



THE CITY OF KEY WEST PLANNING BOARD

Staff Report

To: Chairman and Planning Board Members

From: Thaddeus Cohen, Planning Director

Meeting Date: October 20, 2016

Agenda Item: **Annual BPAS Report - Building Permit Allocation System (BPAS) Annual Report** - Presentation of the tracking and monitoring requirements as required by Section 108-995 of the Land Development Regulations of the Code of Ordinances of the City of Key West, Florida.

Introduction: In accordance with the requirements of Section 108-995 of the Land Development Regulations, the annual report is required to track all inputs into the Building Permit Allocation System as well as allocations to the system by structure and use type.

On November 6, 2013, the City Commission adopted BPAS Ordinance 13-19, which became effective March 1, 2014. This annual report will serve as the third report under Ordinance 13-19, which requires that the Administrative Official provide an Annual Report to the Planning Board and the State Land Planning Agency by September of each year.

Process: The Land Development Regulations require that the Administrative Official provide an Annual Report to both the Planning Board and the State Land Planning Agency.

Recommendation:

The Planning Department recommends approval of the 2016 annual report findings.

Attachments:

1. 2016 BPAS Annual Report
2. Draft Resolution

**PLANNING BOARD
RESOLUTION NO. 2016-**

**A RESOLUTION OF THE CITY OF KEY WEST
PLANNING BOARD ACCEPTING THE
BUILDING PERMIT ALLOCATION SYSTEM
(BPAS) ANNUAL REPORT AND PRESENTATION
OF THE TRACKING AND MONITORING
REQUIREMENTS, AS REQUIRED BY SECTION
108-995 OF THE LAND DEVELOPMENT
REGULATIONS OF THE CODE OF
ORDINANCES OF THE CITY OF KEY WEST,
FLORIDA.**

WHEREAS, Section 108-995 of the Land Development Regulations requires that the City Planner provide an annual report to the Planning Board and the state land planning agency identifying any remaining or unused allocations, and the number of permits by building type; and

WHEREAS, the 2016 Annual Report provides information based on the implementation of the Building Permit Allocation System; and

NOW THEREFORE BE IT RESOLVED by the Planning Board of the City of Key West, Florida:

Section 1. That the above recitals are incorporated by reference as if fully set forth herein.

Section 2. That the City of Key West Planning Board accepts the presentation of the tracking and monitoring requirements as required by Section 108-995 of the Land Development Regulations of the Code of Ordinances of the City of Key West, Florida.

Section 3. This resolution shall go into effect immediately upon its passage and adoption and authentication by the signatures of the presiding officer and the Clerk of the Commission.

_____ Chairman

_____ Planning Director

Read and passed at a regular meeting held this 20th day of October 2016.

Authenticated by the Chairman of the Planning Board and the Planning Director.

Sam Holland, Chairman
Key West Planning Board

Date

Attest:

Thaddeus Cohen
Planning Director

Date

Filed with the Clerk:

Cheryl Smith
City Clerk

Date



Building Permit Allocation System 2016 Annual Report

INTRODUCTION:

This annual report is written in accordance with Section 108-995 of the Building Permit Allocation System Ordinance (BPAS) (Ordinance 13-19). This section requires the City Planner charged with implementation and interpretation of the Land Development Regulations provide an annual report to the Planning Board and the State Land Planning Agency identifying any remaining or unused allocations, and the number of permits by building type by September 1 or each year as stipulated in the 2012 Hurricane Evacuation Clearance Time Memorandum of Understanding.

ANALYSIS RESULTS:

The City's Building Permit Allocation System (BPAS), is a growth management mechanism developed and implemented in 1993 to ensure adequate evacuation time for residents and visitors in the event of a hurricane possibly affecting the City. The BPAS is also commonly referred to as the Rate of Growth Ordinance, or "ROGO", as the intent of the ordinance is to limit the amount and rate of new residential units approved in the City.

Building Permit Allocation System Ordinance 13-19

Ordinance 13-19 updated the existing Building Permit Allocation System regulations in response to the newly adopted Comprehensive Plan policies and the 2012 Hurricane Evacuation Model Memorandum of Understanding. The amendments established an application process for the allocation of 91 new residential units to be received from the State Department of Economic Opportunity (DEO) annually for ten years as well as necessary changes that allow for clarification, simplification and ease of use for the residential development regulations process.

- 1. Lawful Unit Determination Process (LUD's)** – Under the Ordinance 13-19, the date a homeowner must prove his/her unrecognized residential unit was in existence has changed from April 1, 1990 to April 1, 2010, which is based on the most recent published US Census population data. The intent of the Building Permit Allocation System (BPAS), pursuant to City Code Section 108-987, is to implement the City's Comprehensive Plan by limiting annual permanent (non-transient) and transient residential development. All new permanent and transient residential units within the City are subject to the BPAS, except as expressly exempted in City Code Section 108-991. However, nothing in City

Code Chapter 108, Article X (BPAS), shall relieve the property owner from complying with other applicable sections of the City LDRs for development on the property.

As a result of the unit recognition date change, the Planning Department has received over 60 applications to legitimize existing unrecognized residential units throughout the city. Staff's role in the process is to thoroughly research prior approvals, permits, and past and current zoning designations for each application during the determination process. The applicant will be responsible for paying back fees for utility and solid waste service as well as impact fees if any additional units are approved as being exempt from BPAS.

Table 1 Lawful Unit Determinations	
Remaining Applications (as of 9/2015)	47
Applications Received (since 9/2015)	8
Total Applications Completed (since 9/2015)	1
Total Active Applications Pending Review	54

Source: City of Key West Planning Department, 2016

- Beneficial Use Criteria** – Regulations codify Comprehensive Plan Policy 1-1.16.1 which required that the remaining residential BPAS units (from the original 1993 allocation) be reserved for Beneficial Use purposes only. The City has reserved enough Beneficial Use allocations to cover any potential takings claims, leaving the new unit allocations available for new development. Under the current ordinance, any existing or recognized residential unit captured by the City from the owner through the waiver and release of building permit allocation process due to the voluntary reduction of onsite residential density and/or change in residential use shall be reserved for beneficial use allocations only.

Table 2 Total ESFU Allocated through 2016	
Total ESFU Input	1,649.00
Total ESFU Allocated	1,595.87
Total Recovered / Surrendered	52.87
Total Expired (Ord 10-10)	16.55
Surplus:	122.55

Source: City of Key West Planning Department 2016

- 3. Application Process** - Using the framework adopted in the 2013 Comprehensive Plan, staff created an application process that ensures that the limited number of residential unit allocations is distributed in a fair and equitable manner over time and that any future residential development contributes to the sustainable future of the City of Key West.

Allocations by Residential Unit Type – Based on requirements in the Comprehensive Plan the Ordinance requires that unit types be allocated as follows:

Table 3 Allocations by Residential Unit Type				
Application/ Allocation Year	Affordable Housing Units (AH)*	Market Rate Units	Transient Rental Units	Total Units
2013/2014	48 Units dedicated for Peary Court; 7 AH units available for allocation	36	0	91
2014/2015 2015/2016	55 annually; 110 over 2 years	36 annually; 72 over 2 years	0	91 annually; 182 over 2 yrs
2016/2017	91 annually*	0	0	91
2017/2018 2022/2023	45 annually; 270 over 6 years	36 annually; 216 over 6 years	10 annually; 60 over 6 years	91 annually; 546 over 6 yrs
Over next 10 years	526	324	60	910

*Per City Commission Ordinance 16-16

- 4. Application Review and Ranking** – Every year the Building Permit Allocation application period will open to the public in July and will close in September. Applications will be reviewed and ranked by City staff and the Final Determination of Award will be made by the Planning Board by March of the award year. Based on the level of proposed development, development plan approvals will be reviewed by the relevant Boards and Commissions no later than June of the award year. An application approval and allocation schedule will be published in June of each year with the specific deadlines and dates anticipated for final allocation approvals. BPAS Year 1, 2 and 3 have been allocated as follows:

Table 4 BPAS Award Allocations				
Allocation Year	Total Number of Units Allocated (ESFU)			
	Market Rate	Affordable	Affordable Advanced Award	Transient
Year 1	24	7	15.9	0
Year 2	31	44.1	8.46	0
Year 3	7	14.72	0	0
Subtotal	62	65.82	24.36	0
Total Allocations Remaining (through 2022/2023)	262	435.82		60

*Source: Planning Board Resolutions 2015-06, 2015-26 and 2016-16

CONCLUSION:

The Planning Department estimates that a total of 122.55 ESFU remain unallocated and will be reserved as a contingency for potential beneficial use claims that were unanticipated by the City. It is estimated that there are approximately 86 lots of record **potentially** eligible for Beneficial Use consideration (based on on-going research performed by the Planning Department). While the demand for affordable housing may fluctuate, the recorded lots of record potentially eligible for beneficial use are very likely to remain, at minimum, the identified number (unless the Planning Department is able to determine some other build back right that may be established on the property).

Year 1, 2 and 3 of BPAS have allocated a total of 62 market rate units, 90.18 affordable units and 0 transient units.

Attachments: A: Year 1, 2 and 3 BPAS Allocations (PB Resolutions 2015-06, 2015-26 and 2016-16)

Exhibit A

**PLANNING BOARD
RESOLUTION NO. 2015-06**

**A RESOLUTION OF THE KEY WEST PLANNING BOARD
APPROVING BUILDING PERMIT ALLOCATION SYSTEM
(BPAS) RANKINGS AND MAKING THE FINAL
DETERMINATION OF AWARD OF SEVEN (7)
AFFORDABLE AND 24 MARKET-RATE UNITS FROM
YEAR 1 (JULY 1, 2013 – JUNE 30, 2014) AND THE
ADVANCED AWARD OF 15.9 AFFORDABLE UNITS FROM
YEAR 2 (JULY 1, 2014 – JUNE 30, 2015) PURSUANT TO
SECTIONS 86-9 AND 108-997 OF THE LAND
DEVELOPMENT REGULATIONS OF THE CODE OF
ORDINANCES OF THE CITY OF KEY WEST, FLORIDA;
PROVIDING FOR AN EFFECTIVE DATE**

WHEREAS, the City of Key West, Florida (the “City”) adopted Ordinance No. 13-19, which became effective on February 27, 2014, establishing a Building Permit Allocation System (“BPAS”) in order to limit the amount of new permanent and transient residential development in the City pursuant to Objective 1-1.16 of the Comprehensive Plan; and

WHEREAS, the BPAS is now codified in Chapter 108, Article X of the Land Development Regulations (“LDRs”) of the Code of Ordinances (the “Code”); and

WHEREAS, City Code Section 108-995 identifies the annual amount of residential development that may be allocated by housing type (affordable, market-rate and transient) using the Equivalent Single-Family Unit (ESFU) Factors of City Code Section 108-994; and

WHEREAS, for Year 1 (July 1, 2013 – June 30, 2014), 55 affordable and 36 market-rate units are available for allocations; and

WHEREAS, pursuant to Comprehensive Plan Policy 1-1.16.1 and City Code Section 108-



Chairman



Planning Director

995, during Year 1 (July 2013—2014), 48 of the affordable units to be allocated will be dedicated for use at the Peary Court Housing complex property, leaving seven (7) affordable units available for allocations; and

WHEREAS, City Code Section 86-9 provides for the advanced award of units for multi-unit affordable housing projects one year in advance; and

WHEREAS, City Code Section 86-9 provides that, upon ranking, in the event that two applications are determined to have the same numerical ranking score, and units are not available to provide awards to both projects, a drawing of lots will determine the awardee; and

WHEREAS, on February 4, 2015, the Planning Board conducted a public hearing regarding the BPAS rankings and Final Determination of Award prepared by the Planning Director; and

WHEREAS, a drawing of lots was held for two market-rate applications had the same score and the Final Determination of Award reflects the outcome of that drawing; and

WHEREAS, the Planning Board desires to approve the rankings and make the final determination of award for Year 1 and an advanced award from Year 2.

NOW, THEREFORE, BE IT RESOLVED BY THE PLANNING BOARD OF THE CITY OF KEY WEST, FLORIDA:

Section 1. That the above recitals are incorporated by reference as if fully set forth herein.

Section 2. The Planning Board approves the attached rankings and makes its Final Determination of Award of seven (7) affordable units and 36 market-rate units from BPAS Year 1, and the advanced award of 15.9 affordable units from BPAS Year 2 as follows:

Affordable:

- Twenty-nine (29) units with a 0.10 ESFU to 2700-2706 Flagler Avenue with 60 points;
- Twenty (20) units with a 1.0 ESFU to 3800 North Roosevelt Boulevard with 25 points;

Market-Rate:

- Two (2) units with a 1.0 ESFU to 1028-1030 Truman Avenue with 75 points;
- Eight (8) units with a 1.0 ESFU to 2800 Flagler Avenue with 75 points;
- One (1) unit with a 1.0 ESFU to 1315 Whitehead Street with 70 points;
- One (1) unit with a 1.0 ESFU to 700 Eaton Street with 65 points;
- One (1) unit with a 1.0 ESFU to 700 Amelia Street with 25 points per drawing of lots; and
- Twenty-three (23) units with a 1.0 ESFU to 5555 College Road with 25 points per drawing of lots.

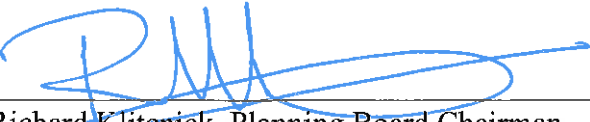
Section 3. This resolution shall go into effect immediately upon its passage and adoption and authentication by the signatures of the presiding officer and the Clerk of the Board.

Section 4. This resolution is subject to appeal periods as provided by the City of Key West Code of Ordinances (including the Land Development Regulations). After the City appeal period has expired, this permit or development order shall be rendered to the Florida Department of Economic Opportunity. Pursuant to Chapter 73C-44, F.A.C., this permit or development order is not effective for 45 days after it has been properly rendered to the DEO with all exhibits and applications attached to or incorporated by reference in this approval; that within the 45-day review period, the DEO can appeal the permit or development order to the Florida Land and Water Adjudicatory Commission; and that such an appeal stays the effectiveness of the permit until the appeal is resolved

by agreement or order.

Read and passed on first reading at a regularly scheduled meeting held this 4th day of February, 2015.

Authenticated by the Chairman of the Planning Board and the Acting Planning Director.


Richard Klitenick, Planning Board Chairman

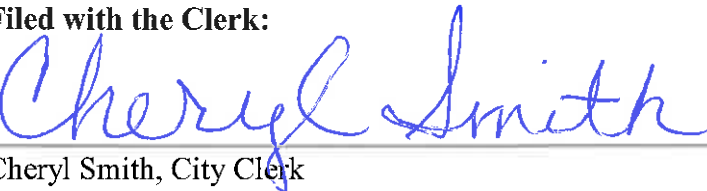
2/12/15
Date

Attest:


Kevin Bond, AICP, Acting Planning Director

2/6/2015
Date

Filed with the Clerk:


Cheryl Smith, City Clerk

2-19-15
Date

**PLANNING BOARD
RESOLUTION NO. 2015-26**

**A RESOLUTION OF THE KEY WEST PLANNING BOARD
APPROVING BUILDING PERMIT ALLOCATION SYSTEM
(BPAS) RANKINGS AND MAKING THE FINAL
DETERMINATION OF AWARD OF 44.1 AFFORDABLE AND
31 MARKET-RATE UNITS FROM YEAR 2 (JULY 1, 2014 –
JUNE 30, 2015) AND THE ADVANCED AWARD OF 8.46
AFFORDABLE UNITS FROM YEAR 3 (JULY 1, 2015 – JUNE
30, 2016) PURSUANT TO SECTIONS 86-9 AND 108-997 OF
THE LAND DEVELOPMENT REGULATIONS OF THE
CODE OF ORDINANCES OF THE CITY OF KEY WEST,
FLORIDA; PROVIDING FOR AN EFFECTIVE DATE**

WHEREAS, the City of Key West, Florida (the “City”) adopted Ordinance No. 13-19, which became effective on February 27, 2014, establishing a Building Permit Allocation System (“BPAS”) in order to limit the amount of new permanent and transient residential development in the City pursuant to Objective 1-1.16 of the Comprehensive Plan; and

WHEREAS, the BPAS is now codified in Chapter 108, Article X of the Land Development Regulations (“LDRs”) of the Code of Ordinances (the “Code”); and

WHEREAS, City Code Section 108-995 identifies the annual amount of residential development that may be allocated by housing type (affordable, market-rate and transient) using the Equivalent Single-Family Unit (ESFU) Factors of City Code Section 108-994; and

WHEREAS, for Year 2 (July 1, 2014 – June 30, 2015), 39.1 affordable and 36 market-rate units are available for allocations; and

WHEREAS, City Code Section 86-9 provides for the advanced award of units for multi-unit affordable housing projects one year in advance; and



Vice-Chairman


Planning Director

WHEREAS, City Code Section 108-997(d) provides in the event that all market rate units are not claimed or applied for, after initial staff evaluation of the applications, any remaining market rate units may be awarded for affordable housing purposes; and

WHEREAS, City Code Section 86-9 provides that, upon ranking, in the event that two applications are determined to have the same numerical ranking score, and units are not available to provide awards to both projects, a drawing of lots will determine the awardee; and

WHEREAS, on June 29, 2015, the Planning Board conducted a public hearing regarding the BPAS rankings and Final Determination of Award prepared by the Planning Director; and

WHEREAS, the Planning Board desires to approve the rankings and make the final determination of award for Year 2 and an advanced award from Year 3.

NOW, THEREFORE, BE IT RESOLVED BY THE PLANNING BOARD OF THE CITY OF KEY WEST, FLORIDA:

Section 1. That the above recitals are incorporated by reference as if fully set forth herein.

Section 2. The Planning Board approves the attached rankings and makes its Final Determination of Award to applicants for a total of 44.1 affordable units and 31 market-rate units from BPAS Year 2, and the advanced award of 8.46 affordable units from BPAS Year 3 as follows:

Affordable:

- Two (2) units with a 0.78 ESFU to 1020 18th Terrace with 100 points;
- Twelve (12) units with a 1.0 ESFU to 3900 South Roosevelt Boulevard with 85 points;
- Thirty-nine (39) units with a 1.0 ESFU to 5555 College Road with 40 points;


Vice-Chairman

Planning Director

Market-Rate:

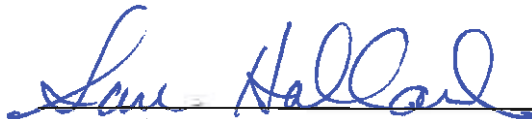
- One (1) unit with a 1.0 ESFU to 2800 Flagler Avenue with 100 points;
- One (1) units with a 1.0 ESFU to 1020 18th Terrace with 100 points;
- Twenty-eight (28) units with a 1.0 ESFU to 3900 South Roosevelt Blvd. with 85 points;
- One (1) unit with a 1.0 ESFU to 515 Angela Street with 75 points;

Section 3. This resolution shall go into effect immediately upon its passage and adoption and authentication by the signatures of the presiding officer and the Clerk of the Board.

Section 4. This resolution is subject to appeal periods as provided by the City of Key West Code of Ordinances (including the Land Development Regulations). After the City appeal period has expired, this resolution shall be rendered to the Florida Department of Economic Opportunity. Pursuant to Chapter 73C-44, F.A.C., this resolution is not effective for 45 days after it has been properly rendered to the DEO with all exhibits and applications attached to or incorporated by reference in this approval; that within the 45-day review period, the DEO can appeal this resolution to the Florida Land and Water Adjudicatory Commission; and that such an appeal stays the effectiveness of the resolution until the appeal is resolved by agreement or order.

Read and passed on first reading at special meeting held this 29th day of June, 2015.

Authenticated by the Vice Chairman of the Planning Board and the Planning Director.



Sam Holland, Planning Board Vice-Chairman

06/29/15

Date

Attest:



Vice-Chairman


Planning Director

THADDEUS COHEN 29 JUNE 2015
Thaddeus Cohen, Planning Director Date

Filed with the Clerk:

Cheryl Smith, City Clerk June 29, 2015
Cheryl Smith, City Clerk Date

used Vice-Chairman
TC Planning Director

**PLANNING BOARD
RESOLUTION NO. 2016-16**

**A RESOLUTION OF THE KEY WEST PLANNING BOARD
APPROVING BUILDING PERMIT ALLOCATION SYSTEM
(BPAS) RANKINGS AND MAKING THE FINAL
DETERMINATION OF AWARD OF 14.72 AFFORDABLE
AND 7 MARKET-RATE UNITS FROM YEAR 3 (JULY 1, 2015
– JUNE 30, 2016) PURSUANT TO SECTIONS 86-9 AND 108-
997 OF THE LAND DEVELOPMENT REGULATIONS OF
THE CODE OF ORDINANCES OF THE CITY OF KEY WEST,
FLORIDA; PROVIDING FOR AN EFFECTIVE DATE**

WHEREAS, the City of Key West, Florida (the “City”) adopted Ordinance No. 13-19, which became effective on February 27, 2014, establishing a Building Permit Allocation System (“BPAS”) in order to limit the amount of new permanent and transient residential development in the City pursuant to Objective 1-1.16 of the Comprehensive Plan; and

WHEREAS, the BPAS is now codified in Chapter 108, Article X of the Land Development Regulations (“LDRs”) of the Code of Ordinances (the “Code”); and

WHEREAS, City Code Section 108-995 identifies the annual amount of residential development that may be allocated by housing type (affordable, market-rate and transient) using the Equivalent Single-Family Unit (ESFU) Factors of City Code Section 108-994; and

WHEREAS, for Year 3 (July 1, 2015 – June 30, 2016), 46.54 affordable and 36 market-rate units are available for allocations; and

WHEREAS, City Code Section 86-9 provides that, upon ranking, in the event that two applications are determined to have the same numerical ranking score, and units are not available to provide awards to both projects, a drawing of lots will determine the awardee; and



Chairman


Planning Director

WHEREAS, on March 17, 2016, the Planning Board conducted a public hearing regarding the BPAS rankings and Final Determination of Award prepared by the Planning Director; and

WHEREAS, the Planning Board desires to approve the rankings and make the final determination of award for Year 3

NOW, THEREFORE, BE IT RESOLVED BY THE PLANNING BOARD OF THE CITY OF KEY WEST, FLORIDA:

Section 1. That the above recitals are incorporated by reference as if fully set forth herein.

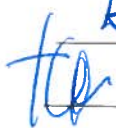
Section 2. The Planning Board approves the attached rankings and makes its Final Determination of Award of 14.72 affordable units and 7 market-rate units from BPAS Year 3

Affordable:

- Eight (8) units with a 0.10 ESFU to 2700-2706 Flagler Avenue with 60 points;
- Two (2) units with a 0.78 ESFU to 725 Duval Street with 55 points;
- One (1) unit with a 0.78 ESFU to 1412 Johnson Street with 50 points;
- One hundred and eight (108) units with a 0.10 ESFU to Poinciana Gardens with 25 points;
- One (1) unit with a 0.78 ESFU to 2303 Linda Avenue with 25 points;

Market-Rate:

- Five (5) units with a 1.0 ESFU to 725 Duval Street with 55 points;
- One (1) unit with a 1.0 ESFU to 2 Go Lane with 50 points;
- One (1) unit with a 1.0 ESFU to 2303 Linda Avenue with 25 points;


Chairman

Planning Director

Section 3. This resolution shall go into effect immediately upon its passage and adoption and authentication by the signatures of the presiding officer and the Clerk of the Board.

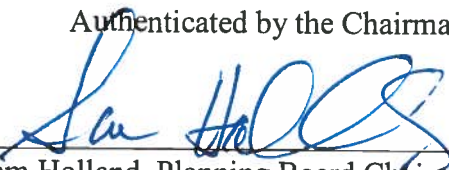
Section 4. This resolution is subject to appeal periods as provided by the City of Key West Code of Ordinances (including the Land Development Regulations). After the City appeal period has expired, this permit or development order shall be rendered to the Florida Department of Economic Opportunity. Pursuant to Chapter 73C-44, F.A.C., this permit or development order is not effective for 45 days after it has been properly rendered to the DEO with all exhibits and applications attached to or incorporated by reference in this approval; that within the 45-day review period, the DEO can appeal the permit or development order to the Florida Land and Water Adjudicatory Commission; and that such an appeal stays the effectiveness of the permit until the appeal is resolved by agreement or order.


Chairman

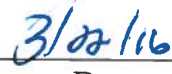
Planning Director

Read and passed on first reading at a regularly scheduled meeting held this 17th day of March, 2016.

Authenticated by the Chairman of the Planning Board and the Planning Director.



Sam Holland, Planning Board Chairman



Date

Attest:



Thaddeus Cohen, Planning Director



Date

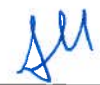
Filed with the Clerk:



Cheryl Smith, City Clerk



Date



Chairman



Planning Director