such notice of appeal will require the administrative official whose decision is appealed to forward to the commission or board within ~~five (5)~~ working-fifteen (15) calendar days any and all records concerning the subject matter of the appeal and to send written notice of the appeal to the owner, applicant, property owner, and adjacent property owners, if different from the person filing the appeal, within ~~five (5) working~~ fifteen (15) calendar days of receipt of the notice of appeal. ~~Failure to file such appeal shall constitute a waiver of any rights under this chapter to appeal any interpretation or determination made by an administrative official.~~

* * * * *

Section 2. Severability. If any section, subsection, sentence, clause or provision of this ordinance is held invalid, the remainder of this ordinance shall not be affected by such invalidity.

Section 3. Repeal of Inconsistent Provisions. All ordinances or parts of ordinances in conflict with this ordinance are hereby repealed to the extent of said conflict.

Section 4. Inclusion in Code. The provisions of this ordinance shall be included and incorporated in the Code of Ordinances of Monroe County, Florida, as an addition or amendment thereto.

Section 5. Filing. This ordinance shall be filed in the Office of the Secretary of the State of Florida This ordinance shall be transmitted by the Planning Department to the Department of Community Affairs pursuant to Chapter 163, Florida Statutes.

Section 6. Effective Date. This ordinance shall take effect immediately upon receipt of official notice from the Office of the Secretary of State of the State of Florida that this ordinance has been filed with said Office and upon approval by the Department of Community Affairs of the State of Florida according to the terms of the approval.

PASSED AND ADOPTED by the Board of County Commissioners of Monroe County, Florida, at a regular meeting of said Board held on the _____ day of _____, _____.

Mayor Charles "Sonny" McCoy _____
 Mayor Pro Tem Mario DiGenarro _____
 Commissioner Sylvia Murphy _____
 Commissioner George Neugent _____
 Commissioner Dixie Spehar _____

(SEAL)
 Attest: DANNY L.KOLHAGE, Clerk

BOARD OF COUNTY COMMISSIONERS
 OF MONROE COUNTY, FLORIDA

By _____
 Deputy Clerk

By _____
 Mayor Charles "Sonny" McCoy

MONROE COUNTY ATTORNEY
 APPROVED AS TO FORM
Susan M. Jursley
 Date: 3-6-08



MEMORANDUM

MONROE COUNTY PLANNING & ENVIRONMENTAL RESOURCES DEPARTMENT

We strive to be caring, professional and fair

To: Monroe County Board of County Commissioners
From: Susan Grimsley, Asst. County Attorney *SG*
Through: Andrew Trivette, Director of Growth Management
Townsville Schwab, Acting Planning Director
Date: March 5, 2008
Subject: Text Amendment Concerning Administrative Appeals, Section 9.5-521

MEETING DATE: March 19, 2008

I. Proposed Revision

A text amendment to the Land Development Regulations of Monroe County, Section 9.5-521, is proposed to change the appeal period for administrative appeals to thirty calendar days from thirty working days. In addition, the revision would extend from five (5) working days to fifteen (15) calendar days the time period to forward all applicable materials to the Planning Commission and affected persons.

II. Background

Administrative appeals have been allowed during the thirty working day period following rendering of the decision. These appeals are generated mostly from decisions from the building official (building permits) and planning director. Both applicants and neighbors affected by a decision use this process.

Thirty working days is approximately six weeks, or a month and a half, which is an extensive time to reach finality on a decision. Persons who receive decisions which they wish to appeal can easily do so within the thirty day calendar day period. In addition, the use of working days gives different appeal periods to different appellants.

Most courts and other decision making bodies use calendar days to calculate time periods unless the period is less than ten days. Use of the thirty working day period is difficult and uncertain for persons who have received building permits, ROGO exemption letters or other decisions which give rights to the applicant. Applicants cannot build, order materials or proceed with other related activities until this time period has passed. One has to have specific knowledge of the Monroe County holiday schedule. Persons not living in the area may not know the exact time frame for appeals.

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2 Staff receives several appeals a month, which number has increased in the last few months. As
3 the ROGO allocation situation becomes less conducive to issuance of permits, appeals of ROGO
4 exemptions and determinations of building rights are increasing. In regard to the forwarding
5 time, five working days to process, copy and mail the appeal to the Planning Commission is
6 insufficient. Staff had originally recommended 10 working days; however the Planning
7 Commission recommended that time period should be changed to fifteen (15) calendar days for
8 consistency. The Planning Commission recommended approval by a 4-0 vote at its meeting of
9 February 19, 2008.

1 **III. Analysis**

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3 The board of county commissioners may consider the adoption of an ordinance enacting the
4 proposed change based on one (1) or more of the following factors in Section 9.5-511(d)(5)b:

- 5 (i) Changed projections (e.g., regarding public service needs) from those on which the text or
6 boundary was based
- 7 (ii) Changed assumptions (e.g., regarding demographic trends)
- 8 (iii) Data errors, including errors in mapping, vegetative types and natural features described in
9 volume 1 of the plan
- 0 (iv) New issues
- 1 (v) Recognition of a need for additional detail or comprehensiveness; or
- 2 (vi) Data updates

3
4 Changed Assumptions: The assumption that an appeal cannot be filed because some of the days
5 are not Monroe County work days has changed. Monroe County holidays do not coincide with
6 holidays in the private sector. If the thirtieth day falls on a weekend or holiday, the appeal is
7 accepted on the next business day. There is a need for uniformity in the finalization of permits
8 and other administrative decisions. Giving different persons varying numbers of days to appeal is
9 unequal treatment, and leads to uncertainty in interpretation by the public.

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1 New Issues: Recent increases in appeals and less staff have made a 15 day forwarding process
2 necessary.

3 **IV. Recommendation**

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5 Staff recommends **approval**.