

## **Last Stand Action Alert**

Last Stand is concerned about the impact of unmanaged residential growth and unsustainable tourism on hurricane evacuation, our residential quality of life and our environment.

### **Call to Action**

The BOCC asked staff to create a 'moratorium on lockouts.' We are sharing our understanding of this complicated topic. We ask you to review the attached pages then email Mayor Neugent and the County Commissioners, asking that the 'moratorium on lockouts' include clarification of the following principles:

- 1- One ROGO equals one dwelling for one family.
- 2- Permanent Residential ROGOs should not be used to build hotels.
- 3- Enforce working waterfront protections, or even better, eliminate ROGO transfers to marinas that currently support working waterfront.

Last Stand has been analyzing the controversial development agreement that converted a working marina on Stock Island into a 175-room hotel. Over more than a decade of revisions, repeated minor and major changes to this marina's original agreement, requested by developers and approved by then sitting County officials, have turned a whale into an elephant. Despite an assurance that 'everything is legal' we question some of the interpretations of County code. Something is wrong when, in the midst of a moratorium on new hotel rooms, a single affordable housing ROGO allocation is used to create two new hotel rooms rather than new workforce housing. Something is wrong when working waterfront protections wind up encouraging the elimination of public access to boat storage and boat launching, enabling the property owner to build a hotel.

While owners of deep-water marinas are entitled to the allowed use of their properties, the board of Last Stand believes it is in the public interest for decision makers to avoid rezoning or questionable code interpretations that encourage what is described above.

## **One ROGO – One Dwelling – One Family**

Since its designation as an Area of Critical State Concern, the Florida Keys have assured safe hurricane evacuation by controlling growth through limiting building allocations (ROGO or BPAS). After ROGO was established, the County began to see requests for additions to existing buildings; additions that were used as separate living units. In 1998, a Memorandum of Understanding (MOU) between Monroe County and the State of Florida established a commitment that the Monroe County Building Department will only approve building permits for project designs that do not create an additional dwelling unit. As years went by and memories faded, the County Building Department again started receiving building plans that were obviously designed to permit the use of a single structure by two families.

In 2004 the County Planning Director issued an 'Administrative Directive' reminding the County staff of the 1998 MOU and instructing them to use the MOU guidelines when reviewing and permitting principal residences, accessory structures or additions to the principal residence. The goal is to assure that additional dwelling units are not created without the benefit of a ROGO allocation.

The MOU guidelines allow a bedroom within a residence to have a separate entrance and a lockable connecting door to the main dwelling unit. It can have its own bathroom. However, it cannot have its own kitchen or wet bar without being considered a separate dwelling unit requiring a separate ROGO.

Despite these clear guidelines, developers have argued that a bedroom/bathroom with a separate entrance can be considered a 'lockout' that can be 'vacation rented' to a different family from the one in the main dwelling.

The approval of one development agreement that allowed 'separately rentable lockouts' to create hotel rooms does not -- and should not -- set precedent. One development agreement does not alter the proper interpretation of our land development code, the 1998 Memorandum of Understanding, or the 2004 Administrative Directive.

We know that in many cases rooms within residences are rented on a long term basis to members of our workforce. We understand this may help pay a family's mortgage. Our goal is not to disrupt these arrangements. Unfortunately, clever people have forced this 'lockout' issue. One ROGO should enable one dwelling for one family.

### **ROGO Transfers to Working Waterfront**

Years ago the County saw existing mobile homes being purchased to quickly obtain transferable ROGO allocations rather than waiting in line for them. In this situation, the mobile home was demolished, the ROGO was transferred to a new building site and a new residence was built. To stem the loss of mobile homes providing relatively affordable housing, an incentive program was created to “address the housing needs in the Florida Keys.”

This incentive program allocates a new affordable housing ROGO if the existing mobile home is deed-restricted for 99 years and brought up to ‘basic livability standards’ (not wind or flood), and then rented or sold within strict affordable housing guidelines. This frees up the market-rate ROGO from the deed restricted mobile home and allows the market-rate ROGO to be transferred. The County preference is to transfer these ROGOs to single-family lots or parcels in ‘Improved Subdivisions’, thus providing much needed residential housing and reducing potential takings cases. One deed-restriction allows one transfer.

This program allows, but with a severe disincentive, transfers to ‘commercial or recreational working waterfront’ or to ‘multi-family projects’ in areas other than Improved Subdivisions. Under this program, condo buildings and marinas are supposed to trigger the disincentive of two deed-restricted units for one transfer; a significantly more expensive process.

Unfortunately, on December 11, 2013 when the Oceanside development agreement was approved by the BOCC, the staff report recognized the ROGOs were not being transferred to single-family lots or parcels, but recommended approval of the requested one-for-one transfer rate. Despite recognition that four large buildings would have multiple dwelling units within each building, and that multiple non-related families would be renting the different units within each buildings, staff agreed that each of the market-rate units could be given a real estate number to mimic the creation of a single family home. More accurately this mimics a condominium in a multi-family building. There was no discussion whatsoever about the other of the other trigger of the two-for-one transfer; the public services that historically had been provided by this marina to the boating public. The development agreement ignored the fact that these services were being eliminated.

The net effect of the County allowing this one-for-one transfer rate is the closure of a public-access boat ramp, elimination of boat trailer parking, a public boat barn and outside rack storage and losses of a diesel repair shop, an outboard repair shop, and a yacht charter office.

### **Permanent Residences are not Hotels**

ROGO allocations enable the creation of dwelling units. Dwelling units can be transient, market rate permanent residential or affordable permanent residential. The characteristics of each are different. The demand placed on our infrastructure is different as is the window for evacuation.

In today's real estate marketplace the value of these transferable ROGOs varies by type. Transient rental ROGOs are currently selling for \$50,000 to \$100,000 each. As described above, the transfer of permanent market rate ROGOs for use in a vacation rental resort becomes all the more attractive.

What started as the short term vacation rental of single-family home or condominium has morphed into the creation of "vacation rental resorts" that are indistinguishable from hotel complexes.

A vacation rental is supposed to be a market-rate, permanent residential dwelling unit that has the "option" of renting short term, long term, or be occupied by the owner. A residence should not be the equivalent of a hotel unit and certainly not two hotel units.

Distinct and different definitions for "permanent residential unit" and "hotel" are critical.