

**BOARD OF COUNTY COMMISSIONERS  
AGENDA ITEM SUMMARY**

Meeting Date: May 23, 2008

Division: Growth Management

Bulk Item: Yes  No

Department: Planning & Environmental Resources

Staff Contact: Susan Grimsley & Richard Jones

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**AGENDA ITEM WORDING:** A public hearing to consider a resolution to extend an Interim Development Ordinance (IDO) deferring the acceptance of applications for redevelopment and/or conversion of marine facilities including commercial marinas and working waterfronts for one year after the effective date or when applicable comprehensive plan and/or land development regulations become effective.

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**ITEM BACKGROUND:** Monroe County is experiencing the loss of and redevelopment of marine facilities including commercial marinas and the working waterfront. The County found it necessary to enact an Interim Development Ordinance deferring the acceptance of development applications that seek development approval for the redevelopment and conversion of marine facilities and working waterfront properties until land development regulations are adopted. However, Comprehensive Plan amendments were adopted February 4, 2008 and were found "not in compliance" by the DCA. The proposed plan amendments are now in the DOAH process, involving several parties. Staff believes the IDO should be extended for another year, due to the potential length and nature of the hearing process and LDR adoption.

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**PREVIOUS RELEVANT BOCC ACTION:**

February 2005 – Approved contract with South Florida Regional Planning Council (SFRPC) and Florida Atlantic University (FAU) to develop a Marine Management Strategic Plan.

July 2005 – Adopted Ordinance No. 017-2005 – An IDO deferring the acceptance of development applications for the redevelopment and conversion of marine facilities.

March 2006 – Accepted findings of the marine Management Strategic Plan.

June 2006 – Extended the IDO by Resolution 241-2006.

September 2006 – Approved contract with SFRPC to develop a Marina Siting Plan, Working Waterfronts Preservation Master Plan and draft land development regulations for working waterfront preservation.

April 2007 – Held a workshop to discuss preservation options, allowing staff to complete land development regulations and begin process for adoption.

July 2007 – Extended IDO until July 9, 2008 by Resolution 265-2007.

September 2007 – Approval of Transmittal Resolution 301-2007 to DCA

February 2008- Adoption of Comprehensive Plan Amendment Ordinance 008-2008

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**CONTRACT/AGREEMENT CHANGES:**

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**STAFF RECOMMENDATIONS:** Approval

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**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 #** \_\_\_\_\_

**MEMORANDUM**  
**MONROE COUNTY GROWTH MANAGEMENT DIVISION**  
*We strive to be caring, professional and fair*

To: Board of County Commissioners

From: Susan Grimsley, Asst. County Attorney *smg*

Through: Andrew Trivette, Director of Growth Management *[Signature]*

Date: May 9, 2008

RE: Interim Development Ordinance for Working Waterfront  
**BOCC Special Meeting      May 23, 2008**  
**BOCC Regular Meeting      June 18, 2008**



The IDO temporarily halting re-development of properties considered as working waterfront and/or containing public access to the waterfront will expire in July. The purpose of the IDO was to allow enactment of Comprehensive Plan amendments and land development regulations to retain most current uses and channel compatible uses to those areas.

Some of the Comprehensive Plan amendments passed by the Board on February 4, 2008, were found to be “not in compliance” by the Department of Community Affairs. This will eventually lead to a hearing before the Division of Administrative Hearings (DOAH), unless prior negotiation or settlement is reached. Therefore, land development regulations implementing such amendments have not been enacted. Several affected parties have petitioned to intervene in the DOAH process which may make the proceeding longer, but there is the potential to compromise or resolve the issues with all parties prior to hearing.

Planning Staff recommends that the IDO be extended for another year, due to the potential length and nature of the DOAH process and LDR adoption.

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**ORDINANCE NO. \_\_\_\_\_ 2008**

**AN ORDINANCE BY THE MONROE COUNTY BOARD OF COUNTY COMMISSIONERS EXTENDING INTERIM DEVELOPMENT ORDINANCE NO. 017-2005; ADOPTING AN INTERIM DEVELOPMENT ORDINANCE DEFERRING THE ACCEPTANCE OF DEVELOPMENT APPLICATIONS FOR THE REDEVELOPMENT AND CONVERSION OF MARINE FACILITIES, INCLUDING COMMERCIAL MARINAS AND THE WORKING WATERFRONT, UNTIL NECESSARY LAND DEVELOPMENT REGULATIONS AND COMPREHENSIVE PLAN AMENDMENTS ARE DRAFTED AND EFFECTIVE; PROVIDING FOR EXEMPTIONS; PROVIDING FOR SEVERABILITY AND REPEAL OF INCONSISTENT PROVISIONS; PROVIDING FOR TRANSMITTAL TO THE FLORIDA DEPARTMENT OF COMMUNITY AFFAIRS (DCA) AND THE SECRETARY OF STATE; PROVIDING FOR AN EFFECTIVE DATE; PROVIDING FOR AN EXPIRATION DATE**

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**THE BOARD OF COUNTY COMMISSIONERS OF MONROE COUNTY MAKES THE FOLLOWING FINDINGS OF FACT AND CONCLUSIONS OF LAW:**

1. The Board of County Commissioners (Board or BOCC) at its meeting of August 18, 2004, directed staff to have a public water access and marine facilities plan prepared for Monroe County.
2. The Board of County Commissioners discussed a policy of "No Net Loss" of working waterfront or public access to the water at its December 16, 2004 meeting.
3. Monroe County has experienced the loss of working waterfront and the loss of public access to the water due to the redevelopment of marine facilities, including commercial marinas, and the working waterfront, including boatyards, wet and dry storage, fish houses and commercial fishing vessel dockage, at an unprecedented rate.
4. Further loss of working waterfront and public access in the County is and will be detrimental to the economic and social well being and the health, safety, and welfare of the citizens of the County.
5. If the 2010 Comprehensive Plan (Plan) and Land Development Regulations are not amended to control certain conversions and redevelopment, future losses of working waterfront and public access will negatively affect the economy and bring an end to critical marine services (e.g. boat yards), commercial marinas that are available to the public, and traditional trades associated with commercial fishing.
6. Preserving the status quo for a temporary period of time will prevent re-development that could be inconsistent with the Plan and/or with pending changes to the Plan or land development regulations.
7. A number of owners of waterfront properties are exploring the possible change of use of their

property to private residential uses and private exclusive use of dockage which will further decrease the public water access and/or working waterfront.

8. Goal 212 of the Plan directs the County to prioritize shoreline land uses and establish criteria for shoreline development in order to preserve and enhance coastal resources and to ensure the continued economic viability of the County.

9. Goal 213 of the Plan directs the County to ensure adequate public access to the beach or shoreline.

10. Objective 502.1 of the Plan directs the County to promote the preservation and enhancement of the existing ports and port related activities.

11. The acceptance or processing of development applications during the term of this ordinance would result in confusion for property owners, inefficiencies in governmental services, and potentially redundant review processes and may unreasonably affect the expectations of property owners.

12. The approval of development applications for conversions and redevelopment may result in the continued and irreversible loss of public access and working waterfront.

13. The exemption of certain uses and development activities, as provided herein, advances the intent of this Ordinance and will not diminish public access or further the loss of working waterfront.

14. The County recognizes the need to amend comprehensive plan and land development regulations and programs to preserve marine facilities including commercial marinas that offer public water access and provide for working waterfront.

15. The Board at its meeting of January 19, 2005, voted to contract with the South Florida Regional Planning Council to prepare the public water access and marine facilities plan and implementation measures including Plan amendments and Land Development Regulations.

16. The County has committed necessary staff and resources to the development of these policies and regulations.

17. The Board at a regular meeting on January 19, 2005, directed staff to prepare an ordinance deferring acceptance of applications for redevelopment of marine facilities including commercial marinas and the working waterfront (boatyards, wet and dry storage, fish houses and commercial fishing vessel dockage) that would diminish public access or result in the loss of working waterfront, while staff prepared amendments to the Plan and Land Development Regulations.

18. Following direction of the Board, the Growth Management Division staff immediately undertook the development of an Interim Development Ordinance and preparation of a contract for the development of a public water access and marine facilities plan and implementation measures including Comprehensive Plan and Land Development Regulations.

19. Interim Development Ordinance (IDO) No. 017-2005 was enacted on July 20, 2005, and extended until July 10, 2007 by Resolution 241-2006 and until July 9, 2008 by Resolution 265-2007.

20. The Board adopted the Marine Management Strategic Plan on March 15, 2006.

21. On April 30, 2007 the South Florida Regional Planning Council completed the Working Waterfront Preservation Master Plan.

22. During the time the IDO was effective, planning staff prepared, Planning Commission reviewed, and the Board approved Plan amendments that were transmitted to the Department of Community Affairs (DCA) on September 19, 2007.
23. Following the receipt of Objections, Recommendations and Comments from the DCA dated December 7, 2007, planning staff revised the proposed Plan amendments and the Board adopted amendments on February 4, 2008.
24. The DCA by Notice of Intent (NOI) dated March 31, 2008, found five of the provisions which would most significantly affect development to be "Not in Compliance" (Policy 101.4.7, Policy 101.4.21, Policy 212.5.4, Policy 219.1.1 and Policy 219.1.2).
25. The NOI triggered further administrative processes, including but not limited to, mediation, conciliation and settlement discussions, and hearings with the DCA and other affected parties, along with enacting land development regulations, all of which will likely take up to a year to be presented to the BOCC for adoption.
26. The legislation concerning the working waterfront Plan amendments is still in progress and drafting of land development regulations is underway.
27. This Interim Development Ordinance and the amendments to the Plan and land development regulations are necessary to protect the health, safety, and general welfare of the public and to advance the policies set forth in the Plan.
28. The utilization of the moratorium device as a temporary measure to facilitate government decision making, study and adoption of comprehensive plan and land development regulations is a legitimate governmental tool to facilitate logical and considered growth, and as a means of avoiding inefficient and ill-conceived development.
29. The County finds that it is necessary to enact an Interim Development Ordinance to continue to defer the acceptance of development applications that seek development approval for the redevelopment of waterfront properties that could result in the loss of public water access and working waterfront.
30. Chapter 125, F.S. authorizes the Board to adopt ordinances to provide standards protecting against imminent and immediate threat to the health, safety and welfare of the citizens of Monroe County.
31. The County finds that a 365-day deferment of development applications and approvals as provided herein is reasonable and is the minimum necessary to protect the health, safety, and general welfare of the citizens of the County and to implement the Plan.
32. The temporary deferral of development applications and approvals, as provided herein, is not intended nor shall it be construed to inhibit the existing lawful use of properties in accordance with the Comprehensive Plan and land development regulations.
33. This Interim Development Ordinance constitutes a valid exercise of the County's police power and is otherwise consistent with Section 163.316, *et seq.*, F.S., which, *inter alia*, encourages the use of innovative land use regulations including provisions such as moratoria to implement the adopted comprehensive plan.
34. On May 20, 2008, the Planning Commission held a properly noticed public hearing and found the draft Interim Development Ordinance to be consistent with the adopted Plan.
35. On May 23, 2008, and on June 18, 2008, the Board reviewed and considered the extension of Ordinance No. 017-2005 and adoption of this Interim Development Ordinance.

**NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF MONROE COUNTY, FLORIDA:**

**Section 1. Findings.** The above Findings of Fact and Conclusions of Law are hereby adopted and incorporated by reference herein as the factual basis which necessitates this action.

**Section 2. Purpose and Intent.** The purpose of this Interim Development Ordinance is to continue to implement the Board's intent to temporarily limit further redevelopment and conversion of marine facilities that result in the loss of working waterfront and diminish public access to the water, in order to implement the Commission's policy of "no net loss" of working waterfront and public water access to marine facilities while the County and other affected persons continue the administrative process triggered by the NOI. Pursuant to its lawful authority and the pending legislation doctrine as set forth in *Smith v. City of Clearwater*, 383 So.2d 681 (Fla. 2d DCA, 1980) the Board hereby establishes the interim development regulations set forth in this Ordinance, which shall remain in full force and effect until the expiration of this legislation.

**Section 3. Definitions.** As used in this Ordinance, the following terms shall have the definitions provided [unless the context clearly provides otherwise]:

- a. "Commercial marina" shall mean any facility or facilities, having three or more slips, docks, or docking spaces, conducting business involving the sale, repair, rental, storage, and servicing of boats, and including accessory retail uses. The term includes a licensed commercial facility which provides secured public moorings or wet storage for private pleasure vessels or commercial vessels on a leased basis. The term does not include privately owned individual berths or docks accessory to land based dwelling units.
- b. "Existing structures and uses" shall mean a structure in existence as of February 28, 2005, and the customary and regular uses of that structure up to and including February 28, 2005.
- c. "Marine facility" shall mean commercial marinas, the working waterfront, boat ramps, and any other locations that provide public access to the navigable waters of the state.
- d. "Public access" shall mean the ability of the public to physically reach, enter, or use beaches and shores. The term shall have the same meaning as defined in Rule 9J-5.003(97), Florida Administrative Code.
- e. "Working waterfront" shall mean a parcel or parcels of real property that are used for water dependent boatyards, wet storage of boats and vessels, commercial fish houses (fish landings, processing and packaging) and commercial fishing vessel dockage. The term does not include commercial marinas providing dockage for pleasure watercraft.
- f. "Water-dependent uses" shall mean activities which can be carried out only on, in or adjacent to water areas because the use requires access to the water body for water borne transportation, including ports or marinas, and recreation. The term shall have the same meaning as defined in Rule 9J5-003(137), Florida Administrative Code.

g. "Water-enhanced uses" shall mean activities that are not water-dependent uses but benefits economically or aesthetically by its location adjacent to or on the waterfront. The term includes dock side bars, restaurants, hotels, motels, and residential uses.

**Section 4. Deferred Action.** Staff is directed to continue to defer the following from the date of March 1, 2005, as prescribed in Ordinance 017-2005, until the expiration of this IDO:

- a) Accepting or processing development applications relating to redevelopment or conversion of existing uses and structures for:
  - (1) any change of use of a commercial marina from a water-dependent use to a water-enhanced or a non-water-dependent use;
  - (2) any division of uplands and/or bay bottom of existing marine facilities into individual parcels regardless of type of ownership;
  - (3) any modification, improvements or expansions of existing marine facilities which would diminish public access or result in a loss of working waterfront; and
  - (4) any change of use of a parcel of parcels of working waterfront to a commercial marina or a non-water dependent use.
  
- b) Issuance of building permits for redevelopment or conversion of existing uses and structures for:
  - (1) any change of use of a commercial marina from a water-dependent use to a water-enhanced or a non-water-dependent use;
  - (2) any division of uplands and/or bay bottom of existing marine facilities into individual parcels regardless of type of ownership;
  - (3) any modification, improvements or expansions of existing marine facilities which would diminish public access or result in a loss of working waterfront; and
  - (4) any change of use of a parcel of parcels of working waterfront to a commercial marina or a non-water dependent use.
  
- c) Issuance of development orders and development permits of existing uses and structures for:
  - (1) any change of use of a commercial marina from a water-dependent use to a water-enhanced or a non-water-dependent use;
  - (2) any division of uplands and/or bay bottom of existing marine facilities into individual parcels regardless of type of ownership;
  - (3) any modification, improvements or expansions of existing marine facilities which would diminish public access or result in a loss of working waterfront; and
  - (4) any change of use of a parcel of parcels of working waterfront to a commercial marina or a non-water dependent use.

**Section 5. Moratorium.** During the time this ordinance is in effect as specified herein, there shall be a moratorium upon the issuance of building permits, acceptance of development

applications or issuance of development orders and development permits within unincorporated Monroe County concerning the redevelopment or conversion of existing uses and structures related to marine facilities, including commercial marinas and the working waterfront, that result in diminished public water access or loss of working waterfront, except as provided herein.

**Section 6. Development Allowed.** During the period that these Interim Regulations are in effect, notwithstanding any other provisions of law the following development is allowed:

- (a) The holder of a Conditional Use Permit issued prior to the effective date of this Ordinance shall be entitled to develop according to the provisions of the Conditional Use Permit.
- (b) None of the restrictions set forth in this Ordinance shall prevent issuance of a permit for general maintenance, repair and/or safety improvements, nor for any modifications, improvement or expansion to an existing marine facility that does not diminish public access and does not result in the loss of working waterfront;
- (c) None of the restrictions set forth in this ordinance shall apply to an application for a building permit or development approval for any development or redevelopment submitted to the County on or before February 28, 2005; however other restrictions in the land development regulations or the development approval may apply.
- (d) None of the restrictions set forth in this ordinance shall apply to an application for a building permit or development approval for any development or redevelopment that is otherwise allowed pursuant to the Monroe County Land Development Regulations and the 2010 Comprehensive Plan.

**Section 7: Preparation of Documents.** The County Attorney and the Growth Management Division are directed to begin immediately preparing the necessary documents in order to address the Comprehensive Plan amendments that deal with the issues of redevelopment and conversion of marine facilities and working waterfront that are or may be the subject of the proceedings with DCA and the Division of Administrative Hearings and any land development regulations made necessary by those amendments.

**Section 8. Severability.** If any section, subsection, sentence, clause, item, charge or provision of this ordinance is held invalid, the remainder shall not be affected by such invalidity.

**Section 9. Inconsistent Provisions.** All ordinances or parts of ordinances in conflict with this ordinance are hereby repealed to the extent of said conflict.

**Section 10. Transmittal to DCA.** The ordinance is hereby transmitted to the Florida Department of Community Affairs pursuant to Chapter 380, Florida Statutes and the DCA is requested to review and approve it by an expedited Immediate Final Order in accordance in recognition of the public importance of retaining the working waterfront, marine facilities, and public access to the waterfront, and to prevent the threat of further loss thereof as “an immediate danger to the public health, safety, or welfare”.

**Section 11. Effective Date:** This ordinance shall be filed in the Office of the Secretary of State of

the State of Florida, but shall not become effective until a notice is issued by the DCA or Administration Commission approving the ordinance pursuant to Florida Statutes, Chapter 380.

**Section 12. Expiration.** This ordinance shall stand repealed as of 11:59 p.m. on the 365th day after the effective date of the Ordinance, unless repealed sooner by the Board, or upon the adoption of amendments to the Plan and land development regulations addressing public water access and marine facilities.

**PASSED AND ADOPTED** by the Board of County Commissioners of Monroe County, Florida at a regular meeting held on the \_\_\_\_ day of \_\_\_\_\_, 2008.

Mayor Charles McCoy	_____
Mayor Pro Tem Mario DiGennaro	_____
Commissioner Sylvia J. Murphy	_____
Commissioner George Neugent	_____
Commissioner Dixie Spehar	_____

By \_\_\_\_\_  
Charles McCoy, Mayor

(SEAL)  
ATTEST: DANNY L. KOLHAGE, CLERK

\_\_\_\_\_  
DEPUTY CLERK

MONROE COUNTY ATTORNEY APPROVED AS TO FORM  Date: 5-12-08
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