

EXECUTIVE SUMMARY



To: Jim Scholl

From: Donald Leland Craig, AICP, Planning Director

Meeting Date: May 15, 2012

RE: Zoning In Progress - An ordinance amending Chapter 108 of the Code of Ordinances entitled "Planning and Development" to include Section 108-999 to provide for the retroactive invoking of the Zoning in Progress Doctrine; declaring that the City is considering amendments to its Land Development Regulations and Building Permit Allocation System; directing Building and Planning Department staff to continue the policy of deferring the acceptance and processing of development applications requiring the issuance of building permit allocations; continuing this policy until new building permit allocation regulations or amended Land Development Regulations are adopted by the City Commission; providing for retroactive effect, directing staff to continue preparations of new Building Permit Allocation Regulations; providing for severability; providing for repeal of inconsistent provisions; providing for an effective date.

Location: Citywide

Background: In accordance with the requirements of Section 108-995 of the Land Development Regulations, Planning Department staff has been tracking and monitoring the Building Permit Allocation System (BPAS). The Department recently finalized the BPAS 2010-2011 Annual Report, providing for recommendations with respect to adjustments in the building permit allocation schedule. As a result of the findings of the report, the Planning Department, upon coordination with the City's Legal Department, recommends the invoking of Zoning in Progress while City staff updates the BPAS ordinance.

To summarize the 2010 annual report findings, the Planning Department estimates that a total of 100.23 Equivalent Single Family Units (ESFU) remain unallocated. Based on a vacant lot analysis performed in accordance with Section 108-995 of the Land Development Regulations, 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). Furthermore, the Annual Report also provides that Policy 1-3.12.2 of the Comprehensive Plan, which requires that 30% of all new permanent residential units be affordable units based on definitions and criteria contained in Policy 3-1.1.3 of the Comprehensive Plan has been met. As a result, the Planning

Department estimates that approximately 14.23 ESFU remain as excess units as of the date of this report.

The latest update to the BPAS ordinance occurred through Ordinance 10-10. This ordinance, under Section 108-995 provides that the City shall reserve a minimum number of units for beneficial use claims, based on available data. The ordinance then provides that “remaining units shall be allocated in accordance with the Comprehensive Plan and Land Development Regulations.” Based on the data available when Ordinance 10-10 was approved, any remaining units available would need to be allocated for affordable housing, as the 2009 BPAS Audit Report findings identified that Policy 1-3.12.2 in the Comprehensive Plan had not yet been met. As such, the interpretation of Ordinance 10-10 provided that any remaining units must be reserved for beneficial use claims and meeting Comprehensive Plan requirements with respect to affordable housing.

Planning Staff Analysis:

As staff reevaluated the 2009 Audit Findings to compile the 2010-2011 BPAS Annual Report, it became evident that there is no longer an obligation under the Comprehensive Plan to reserve units specifically for affordable housing. As such, Planning Department staff have determined that the City must consider revisions to the BPAS ordinance to ensure consistency between the Comprehensive Plan and supporting BPAS ordinance, as well as to provide an updated allocation system for excess units. Though at this time there is a minimal number of excess units available, an updated allocation system will help provide direction to the City should additional units be allocated in the future, or be discovered (for example, such as new allocations granted by the state, allocations that may derive from settlement agreements, or through the recognition of fully documented recovered units).

On November 16, 2011, City staff met to discuss these key report findings. As a result, the City of Key West Planning Department is recommending consideration of the invocation of the Zoning in Progress doctrine, commencing retroactively from the November 16, 2011 meeting date. Zoning in Progress will provide a measure for City staff to update the BPAS ordinance, and protect the remaining excess units from being allocated, when no criteria are in effect for equal or balanced distribution to multiple applicants.

Attached to this report are current representations of the Draft BPAS Master Spreadsheet and Draft Vacant Lot Analysis. These documents represent staff research to date, but are not final documents. It is important to note that the information presented in this report, as well as associated supporting documents, is not static. As units are recovered to the City, or as units are allocated, these numbers can fluctuate. The information in this document is a representation of the information available at the time of report preparation.

Previous City Actions:

The Planning Board approved the recommendation for invoking the Zoning in Progress doctrine at a regularly scheduled meeting on January 19, 2012. On April 19, 2012 the

Planning Board adopted a resolution recommending the City Commission adopt the Zoning in Progress by ordinance in order to address any potential legal challenges that may have resulted in pursuing the changes to the BPAS ordinance first initiated by resolution only.

Options / Advantages / Disadvantages:

Option 1. To invoke the Zoning in Progress Doctrine, commencing retroactively from November 16, 2011; with the exception of requests involving beneficial use allocations, City staff shall defer the acceptance and processing of applications requiring building permit allocations.

1. **Consistency with the City’s Comprehensive Plan and Land Development Regulations:**

Invoking the Zoning in Progress Doctrine while City staff updates the regulations regarding the Building Permit Allocation System is an action consistent with the City’s Comprehensive Plan and Land Development Regulations.

2. **Consistency with the City’s Strategic Plan, Vision and Mission:**

The proposal is consistent with the City’s Strategic Plan, Vision, and Mission.

3. **Financial Impact:**

The proposal is intended to create a fair, equitable building permit allocation structure, and as such, may limit the City’s vulnerability to potential takings claims.

Option 2. To not invoke the Zoning in Progress Doctrine.

1. **Consistency with the City’s Comprehensive Plan and Land Development Regulations:**

Choosing to not invoke the Zoning in Progress Doctrine would still be consistent with the City’s Comprehensive Plan and Land Development Regulations; however, it is staff’s professional opinion that Zoning in Progress is the best measure for the City based on the current availability of building permit allocations.

2. **Consistency with the City’s Strategic Plan, Vision and Mission:**

Choosing to not invoke the Zoning in Progress Doctrine would still be consistent with the City’s Strategic Plan, Vision, and Mission; however, it is staff’s professional opinion that Zoning in Progress is the best measure for the City based on the current availability of building permit allocations.

3. **Financial Impact:**

Not approving Zoning in Progress may indirectly put the City in a vulnerable position with respect to potential takings claims, as well as fair, equitable distribution of the remaining building permit allocations.

Recommendation:

The Planning Department recommends the **approval of Option 1**, invoking the Zoning in Progress Doctrine by Ordinance, commencing retroactively from November 16, 2011; with the exception of requests involving beneficial use allocations, City staff shall defer the acceptance and processing of applications requiring building permit allocations.