

PLANNING COMMISSION
November 18, 2015
Meeting Minutes

The Planning Commission of Monroe County conducted a meeting on **Wednesday, November 18, 2015**, beginning at 10:00 a.m. at the Marathon Government Center, 2798 Overseas Highway, Marathon, Florida.

CALL TO ORDER

PLEDGE OF ALLEGIANCE

ROLL CALL by Gail Creech

PLANNING COMMISSION MEMBERS

Denise Werling, Chair	Present
William Wiatt, Vice Chair	Present
Elizabeth Lustberg	Present
Ron Miller	Present
Beth Ramsay-Vickrey	Present

STAFF

Mayte Santamaria, Sr. Director of Planning and Environmental Resources	Present
Steve Williams, Assistant County Attorney	Present
Peter Morris, Assistant County Attorney	Present
John Wolfe, Planning Commission Counsel	Present
Mike Roberts, Senior Administrator, Environmental Resources	Present
Tiffany Stankiewicz, Development Administrator	Present
Emily Schemper, Comprehensive Planning Manager	Present
Kevin Bond, Planning & Development Review Manager	Present
Matt Coyle, Principal Planner	Present
Devin Rains, Senior Planner	Present
Gail Creech, Planning Commission Coordinator	Present

COUNTY RESOLUTION 131-91 APPELLANT TO PROVIDE RECORD FOR APPEAL

County Resolution 131-92 was read into the record by Mr. Wolfe.

SUBMISSION OF PROPERTY POSTING AFFIDAVITS AND PHOTOGRAPHS

Gail Creech confirmed receipt of all necessary paperwork.

SWEARING OF COUNTY STAFF

County staff members and all members of the public who believed they might possibly testify at today's meeting were sworn in by Mr. Wolfe.

CHANGES TO THE AGENDA

Ms. Creech stated that a request has been made to continue Item 1 to the December 16, 2015, Planning Commission meeting. Staff has asked to read Agenda Items 4 and 5 together with separate votes taken. Chair Werling stated participants of agenda items placed at the end of the agenda have asked to be heard first. Chair Werling asked for a show of hands to see how many of the public were present for Item 3. Chair Werling decided to hear the agenda items in order. **Motion: Chair Werling made a motion to continue Item 1 to the December 16, 2015, Planning Commission meeting. Commissioner Ramsay-Vickrey seconded the motion. There was no opposition. The motion passed unanimously.**

APPROVAL OF MINUTES

Motion: Commissioner Ramsay-Vickrey made a motion to approve the September 30, 2015, meeting minutes with the following correction: On Page 12, Paragraph 3, Line 4, change “Miller” to “Wiatt.” Commissioner Lustberg seconded the motion. There was no opposition. The motion passed unanimously.

MEETING

Continued Item:

1.THE TRUSTEE OF RAYMOND A. WARNER, SR., LIVING TRUST, 99550 OVERSEAS HIGHWAY, KEY LARGO, MILE MARKER 99: A PUBLIC HEARING CONCERNING A REQUEST FOR A VARIANCE OF 7 FEET TO THE REQUIRED 10 FOOT PRIMARY SIDE NON SHORELINE SETBACK, WHICH IS ADJACENT TO THE NORTHEASTERN PROPERTY LINE; AND A REQUEST FOR A VARIANCE TO REDUCE THE REQUIRED AMOUNT OF PARKING LANDSCAPING FROM 688 SQUARE FEET TO 399 SQUARE FEET AND TO BE LOCATED AT A DISTANCE GREATER THAN 5 FEET FROM THE PARKING AREA. APPROVAL WOULD RESULT IN A PRIMARY SIDE SETBACK OF 3 FEET; AND A 58% REDUCTION IN REQUIRED LANDSCAPING LOCATED AT A GREATER DISTANCE THAN ALLOWED. THE REQUESTED VARIANCES ARE REQUIRED FOR THE DEVELOPMENT OF A PROPOSED FURNITURE SHOWROOM. THE SUBJECT PROPERTY IS DESCRIBED AS A PARCEL OF LAND IN SECTION 33, TOWNSHIP 61 SOUTH, RANGE 39 EAST, AND FURTHER LEGALLY DESCRIBED IN METES AND BOUNDS AS PROVIDED IN THE APPLICATION FILE, KEY LARGO, MONROE COUNTY, FLORIDA, HAVING REAL ESTATE NUMBER 00088220.000000.
(File 2015-122)

This item was continued to the December 16, 2015, Planning Commission meeting.

New Items:

2.A PUBLIC HEARING TO CONSIDER AND FINALIZE THE RANKING OF APPLICATIONS IN THE DWELLING UNIT ALLOCATION SYSTEM FOR JULY 14, 2015, THROUGH OCTOBER 13, 2015, ROGO (1ST QUARTER YEAR 24). ALLOCATION AWARDS WILL BE ALLOCATED FOR ALL UNINCORPORATED MONROE COUNTY.

(File 2015-192)

Ms. Stankiewicz presented the staff report. Ms. Stankiewicz reported that this is a report for the residential dwelling allocations for the Lower and Upper Keys subareas and Big Pine/No Name subarea market rate allocations. Staff recommended approval for Lower Keys Applicants ranked 1 through 14; Big Pine/No Name Applicants 1 through 2, subject to mitigation availability at the time of permitting; and Upper Keys applicants 1 through 15 are recommended for market rate allocations. There were no affordable housing applicants

Chair Werling asked for public comment. There was none. Public comment was closed.

Motion: Commissioner Miller made a motion to approve. Commissioner Wiatt seconded the motion. There was no opposition. The motion passed unanimously.

3.FLORIDA KEYS MEDIA, LLC, 830-836 CRANE BOULEVARD, SUGARLOAF KEY, MILE MARKER 19: A PUBLIC HEARING CONCERNING A REQUEST FOR A MAJOR CONDITIONAL USE PERMIT. THE REQUESTED APPROVAL IS REQUIRED FOR THE DEVELOPMENT OF A PROPOSED ANTENNA SUPPORTING STRUCTURE. THE SUBJECT PROPERTY IS DESCRIBED AS A PARCEL OF LAND IN SECTION 25, TOWNSHIP 66 SOUTH, RANGE 27 EAST, SUGARLOAF KEY, MONROE COUNTY, FLORIDA, ALSO KNOWN AS BLOCK 1, LOT 4, IN THE UNRECORDED PLAT OF NORTH SUGARLOAF ACRES SECTION ONE, HAVING REAL ESTATE NUMBER 00117510.000400.

(File 2015-085)

(10:06 a.m.) Mr. Coyle presented the staff report. Mr. Coyle showed an illustration of and described the property. Mr. Coyle reported that the property is currently being used as office space surrounded by some light industrial and low density residential uses. The request today is for a major conditional use permit in order to construct a monopole antenna-supporting structure of 199 feet. The monopole would serve as a studio transmitter link for five broadcast stations and also a future collocation for a minimum of three PCS wireless carriers. It would be constructed right behind the office building. New antenna-supporting structures are allowed in suburban commercial zoning pursuant to 146-5 as a major conditional use. Mr. Coyle described in more detail the surrounding area as very low density residential properties and native natural habitat. There are also three antenna-supporting structures on the island. Pictures were shown of the subject property.

Mr. Coyle explained that there are nine standards that apply to all conditional uses. Staff has found that this conditional use is consistent with the comp plan, the land development regulations and the Lower Keys Livable CommuniKeys Plan. Mr. Coyle noted that the Lower Keys Livable CommuniKeys Plan has a policy that Monroe County shall continue to use the land use district map and future land use categories to regulate by land use type, density and intensity. Mr. Coyle continued to report that this conditional use is also consistent with the Wireless Communication Facilities chapter of the land development regulations. This additional supporting structure would not be inconsistent with the community character of the immediate vicinity. The proposed structure is anticipated to be less intrusive than the other towers on the

island due to the monopole construction. Also, the other three towers are lit and this would not have any lighting associated with it. Staff has no evidence to support or disprove that the proposed redevelopment will have an adverse impact on the value of surrounding properties. There are also standards related to wireless communication facilities. This proposal meets the setback standard and is in compliance with the height standard and construction type. Staff has received some engineering documents that state that the structure meets the wind speed design requirements. The structural integrity component will be reviewed at the time of permitting by the Building Department. Engineering documents also show that the structure would be designed to ensure that in the event of structural failure the facility would collapse within the boundaries of the property. There is no proposal to have lighting on this tower. The applicant has submitted an affidavit and supporting documentation demonstrating that the existing towers are unsuitable for their needs. This proposal also meets the color, fencing and landscaping standards.

Mr. Coyle recommended approval with the following conditions: 1, Prior to the issuance of a development order approving the major conditional use permit design details of the existing fence showing compliance with the fencing regulations are needed; 2, A stormwater management plan consistent with the requirements of 114-3 shall be submitted at the time of building permit application; 3, Prior to the issuance of a certificate of completion of any new structure all required landscaping shall be formally approved and inspected and pass a final inspection by the County Biologist or designee; 4, Prior to the issuance of a certificate of completion for any new structure all required parking spaces shall be formally approved by building permit; 5, A major conditional use permit is not the final approval for certain development, so the applicant shall obtain a building permit for any improvement requiring such approval; 6, Prior to the issuance of building permits, new development and all structures shall be found in compliance with the Monroe County Building Department, Flood Plain Administrator and the Office of the Fire Marshal; 7, The Public Works Division shall review any proposed work within County public rights-of-way and maintains the right to request revision as it carries out its review of any application for an access permit.

Upon questioning by Mr. Williams, Mr. Coyle testified he has been a principal planner with Monroe County for almost three years. Before coming to Monroe County he worked in the Planning and Redevelopment Division of Broward County. Mr. Coyle has a Master's degree in Urban and Regional Planning from Florida Atlantic University and holds an AICP certification. Mr. Coyle clarified for Commissioner Miller that this proposal will serve radio stations throughout the Florida Keys beyond the local planning area.

Frank Greenman, Esquire, representing the applicant, listed the speakers on behalf of the applicant as: Robert Holladay, the principal behind Florida Keys Media, LLC; Sandra Walters of SWC, planning consultant; Pat Roberts from the Department of Homeland Security and other organizations; Bill Becker from U.S. 1 Radio; Undersheriff Lou Caputo; and Laura White, Communications Director for the Sheriff's Office. Mr. Greenman submitted the application and stated he believes every question is thoroughly answered in this document.

Robert Holladay introduced himself and his wife Sherri as a couple who run radio stations and are residents of the State of Florida and enjoy spending time at their condo in Marathon. Mr.

Holladay explained that the primary reason this tower is needed is the Emergency Alert System (EAS), public safety and keeping the public informed. The FCC and the State have designated two of his stations as the primary and secondary stations for the Keys for the FCC and the EAS system. Florida Keys Media has the only broadcast news department in the Florida Keys. The tower is needed to handle six radio stations in the Lower Keys, five FMs and one AM. A tower is needed that will withstand a hurricane and can transmit audio and data from the studio to the main transmitter sites. Mr. Holladay stated radio is the most reliable method of this transmission. The proposed tower is going to be the only tower in the Keys that will meet the new code that Monroe County has established for towers. After spending nine months looking at different structures to house a studio of these radio stations the Crane Boulevard location was the only location that the FCC, the FAA and Monroe County Code would approve that would withstand a hurricane. With those criteria the available buildings are extremely limited in the Keys. The building is centrally located to allow service to these six radio stations. The studio transmitter link microwave system has a radius of roughly 20 to 25 miles, thereby creating the need to be centrally located. Mr. Holladay clarified that the tower on Sugarloaf will be carrying five studio transmitter link systems radiating a total of 211 watts of power, which is less than a microwave oven found in homes. A backup FM antenna will be on this tower that can radiate 2,000 watts should the primary facility fail.

Mr. Williams interrupted the proceedings to ask anyone in the room who parked in the State's parking lot next door to move their cars. A brief recess was held from 10:39 a.m. to 10:46 a.m.

Mr. Holladay concluded by stating he is two years into this project and has met the FCC, FAA and Monroe County Code rules and has followed the law. Upon questioning by Van Fischer, Esquire, attorney representing the Upper Sugarloaf Residents Association, Mr. Holladay testified that the property on Upper Sugarloaf was purchased in roughly March of 2014. The zoning for this building was checked to ensure antenna structures were allowed to be built and also to be commercially used as a radio station. Florida Keys Media owns seven stations in the Keys and operates an eighth station owned by another. Those stations range in location from Stock Island up to Tavernier. The 440-foot tower currently located on Ramrod Key cannot be used by the applicant because it is not able to handle the load needed, a studio cannot be placed at that location, and the STL link from there to Stock Island would not be sufficient. The proposed tower on Sugarloaf is the primary facility for the studio transmitter link and will serve as a backup if the main transmission facility fails. Other stations currently located on Upper Sugarloaf are operating with 100,000 watts, which is the strongest FM that you can have in the country. Residents of Upper Sugarloaf Key do not currently suffer an inability to receive the radio station broadcast. No research has been done to determine the sufficiency of cell phone service on Upper Sugarloaf Key. County code requires the tower be made robust enough to handle three different cellular companies should they wish to locate on the tower.

Sandy Walters, planning consultant for the applicant and registered agent with the County for this application, asked to present a Power Point. Ms. Walters confirmed for Mr. Wolfe that the Power Point is only being submitted as an aid to facilitate the presentation and not as an exhibit. The Power Point illustrated how the Upper Sugarloaf studio and single band facilities would work for the various radio stations. A photo simulation was shown of what the tower would look like from different vantage points. Ms. Walters explained and demonstrated the foreshortening

effect. The photo simulations were produced by a licensed engineer using specific computer programming. Ms. Walters stated throughout the subdivision the tower will not be seen from residents' properties. A 2009 County habitat map was shown of the protected lands in the vicinity of this property. Ms. Walters explained that the neighborhood is not entirely an environmentally sensitive area because there are obviously homes and some development in the area, but a great deal of it is highly protected, which will reduce the amount of future development and the amount of people who will be in the vicinity of the tower. Ms. Walters explained how using another tower not associated with the studio would require double the amount of equipment. Tower owners in the area have stated that they do not have the capacity to support the equipment needed for this proposed facility. Other towers in the area are not located in a viable location for this facility. Upon questioning by Commissioner Miller, Ms. Walters explained that two tower owners have not responded to the applicant's request, but regardless the towers' locations prohibit the applicant from using them. Ms. Walters then stated this structure will be subject to the Fifth Edition of the Florida Building Code, which means it will be built to a substantially higher standard than any of the current structures in Monroe County. This facility will be able to handle wind load requirements to ensure its long-term viability as a communication facility. Ms. Walters spoke of the property appraisals of tower sites that were previously entered into the record. Ms. Walters stated that these surveys concluded that there is no adverse impact to real property values proximate to communication towers or cellular phone and wireless towers. Ms. Walters emphasized that the Florida Keys Media stations play a key role in the emergency system.

Undersheriff Lou Caputo stated he was speaking on behalf of the Sheriff who was not able to appear today. Colonel Caputo stated the applicant's radio group has been good partners with the Sheriff's Office on ensuring public safety. First responders rely on accurate and good communication systems that will hold up in the strongest of storms. It is important to the Sheriff's Office to ensure the capability of providing information after a tragic event in the community, which is why the Sheriff is taking a stand in favor of this tower.

Laura White, Director of Emergency Communications for the Sheriff's Office, informed the Commissioners that she was a previous employee of U.S. 1 Radio and understands both sides of this situation. Ms. White stated this tower is within FCC and FAA compliance. The EAS notifications are the most important aspect of this tower because the applicant's tower will act as a primary and a secondary retransmission of the EAS messages that come from the National Weather Service, the County, the State or the President. Ms. White spoke of an instance when, during a hurricane, the site for the National Weather Service went down and the radio station was able to get the message out and keep people safe. The redundancy this tower will provide will get a message out through at least a 25- to 30-mile radius. Ms. White, in response to Commissioner Wiatt, stated the Sheriff's Department does not plan on putting their own equipment on this tower. Upon questioning by Mr. Fischer, Ms. White testified that she was not aware that Mosquito Control specifically requested that a light be placed on the tower, but the FAA does not require lighting on this size tower. The new equipment just installed at the site consists of a large dish that will receive and rebroadcast any emergency information that is required. Upon questioning by Mr. Greenman, Ms. White testified in her experience this tower will not pose a threat in any way to birds or wildlife of any kind. The biggest problem with this tower would be the birds building their nests on the tower.

Pat Roberts, President of the Florida Association of Broadcasters and Chairman of the State Emergency Communication Committee for the FCC, stated during his tenure with these organizations the Florida Keys have been the most vulnerable area in the state. This group of stations is the most important group of stations in the Keys for emergency management in times of a disaster. This tower is only 199 feet and is made to collapse straight down. Having a studio with a tower will enable information getting out in a natural disaster or terrorist attack. The applicant's company has been a great example of what is needed in communities around the country to serve their communities. Upon questioning by Mr. Fischer, Mr. Roberts testified while there may not be a technical reason why the existing studio towers cannot continue to serve as the STL link to the existing Cudjoe and Ramrod towers, the more redundancy there is the more reliability there is of making sure a message is put out to the community. This proposal adds another layer of redundancy of what exists today. Upon questioning by Commissioner Wiatt, Mr. Roberts stated the State's equipment comes into the station and is then sent out to all the other stations in the Keys. Mr. Roberts does not know of any governmental agency planning to put their own equipment on the proposed tower.

Bill Becker, resident of the Lower Keys and News Director at U.S. 1 Radio, stated he is in a unique situation because he is employed by the applicant and lives very close to the three towers on Upper Sugarloaf. Mr. Becker is concerned about emergency information getting out to the community without this proposed tower. Mr. Becker spoke about the tenuous situation during and after Hurricane Georges in getting communications out from a building falling down around them. The new facility provides more reliability and enables the applicant to fulfill the commitment to the community to provide that information that is needed in a time of emergency. Mr. Becker stated the community needs this proposed tower. Upon questioning by Mr. Fischer, Mr. Becker testified he does not believe there is an STL link from the current location of the studio to the towers on Cudjoe and Ramrod. Mr. Becker is unaware that this specific site is being pursued by the applicant because they would rather own a tower than rent or lease space on existing towers and stated this proposed tower fulfills all requirements.

Mr. Greenman announced the applicant's presentation was concluded. Chair Werling explained the quasi-judicial procedure to the public. Mr. Williams added that anyone who wants to can speak today.

Van Fischer, Esquire, submitted a supplemental set of comments to the Commissioners. Mr. Fischer pointed out a few inconsistencies identified with the code which should result in the application being denied as it stands. The first is Section 110-67, which requires that consideration must be given to the extent to which the proposed conditional use will adversely affect property value. The staff report provides no evidence to support or disprove any adverse effects to property values. The same section requires that the applicant's financial and technical capacity to complete the project proposed be considered, which no evidence to support or disprove that ability was given in the staff report. A larger issue under that section is adverse impacts to community character. This low-scale residential community surrounded by natural areas will be adversely impacted. One of the requirements and intents of the comp plan is to protect the natural environment, but also to maintain and enhance community character and quality of life. The Wireless Communications chapter requires consideration of the height, mass

and scale from vantage points, plural, within three miles, and the staff report only indicated that they considered that aspect from one point three miles away which is not even on the island. More importantly, 146-5 requires that the applicant demonstrate that no other existing communications facility can accommodate the proposed facility. Mr. Fischer pointed out that all of the stations currently broadcast, which is fundamental proof that an alternative exists. Ms. Santamaria confirmed for Commissioner Ramsay-Vickrey that staff's opinion is that the applicant has proven that no alternative sites are available. Ms. Santamaria recited 146-5(1)a.14 regarding the adverse effects on adjacent properties and compatibility with community character, as well as quoting the following: "The applicant shall demonstrate alternative locations, configurations and facility types have been examined and shall address in narrative form the feasibility of any alternatives."

Vera Vasek, resident of Upper Sugarloaf Key and President of the Upper Sugarloaf Residents Association, recited the Association's mission statement. Ms. Vasek then stated she has been living as a resident of Upper Sugarloaf Key for two years, but has had a studio there since 2004. The community survived Hurricane Wilma by pulling together as an island community. Ms. Vasek mentioned that the Association disagrees with staff's recommendation on the proposal because they are a living, breathing community, not a community of towers. Ms. Vasek questions why the first introductory proposal meeting that the applicant held in October of 2014 is not mentioned anywhere in the staff report or proposal. That meeting broke down into a shouting match because the community did not want the tower then and does not want the tower now. The tower in the heart of the community would totally destroy the community character.

Liana Thomas, Secretary of the Upper Sugarloaf Residents Association, read aloud the Association's petition to stop the installation of the communication tower on Upper Sugarloaf, which contains 140 signatures from residents. The letter states the residents of Upper Sugarloaf Key are united in opposition to the 199-foot tower. The neighborhood already suffers more than their share of visual intrusions. The proposed industrial tower would forever alter the community character of Upper Sugarloaf. Erecting this radio tower in this small community is inconsistent with the purpose of the suburban commercial district and the tower far exceeds the communication needs of the Upper Sugarloaf planning area described in the Lower Keys CommuniKeys Plan approved in 2012. The existing facilities are adequate to provide cellular and radio service to their community. The applicant has not met its obligation to provide unavailability of an alternative facility. The Planning Director was urged to exercise her discretion to require a technical review of this issue by a third-party expert, as provided by Code Section 146-6.

Jamie Merkel, resident of Upper Sugarloaf Key and Vice-President of the Indian Mounds Homeowners Association, expressed his Association's desire to strike down the proposal. Firstly, this application should have been denied at the previous meeting, but staff believes that Upper Sugarloaf does not meet the standards or quality as a Monroe County neighborhood by definition. Mr. Merkel gave a brief history and description of Indian Mounds Estates. Mr. Merkel stated by the County's own definition Indian Mounds Estates is a neighborhood and requested that the Commission recognize that in this meeting. Mr. Merkel is unsure of the integrity of Mr. Holladay's application after finding so many inaccuracies in his timeline and content. Approval by U.S. Fish & Wildlife Service and Florida Fish & Wildlife Service have

never actually been obtained, but only guidelines to obtain an approval. There is an active bald eagle nest within a two-mile radius of the proposed tower, as well as wood storks in the area. Mr. Merkel believes the applicant is asking the County to ensure that his plan and business be viable before the need for his tower is determined. Mr. Merkel asked the Commissioners to realize approving this application will set a precedent that future towers can be built in neighborhoods only 253 feet from a residence.

Gavin Willis, resident of Upper Sugarloaf Key, stated one of the reasons his family bought a house in this community is because one of the largest bird refuges in the Keys is located here. Mr. Willis believes a light on this tower that will be required by Mosquito Control will cause problems for birds migrating because it is so close to the bird refuge. It is the job of the citizens to protect flora and fauna of the Florida Keys. Mr. Willis asked the Commission to vote no for the tower in order to protect the environment and animals.

James Nedin, resident of Upper Sugarloaf Key, stated the biggest reason not to allow this tower to be built is because of the effect this will have on property values. Mr. Nedin believes this tower is being built where it is being built for the monetary gain of the applicant without regard for the neighborhood. Mr. Nedin stated the radio stations come in loud and clear as far north as Islamorada. Mr. Nedin suggested, if the Sheriff's Office really likes this proposed tower, they should put it on the substation in Cudjoe.

Mira Negron, adjacent property owner of the proposed tower, referred to letters from four realtors supporting the negative impact to the value and marketability of homes in close proximity to the subject tower. Ms. Negron also referred to a letter from the abutting neighbors and Mosquito Control letters discussing the larvicides in that area. Ms. Negron asked the Commissioners to read a letter from a structural engineer regarding reasonable and proper design criteria to minimize the risk to human life in the event of a structural failure of a monopole tower. Ms. Negron stated the potential for the tower to fail is too great for her peace of mind or to continue living there. Included in a packet previously submitted are the statistics of towers that have fallen with photos. Ms. Negron fears the threat of a fire caused by various sources. Ms. Negron urged the Commissioners to not allow this eyesore of a radio tower to be built next to her home. Radio, Wi-Fi and cell services are not lacking and they already exist in this area.

Leyla Nedin, representing 40 teachers at Sugarloaf School, asked to submit photos of what is in front of the subject location because the applicant's pictures are inaccurate. Mr. Williams informed Ms. Nedin there is a County requirement that such evidence be given to the Planning Commission in advance of the meeting. Ms. Nedin replied that Ms. Santamaria received the photograph previously by e-mail. Commissioner Miller asked Mr. Williams to clarify at a later time what is acceptable and what is not in reference to submissions to the Commissioners. Mr. Williams replied that the Commission has the right to vote as they see fit at any time this occurs.

Ms. Nedin then presented a petition of 40 teachers, the largest group of employees on Sugarloaf Key. Ms. Nedin stated the teachers are concerned for the safety of the children walking to and from school, as well as their concern that the children will find their way back to play around the tower since no barrier will be placed around the tower other than a small fence that is there now. The "Watch Children" signs in front of the subject property is proof this is not a commercial

area. The FDOT speed zoning manual states that these signs are placed in residential subdivisions. Another concern of the teachers is the fact that mosquito pellet droppings will be discontinued and mosquito spraying will become more difficult due to the tower while Florida law requires a minimum of 30 minutes of play and exercise for children each day. Ms. Nedin believes radio is a dying source of communication. Ms. Nedin asked the Commissioners to think about the children being sent to school in a location with a huge amount of towers. This parcel is not the appropriate location for such a tower. Commissioner Ramsay-Vickrey clarified through a letter from Florida Keys Mosquito Control District that this tower will not affect the larviciding operation, nor have any significant negative effect on the aerial adulticiding in the area.

Brad Merkey, former employee of the Florida Keys Mosquito Control, stated the tower will prevent any larviciding in the area. The proposed monopole will be directly within the flight pattern that is a known larvicide area for the wetlands and standing rainwater. The four letters submitted by Mosquito Control all have one thing in common: That this is an area that can only be treated by larvicide and flying with a helicopter. Accuracy will be lost in this effort. The area treated by pellets that the truck-spraying cannot reach is an environmental area.

Marcella Morgan-Gregory, resident of Key West, stated she is present because of concern for the nearby residents and concern about the precedent this will set. The tower should not be in a residential neighborhood regardless of the zoning. What matters is the usage of the zoning in real life, which is residential. Electromagnetic fields of this degree are not something anybody should live next to. There is no proof that this will absolutely not pose a health risk. The health crisis in the country is a sign that the U.S. is a country that lacks education in regards to health. The fear of the tower being a health hazard will prevent potential buyers from purchasing the nearby homes. Ms. Morgan-Gregory asked the Commissioners to apply the Golden Rule and not turn their back on the neighborhood for one man.

Ashley Nedin, resident of Upper Sugarloaf Key, stated she has Asperger's disorder, which presents obsessive characteristics. Ms. Nedin cannot stop worrying about being able to see the tower outside of her window and worrying about the tower falling, as well as the health risks. Ms. Nedin does not believe a tower like this should be placed in the middle of a neighborhood.

Jim Hendrick, appearing as an expert witness for the Residents Association, asked that a copy of his C.V. be made part of the record. Mr. Hendrick pointed out that there will be a light on this tower no matter what conditions are imposed. This facility is not consistent with the purpose of SC zoning, which Mr. Hendrick helped write the code. This particular facility is a regional facility both by its size and its impact and is not designed to meet the needs of the immediate planning area. Therefore, it does not comply with the code requirements. Mr. Hendrick stressed that there is adequacy of existing facilities. Mr. Hendrick read aloud Monroe County Code Section 146-5(1)a.6i. Mr. Hendrick stated the term "facility" used in the code means the tower, not the office. The tower on Ramrod Key supports four FM stations now at 100,000 watts and should be adequate to support the applicant's proposed facility. Instead of having an STL facility that only has a range of 25 miles, a more robust facility should be built elsewhere. Mr. Hendrick commented that Bill Becker had previously stated that the applicant would rather own than rent and that is the reason for this new facility. There is redundancy built into the current system and there is no need to have a new facility when the existing facilities are doing their job.

Claudia Richards, resident of Upper Sugarloaf Key, read a quote from the Livable CommuniKeys Plan: “To foster sustainable quality development while conserving and promoting stewardship of the County’s fragile environment and the unique character of its diverse island community.” Ms. Richards asked the Commissioners to consider the human factor in all of this. Ms. Richards cited four examples of the human factor: Mira Negron’s loss of her retirement investment and her quality of life; Nate Samson, who owns the property right next to the tower, who grew up in Sugarloaf and wants to raise his own family there; Ms. Richards, herself, whose retirement plan is also their house in close proximity to this proposed tower; and the many residents of the area who use the area recreationally and whose quality of lives would be reduced.

Lucy Paige asked to read a letter from Dan Urban, a local realtor. Mr. Williams stated reading letters of other people is not an accepted practice. Ms. Paige then introduced herself as a certified residential appraiser in Monroe County for over 20 years. Ms. Paige stated she has reviewed the appraisal information presented that states there will be no negative effect on the property values in this area. The comparison in the appraisal of Upper Sugarloaf to Big Coppitt and Key Largo is disingenuous because of the different impacts on those two other areas. Sugarloaf is rural and residential.

Tom Wyatt, resident of Upper Sugarloaf Key since 1977, commented that this tower is going to adversely affect the lives of residents of Sugarloaf Key. Mr. Wyatt did the original landscaping on this property and said the tower will stick up six times taller than the tree line in the middle of a residential area. There was previously a 20-foot swale around the property that has since been filled in. Mr. Wyatt requested that the permit for this tower be denied because it does not fit within the CommuniKeys format.

Tom Ashley, resident of Upper Sugarloaf Key, stated Crane Boulevard is not the proper place for this tower. The building does not even fit into the residential appearance of Crane Boulevard. Although a tower may be permitted in this area, it will affect the residents’ quality of life.

Vera Vasek requested two more minutes of time since she was talking on behalf of the Upper Sugarloaf Residents Association. Ms. Vasek stated Section 146-6 of the code allows for expert review and asked the Commissioners to instruct the Planning Director to require that expert review to make sure the vote is going to be correct for the community and for Monroe County. There will be legalities involved with this application. Since the tree line is 30 feet in this area, the tower will be within direct view of the residents in the neighborhood.

Karen Moore, Upper Sugarloaf Key resident, stated this area seems untouched. Ms. Moore feels the environmental impact and health impacts from this tower are scary. The support in the neighborhood against this tower is growing. Ms. Moore agrees with the need for communications, but does not think it belongs on Crane Boulevard.

Jan Berg, resident of Upper Sugarloaf Key, gave a brief history of a tower permit that was denied in 1986 because of neighborhood complaints on Cudjoe Key. The complaints then were very similar to the ones heard today. The applicant was told to find another location for their tower.

Ms. Berg's house abuts a very natural area and the sight of this tower will change the character of the neighborhood. The Commission was asked to deny this application.

Bill Hunter, resident of Lower Sugarloaf, stated he would like for U.S. 1 Radio to be successful, but the public should help the decision-makers understand what their community character is. Mr. Hunter asked the Commissioners to take that into account.

Gretchen Weiss, resident of Upper Sugarloaf Key, commented that she chose to raise her son on Upper Sugarloaf Key because it was a beautiful residential area. The towers that currently exist on Sugarloaf Key are all located up by U.S. 1 and across a dump located on Cudjoe Key. The tower does not fit in with the character of the community.

Elaine Davia, Upper Sugarloaf Key resident, reiterated that the residents' line of sight will be significantly impacted by this tower. Mr. Davia believes there will be a light put on the tower.

Chair Werling asked for further public comment. There was none. Public comment was closed.

Commissioner Ramsay-Vickrey spoke of how it took her ten years to notice that there was a tower on a property within close proximity to a property that she owns. Property values have gone up considerably on her property because property values in the Keys in general have gone up and she has improved her property. Commissioner Ramsay-Vickrey explained that she sought to understand the necessity of this tower from staff. Commissioner Ramsay-Vickrey believes this tower is necessary for the safety of many citizens of Monroe County and believes this proposed tower is an integral part of the emergency broadcast system.

Mr. Greenman stated that while he sympathizes with the passions heard today, a decision must be made today based on the law as passed by the BOCC, the Legislature of the State of Florida and the United States Government. The property is zoned SC and is the only piece of property that meets the criteria of providing the necessary distance from Key West, provides the necessary zoning to meet code and meets the requirements of both the FCC and FAA. In perfect weather this STL tower will take the signal from Key West all the way up to Grassy Key, certainly outside the planning area, but if the power goes down it becomes the sole source of radio broadcasting within a 25-mile limit. That is the immediate planning area and it is essential that that is done. The County zoned this property SC, which not only allows wireless towers such as this, but other satellite and wireless communications facilities as well. The noise level emitted from the propane gas generator that will be operated in emergencies and tested once a month is lower than human conversation. Monroe County Code prohibits lights on this tower. Mr. Greenman referenced the case of Irvine vs. Duval County requiring competent substantial evidence be presented to overturn the decision of staff and stated that has not happened today. Essentially comments from the public were opinion. The applicant has produced engineering reports.

Commissioner Miller noted that he would be interested to hear independent testimony. Mr. Williams interjected that there is no independent requirement. Substantial competent evidence can be found from any source of information that properly comes before the Planning

Commission. The Commissioners are effectively acting in a judicial capacity in hearing this matter today.

Mr. Greenman commented that Brian Schmitt has written a letter saying that the realtors who produced letters to the Commissioners did not speak for Coldwell Banker Real Estate and spoke only as individuals. Mr. Greenman explained that the Florida Building Code changed in June 2015 and has substantially strengthened the requirements of towers. The proposed tower will be the only tower that meets those requirements. Mr. Greenman stated this is a legally appropriate use of this property and, more importantly, public safety compels it.

Mr. Greenman clarified for Commissioner Miller that on a normal basis this tower would serve more than the local area, but in an emergency it serves the local area. This tower provides some redundancy, which does not exist currently. Mr. Holladay explained that this tower is a primary source for the studio to transmit the audio link. The redundancy is in the backup FM antenna that will be located on the tower that will allow backup of any of the four FM stations in case they fail at their primary site. There are other towers that can handle that backup, but the coverage area of the backup would depend upon where the tower is located. The real issue is that the proposed tower can handle a higher wind load than what exists today. Eddie Bie added that the previous wind speed was 137 sustained, 180 three-second gust, and this tower can handle 142 sustained and 200 three-second gust. Pre-Andrew towers were built to 90 miles an hour. Other towers were built to 135.

Commissioner Wiatt pointed out that it seems like what exists right now is suitable without consideration of the backup or redundancy needed for emergencies. Commissioner Wiatt asked why the redundancy cannot be created on an existing tower. The new tower is only ten miles an hour stronger for sustained winds. Mr. Holladay clarified that the current broadcast towers and antennae that transmit the main signal are adequate and functioning. What is being proposed today is the combining of two studios and six radio stations into a new facility that is hurricane-proof. Both the tower and the building are integral parts. Mr. Holladay explained that both the lease at Big Pine and the lease at Key West no longer exist. Commissioner Wiatt pointed out that the current facilities are suitable in a normal scenario, but are unsuitable in hurricane conditions, and from a regulatory standpoint the Commissioners have no guidance in that respect. Mr. Holladay explained that the Key West and Big Pine facilities were both leased and those lease have expired. If the tower did not have to be built structurally sound enough to hold more wind load and more weight it would be much less expensive for the applicant. From an aesthetic standpoint it would be an immaterial difference.

Chair Werling exited the proceeding and Commissioner Wiatt took over as Chair.

Upon questioning by Mr. Fischer, Mr. Bie testified that the existing towers can be modified to be more robust to handle the higher wind speeds, but sometimes it is cheaper to replace them with a new one. Mr. Holladay testified that although space is available for rent commercially, a tower could not be put up where those are that would fulfill the needs and have the building integrity needed for this studio. Commissioner Lustberg asked if the load could be broken up onto different towers. Mr. Holladay replied that the economies of putting the operations together was the way to turn the business into a profitable business. The stations in two different places

causes you to have to double everything. Commissioner Ramsay-Vickrey added that she was informed by staff that the equipment load requirements for STL collocation on any of the nearby towers are much greater, which affects the fasteners and the structural ability of those towers to serve. Commissioner Ramsay-Vickrey also learned that the proposed tower is exactly opposite of a backup radio tower, but rather will be **the** STL facility conveying signals to the five transmission towers from the central studio.

Mr. Greenman commented that out of 116,000 911 calls made to the Sheriff's Office, 93,000 were from wireless phones. Mr. Greenman informed the Commissioners of the number of cell phones and internet users in this country. Mr. Greenman asked the Commissioners to keep in mind what a technological age we live in when making their decision.

Mr. Wolfe clarified that substantial competent evidence is needed to approve or deny this matter and the Commission weighs whatever evidence that comes in. Mr. Williams further clarified that a Supreme Court case out of Atlanta requires that a denial of the application specifically needs substantial competent evidence and needs to be in writing and submitted in a timely manner. However, if it is appealed by either side a court will look for substantial competent evidence on either side. A written decision is needed in this matter in a much quicker time frame than normal.

Commissioner Miller again requested an independent assessment as referred to in Section 146-6. Mr. Williams pointed out that does not apply to the Planning Commission. Mr. Williams also clarified the Planning Commission does not have the ability to prohibit the structure. Commissioner Miller questions why this application would be approved when on a normal basis this structure would be serving outside the local planning area, but only in an emergency would they serve the local planning area. Ms. Santamaria responded that staff reviewed the application and looked at the zoning purpose as well as the allowed uses. While the applicant is going to broadcast beyond, they are also broadcasting to their immediate vicinity and all the properties around them. Commissioner Miller is not comfortable voting on this today.

Commissioner Lustberg questioned how something can be determined to be consistent with community character when the whole community is opposed to it. Commissioner Ramsay-Vickrey referred to the electrification of No Name Key being denied when 79 percent of the community wanted it. There is substantial evidence supporting this tower as an integral part of the emergency broadcast system. Mr. Williams read aloud that substantial evidence requires more than a scintilla, but less than a preponderance from case law. Commissioner Ramsay-Vickrey believes staff's work and staff's report contains the substantial evidence. Commissioner Wiatt asked staff if the definition of "wireless communication facility" includes the studio. Ms. Santamaria believes that it is the antenna-supporting structure and associated equipment enclosures. Commissioner Wiatt believes it is undeniable that the tower is working and suitable because currently the stations are being broadcast fine and, therefore, this application does not meet Section 146. Ms. Santamaria explained what was provided by the applicant could not be accommodated on one tower. Ms. Santamaria clarified for Commissioner Ramsay-Vickrey that staff's recommendation has not changed. Commissioner Miller feels that the record is not complete because there has been no response from two of the towers that the applicant had reached out to. Commissioner Miller asked to continue this item for additional information.

Commissioner Lustberg does not wish to continue this and believes this major conditional use does not meet Condition 2 nor Condition 4. Mr. Wolfe noted that a reason is needed in order to continue an item. If the Commission has heard everything there is to hear, it would be inappropriate to continue this.

Motion: Commissioner Ramsay-Vickrey made a motion to approve with the recommendations by County staff. The motion failed.

Motion: Commissioner Lustberg made a motion to deny the application because it does not meet Criteria 2 and Criteria 4 as required for a major conditional use and based upon evidence in the written packet and based on testimony given today. Commissioner Miller seconded the motion. The roll was called with the following results: Commissioner Ramsay-Vickrey, No; Commissioner Lustberg, Yes; Commissioner Miller, Yes; and Commissioner Wiatt, No. No official action was taken

Commissioner Wiatt clarified that his “No” vote is based on the fact that the applicant has not demonstrated that there are other limiting factors that render existing wireless communication facilities unsuitable because his stations are currently being broadcast. Commissioner Wiatt wavers on the community character standpoint because to some extent the community expands past Sugarloaf into other parts of the Lower Keys.

Motion: Commissioner Lustberg made a motion to deny this major conditional use application for three reasons: It does not meet the requirements of Section 110-67, Numbers 2 and 4, and does not meet the requirements of Section 146-5(1)a.6(ii) and based upon the written evidence received prior to the meeting and the testimony heard today in the meeting. Ms. Santamaria again clarified for Commissioner Ramsay-Vickrey that staff’s opinion has not changed in their recommendation. Commissioner Miller seconded the motion. The roll was called with the following results: Commissioner Ramsay-Vickrey, No; Commissioner Lustberg, Yes; Commissioner Miller, Yes; and Commissioner Wiatt, Yes. The motion passed three to one. Mr. Williams again informed the Commission that the written record will be needed on an expedited basis.

A recess was held from 2:10 p.m. to 2:27 p.m.

4.AN ORDINANCE BY THE MONROE COUNTY BOARD OF COUNTY COMMISSIONERS AMENDING THE MONROE COUNTY FUTURE LAND USE MAP FROM RESIDENTIAL CONSERVATION (RC) TO RECREATION (R) AND CONSERVATION (C), FOR PROPERTY DESCRIBED AS A PARCEL OF LAND IN SECTION 24, TOWNSHIP 59 SOUTH, RANGE 40 EAST, KEY LARGO, MONROE COUNTY, FLORIDA, AND ALSO BEING A PORTION OF TRACT A, HARBOR COURSE SOUTH, SECTION ONE, OCEAN REEF PLAT NO. 14 (PLAT BOOK 7, PAGE 9), KEY LARGO, MONROE COUNTY, FLORIDA, HAVING REAL ESTATE NUMBER 00573690.003900, AS PROPOSED BY OCEAN REEF CLUB INC.; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL OF CONFLICTING PROVISIONS; PROVIDING FOR TRANSMITTAL TO THE STATE LAND PLANNING AGENCY AND THE SECRETARY OF STATE; PROVIDING FOR INCLUSION IN THE MONROE

COUNTY COMPREHENSIVE PLAN AND FOR AMENDMENT TO THE FUTURE LAND USE MAP; PROVIDING FOR AN EFFECTIVE DATE.

(File 2015-047)

5. AN ORDINANCE BY THE MONROE COUNTY BOARD OF COUNTY COMMISSIONERS AMENDING THE MONROE COUNTY LAND USE DISTRICT (ZONING) MAP FROM NATIVE AREA (NA) TO PARKS AND REFUGE (PR) AND CONSERVATION DISTRICT (CD), FOR PROPERTY DESCRIBED AS A PARCEL OF LAND IN SECTION 24, TOWNSHIP 59 SOUTH, RANGE 40 EAST, KEY LARGO, MONROE COUNTY, FLORIDA, AND ALSO BEING A PORTION OF TRACT A, HARBOR COURSE SOUTH, SECTION ONE, OCEAN REEF PLAT NO. 14 (PLAT BOOK 7, PAGE 9), KEY LARGO, MONROE COUNTY, FLORIDA, HAVING REAL ESTATE NUMBER 00573690.003900, AS PROPOSED BY OCEAN REEF CLUB INC.; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL OF CONFLICTING PROVISIONS; PROVIDING FOR TRANSMITTAL TO THE STATE LAND PLANNING AGENCY AND THE SECRETARY OF STATE; PROVIDING FOR AMENDMENT TO THE LAND USE DISTRICT (ZONING) MAP; PROVIDING FOR AN EFFECTIVE DATE.

(File 2015-048)

(2:27 p.m.)Ms. Schemper presented the staff report. Ms. Schemper reported that these are two separate items, but associated with each other: A FLUM amendment and corresponding zoning map amendment. The future land use is proposed to go from residential conservation to a mixture of recreation and conservation, and the zoning is proposed to go from native area to park and refuge and conservation district. Ms. Schemper described the site as 11 acres, currently undeveloped land, containing hammock and some buttonwood and mangrove areas. The surrounding uses were listed. There is a teardrop-shaped portion of the site the applicant is requesting become recreation and the park surrounding it to become conservation, and for the zoning they are proposing for the teardrop shape to become park and refuge and the surrounding area to become conservation district. The teardrop portion is about 1.7 acres. The net change in development potential based on these FLUM and zoning changes would be a reduction in residential potential of 2.4 dwelling units, a reduction in nonresidential square footage potential of about 13,000 square feet based on the FLUM change and a reduction in potential of about 33,000 square feet based on the zoning. The transient dwelling unit potential would be up by 3.4 rooms or spaces. Ms. Schemper noted that within Ocean Reef the County does not permit new transient uses beyond those already included in their vested rights determination.

Ms. Schemper further reported that staff has found that both new FLUM designations would be consistent with the character of the surrounding area, consistent with the surrounding undeveloped land. The applicant is proposing the FLUM amendment to allow the development of a park and a passive recreation trail on the site. The applicant submitted information from Ocean Reef Club's membership data from 2010 to 2013 showing an increase in the number of families with children in recent years, thereby increasing their need for parks and recreational open space within the community. Also submitted were standards developed by the American Planning Association that support that need for recreational space. Staff has found no potential adverse effects on public facilities, found both map amendments to be consistent with the Land Development Code (LDC), the comp plan and the principles for guiding development and Florida Statute. Specifically for the zoning amendment staff has found this map amendment

meets the factors in the LDC of changed projection, changed assumption, new issues, recognition of a need for additional detail or comprehensiveness and data updates. If the FLUM amendment is adopted, then the zoning would have to be adopted per Florida Statute to be consistent. Staff recommended approval of both proposed FLUM amendments and the zoning amendment. The recommendation for approval of the zoning amendment is contingent on the adoption and effectiveness of the corresponding FLUM amendment.

Joel Reed, present on behalf of Ocean Reef Club, was sworn in by Mr. Wolfe. Mr. Reed described how Ocean Reef began and stated Ocean Reef is continuing to see the population have more families and children. The site is adjacent to both the academy, which has 50 to 75 students, and to the fitness facility. A third adjacent building is a feral cat facility where they take in feral cats and try to re-home them. Mr. Reed clarified for Commissioner Miller that this site is not within the national wildlife sanctuary.

Commissioner Wiatt asked for public comment.

Deb Curlee, resident of Cudjoe Key, mentioned that six endangered species are listed for this property and is concerned about the diminishment of hammock. Ms. Curlee suggested putting the wide end of the parcel towards where the buildings already are so there would be less human disturbance.

Commissioner Wiatt asked for further public comment. There was none. Public comment was closed.

Commissioner Miller read aloud from the Ocean Reef website that described the recreational facilities. With everything described on the website, Commissioner Miller has a problem with disturbing a native area on this parcel. Commissioner Miller asked about the clearing limits in the existing and the proposed FLUM and asked why the teardrop section would have to go into the middle of a hammock. Ms. Schemper reminded the Commission that this is actually an effect of downzoning in this area. With the current FLUM and zoning two houses could be built. The current zoning and FLUM do not allow parks only because it is a more restrictive category. Mr. Roberts reported that the clearing limits in Ocean Reef are 40 percent regardless of use. Mr. Reed responded that the applicant is very aware of balancing development with nature. This is a downzoning request. The current zoning would allow greater than four acres to be cleared and this proposal would limit that clearing to 1.71 acres. Although Ocean Reef has great recreation and great amenities, there are no play fields. Mr. Reed believes this proposal, when looking at the development potential, is a win/win for both the community and for the environment. The area designated as hammock has no portion of that hammock more environmentally sensitive than other portions. Commissioner Miller replied that this teardrop actually fragments this hammock from one side to the next. Mr. Reed disagreed and stated there is still plenty of natural corridor for species to move through there. Commissioner Miller believes the area adjacent to the school would be less acceptable to the wildlife than the area further into the hammock. Mr. Reed explained that part of the shape is proposed for a hammock trail that would follow along more on the outside and then link into the green space. Commissioner Miller does not approve of the way it is designed.

Commissioner Ramsay-Vickrey commented that the species listed would not necessarily be more or less prone to benefit if this teardrop were reconfigured. Mr. Roberts stressed the importance that this is a downzoning. This is a reduction in the uses that are allowed there and does not limit the amount that they can clear any more than what they can already do. The residential use is being taken out, which is critical to the survival of the rat and the mouse because of the removal of free-roaming cats. That is a beneficial use. The small propensity of that shape to further fragment that hammock is not going to have a quantifiable effect on the covered species. Building two houses and clearing 40 percent would have a definite effect on the species. Commissioner Miller feels the logical area to build as far as environmental concerns would be along the periphery of the school area. Commissioner Ramsay-Vickrey agreed with Mr. Roberts and Commissioner Wiatt that the proposal is better than the 40 percent clearing. Also, the shape would make more sense for a trail experience. Commissioner Miller believes Ocean Reef is looking to have a cleared area, not a trail. Mr. Reed agreed they are looking for a cleared area, but the focus of the discussion should be on whether or not it meets the criteria for the change. Commissioner Wiatt feels that given the fact that the applicant is downzoning, they should be given some latitude on how they go about utilizing a smaller piece of the property for a use that is going to have much less impact than two houses. Commissioner Miller questioned whether Ocean Reef is getting special consideration. Commissioner Wiatt responded regardless of the location, somebody looking to downzone should get consideration. Commissioner Miller stated there is nothing in the code that says zoning should be changed to clear along an area that has already been affected. Mr. Roberts explained that the siting criteria is based on habitat to habitat, not from a portion of hammock to another portion of hammock. Commissioner Miller believes this flies in the face of logic when it comes to environmental protection. Commissioner Wiatt replied that the bigger picture is absolutely in line with the comp plan. Commissioner Miller stressed that, although in favor of the downzoning, this could be constructed in a less environmentally invasive way.

Commissioner Miller then asked to discuss the configuration of the downzoning. Ms. Schemper explained that the applicant had earlier proposed that the entire parcel become recreation and then decided to make it conservation land surrounding the park. Commissioner Ramsay-Vickrey agreed with Commissioner Wiatt and stated she appreciates the applicant's concessions in what will be put aside in conservation on this property.

Motion: Commissioner Ramsay-Vickrey made a motion to approve Item Number 4 as recommended by staff. Commissioner Lustberg seconded the motion. The roll was called with the following results: Commissioner Ramsay-Vickrey, Yes; Commissioner Lustberg, Yes; Commissioner Miller, No; and Commissioner Wiatt, Yes. The motion passed three to one.

Motion: Commissioner Ramsay-Vickrey made a motion to approve Item Number 5 as recommended by staff. Commissioner Lustberg seconded the motion. The roll was called with the following results: Commissioner Ramsay-Vickrey, Yes; Commissioner Lustberg, Yes; Commissioner Miller, No; and Commissioner Wiatt, Yes. The motion passed three to one.

6. AN ORDINANCE BY THE MONROE COUNTY BOARD OF COUNTY COMMISSIONERS AMENDING THE MONROE COUNTY LAND USE DISTRICT (ZONING) MAP FROM SUBURBAN COMMERCIAL (SC) TO MIXED USE (MU), FOR PROPERTY LOCATED AT 28500 & 28540 OVERSEAS HIGHWAY, LITTLE TORCH KEY, MILE MARKER 28.5 OCEANSIDE, LEGALLY DESCRIBED AS PARCELS OF LAND IN A PART OF U.S. GOVERNMENT LOT 6, SECTION 28, TOWNSHIP 66 SOUTH, RANGE 29 EAST, LITTLE TORCH KEY, MONROE COUNTY, FLORIDA, HAVING REAL ESTATE NUMBERS 00113570-000000, 00113570-000100, 00113570-000200, 00113590-000000 AND 00113620-000000, AS PROPOSED BY PATRICK R AND DIANE COLEE, DOLPHIN MARINA ASSOCIATES LTD AND TORCH KEY PROPERTIES LTD; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL OF CONFLICTING PROVISIONS; PROVIDING FOR TRANSMITTAL TO THE STATE LAND PLANNING AGENCY AND THE SECRETARY OF STATE; PROVIDING FOR AMENDMENT TO THE LAND USE DISTRICT (ZONING) MAP; PROVIDING FOR AN EFFECTIVE DATE.
(2015-152)

(3:05 p.m.) Mr. Williams asked for time to verify that the posting on the property was adequate. That determination was made.

Mr. Bond presented the staff report. Mr. Bond reported that this is the land use district map amendment for the Dolphin Marina property located on Little Torch Key. It also serves as the land base for Little Palm Island offshore resort. Mr. Bond described the surrounding area and some relevant prior County actions on this property. There is no need for a FLUM change because they are keeping within the same category. This is a Tier III property of scarified and disturbed habitat with some fringing mangroves on the ocean side. Mr. Bond pointed out that this is a map amendment and it is important to keep in mind the criteria for map amendments in terms of the change in development potential and the different allowed uses. Since there is no FLUM amendment necessary, there is no change to the density or intensity as far as the FLUM is concerned. In terms of allocated density, it would go down based on residential density and have no change based on transient. The maximum net density would go up, but there would be no change in max net density for transient uses and there would be no change as far as nonresidential FAR goes. Many of the same allowed uses would continue under the proposed district. Some of the new uses that would be allowed if the amendment is adopted would be new attached and detached residential dwellings, including vacation rental of detached units, boat building or repair, commercial fishing, broader commercial recreational uses, light industrial on parcels over two acres and wastewater treatment facilities that serve any use. The trigger for a major conditional use for hotels would increase from 25 rooms to 50 rooms. Parks would be allowed as of right. Staff has conducted an analysis and found that there will be no adverse impact on community character and would have no impact on public facilities. Staff found that it would further Goal 101, Objective 101.4 and Policies 101.4.5 and 101.4.22 of the comp plan and would further the Lower Keys LCP Goal 1, Objectives 1.1 and 1.2 and Policy 1.2.1. Staff found that it meets Factors 4, 5 and 6 of the seven factors considered for a land use map amendment. Mr. Bond recommended approval of the proposed land use map amendment from suburban commercial to mixed use.

Ms. Santamaria clarified for Commissioner Miller that the vacation rentals would have to be detached units under the proposed mixed use district.

Donna Bosold, agent for the applicants, stated that the proposed zoning district is consistent with the comp plan and furthers the objectives of the adopted Lower Keys LCP. Ms. Bosold stated the Colee family has invested in these properties for many years and sees an opportunity at this point to continue to improve the property and understands and appreciates concerns that have been expressed by neighbors. Ms. Bosold emphasized that today is not to discuss what it is the applicant wants to do with the property today. The applicant is looking at this as an opportunity to refine their ability to develop the property in a way that responds to market trends. Ms. Bosold clarified for Commissioner Miller that the applicant is not necessarily proposing what was discussed in the letter of understanding with the County, but is interested in the opportunity to look closer at doing vacation rentals. Ms. Santamaria explained that a letter of understanding is not binding. Commissioner Lustberg pointed out that the Commission's job is to look at the difference between what can be done as it is now and what could be done with the land use change and determine whether that is appropriate for this location. Commissioner Ramsay-Vickrey commented that she is very familiar with this property and it fits within the definition of mixed use. Commissioner Ramsay-Vickrey likes the fact that this will potentially allow for the increase of affordable housing and opens up more commercial fishing opportunities in this area.

Commissioner Wiatt asked for public comment.

Tony Farretta, full-time resident of Little Torch Key, pointed out on the map how close his house is to the subject property. Mr. Farretta stated the Dolphin Marina has not been a good neighbor, which makes him very suspicious of what their intentions are in the future. The behavior of a lot of the boat captains that go in and out of the canal is poor and an increase of boat traffic will be deleterious to the health of the canal. Commissioner Wiatt explained that today's meeting is just to determine whether or not this particular piece of property would be best served under a different zoning requirement than currently exists. Ms. Bosold added that a plan is not being brought to the Commission today, but only a zoning change. The applicant will be reaching out to the neighbors in their future plans. Commissioner Lustberg stated that in addressing a land use change the Commission considers all of the different ways the property could be used if the land use map is changed. Ms. Santamaria clarified that for a minor conditional use or major conditional use the surrounding property owners within 300 feet will get notice. An as-of-right use does not require notice. Mr. Farretta voiced concerns of ending up with a loud restaurant or clubhouse and jet ski traffic. The canal is a no-wake zone. Mr. Farretta asked about the reference to this being a gated community. Ms. Bosold reiterated that today applies strictly to the zoning change and the differences between the two zoning categories. The Colee family is committed to reaching out to the neighbors in the future. Commissioner Wiatt suggested the neighbors reach out to the applicant in the near future to discuss and address some of the concerns. Mr. Farretta stated he has had no success in the past getting them to address their boat captains' behavior.

Roy Griscom, owner of a property across the canal from Dolphin Marina for 22 years, stated he believes that the canal alongside his home is one of the busiest in the Keys. Mr. Griscom estimates that 65 percent of the land at Dolphin Marina is taken up by vehicles. Mr. Griscom

stated Dolphin Marina is already a thriving business and they have 12 short-term rental units. Anything else allowed on that property would be too much. Allowing more development on this property would negate all of the County's hard work done for years to keep the Keys "Keys-y."

Kim Schroeder, neighbor of the applicant for over 20 years, was sworn in by Ms. Creech. Ms. Schroeder agreed that the amount of boat traffic from charter boats and locals who come in to gas up is too much already and the boaters' behavior is inconsiderate. Reporting this behavior to FWC has not helped. Ms. Schroeder stated the owners of the marina have responded to her complaints of loud noise, but more growth will cause more chaos on this property.

Bill Hunter, resident of Sugarloaf Key, agrees that although today's determination is just as to zoning, once the zoning takes place then the rights are there, so today is an opportunity for the community to express concerns about what this may do. Mr. Hunter expressed concern about the use of the Lower Keys community plan to support this. Goal 1 of that plan is in there because there is a trend to rezone suburban commercial to mixed use. Suburban commercial serves the needs of the locals and mixed use is to serve the needs of tourism. Mr. Hunter then mentioned the Colees have purchased a property on Stock Island that is going to be reconverted to affordable housing and if this property is turned into 22 vacation rentals the affordable housing component to this is not being met because people are going to have to service those rentals.

John Rhode, resident of Little Torch Key, asked if there is other mixed use zoning on any of the Torches. Mr. Rhode voiced concern that mixed use allows for industrial use. Mr. Rhode believes that Dolphin Marina is an advantage to the area the way it exists now, but changing it to mixed use would be a major disadvantage to Little Torch Key. Commissioner Miller pointed out that right now light industrial uses can be on the parcel without changing the zoning. Ms. Santamaria explained that there is mixed use zoning to the north along Barry Avenue on Little Torch Key.

Deb Curlee, resident of Cudjoe Key, is concerned that once there is a change in the zoning, then public input against what might be proposed is almost too late. Ms. Curlee does not believe the notice posted on the property is adequate. Mr. Williams clarified that Ms. Bosold has supplied an affidavit to the County swearing that she has posted the property pursuant to the proper statutes and ordinances, but Mr. Williams agreed that it is not the usual kind of posting seen. Ms. Bosold responded that it is the signage the County provided to the applicant. Because of cap rock in the area, that was the only place where the metal frame actually was able to be put into the ground. Ms. Curlee stated she does not agree with that excuse and believes public notice is one of the primary things needed so people in the area can have input. Mr. Williams read aloud Section 110-5 of the code and pointed out the code does not state the notice has to be at eye level. Ms. Curlee replied it needs to be easily readable. Mr. Williams corrected that the code says "easily visible." Mr. Williams informed the Commissioners whether it meets the code or not is within their purview. Mr. Williams cannot say the notice given violates Section 110-5 and agreed that the affidavit is sufficient and meets the terms of the code. Ms. Bosold pointed out that notices were mailed out within the 300 feet. If this is an issue, the applicant is happy to continue it to the next meeting and repost the property. Commissioner Miller requested to continue the item. Commissioner Lustberg noted that while it would be better if the notice were

higher, obviously many members of the public were aware of it and did make it to the meeting. Commissioner Wiatt is fine with the notice since Legal staff said it was posted properly. Commissioner Ramsay-Vickrey agrees that it meets the letter of the law, not necessarily the spirit of the law, and encouraged the public to take that into account in the future.

Ms. Curlee then brought up the question of whether FDOT allows parking on part of the property since parking is a huge issue on this particular property. Ms. Curlee stated the LCP was a document that was pored over for many, many months where everybody expressed how they wanted their community to be. This community does not want more development, more vacation rentals or more traffic. A zoning change could possibly bring these things. Commissioner Wiatt noted that there are not a lot of differences between SC and MU. Ms. Curlee pointed out that a gated community would only allow the people within the gates to have access to the boat ramp and the marina. Ms. Curlee asked the applicant to leave it what it is and improve it and asked the Commissioners to deny this requested change in zoning because it is not in keeping with what the LCP means or with what the community wants.

Pat Dawson, resident of Little Torch Key, was sworn in by Ms. Creech. Ms. Dawson asked what the new development on Little Torch Key is zoned. Ms. Santamaria replied it is zoned urban residential. Ms. Dawson voiced concern that Dolphin Marin will end up with the units so close together like that new development. Ms. Dawson asked the Commissioners to consider the small space that will have to accommodate these new units and more parking, including boat parking.

Commissioner Wiatt asked for further public comment. There was none. Public comment was closed.

Ms. Bosold clarified that the Colees have not bought a property on Stock Island. Ms. Bosold emphasized that the conditional use process provides the platform to control some of the existing problems that the residents are expressing right now. Ms. Bosold then clarified that in this case the County limits light industrial use to things like boat storage and urged the residents to compare the differences in the permitted uses for both zoning categories. Commissioner Miller pointed out that vacation rentals are allowed as of right in mixed use. Commissioner Miller noted how paradoxical it is that the County is using Points 4 and 6 in the LCP to approve the change, yet the community is saying this is not what they want. Ms. Bosold noted that the whole gist of the LCP was to continue to cluster like uses together instead of spreading them out. Commissioner Wiatt added that the definition of commercial fishing now includes charter boats and if they redeveloped and remained in SC they would not be able to have charter fishing at the facility. Commissioner Ramsay-Vickrey stated what is allowed in mixed use is already an integral part of this resort-marina area. The commercial fishing may result in less boat traffic. Commissioner Ramsay-Vickrey agrees that the affordable housing that is allowed with the vacation rentals is a plus. Ms. Bosold agreed that the mixed use uses are already on the site. The conditional use process will allow the applicant to improve on what exists currently. Commissioner Miller noted that changing the zoning to MU takes away some planning ability to cooperate with the neighborhood. Ms. Santamaria recited for Commissioner Lustberg the difference in terms of potential residential development and density and potential transient uses.

Commissioner Miller reiterated the contradiction of staff in using the LCP for approving this application. Ms. Santamaria cited the LCP as the document to regulate land use by type, density and intensity and as the primary regulatory tool for evaluating development proposals. Commissioner Miller pointed out that in the big picture development is being retired from somewhere else to put it in a neighborhood that does not want it. Commissioner Wiatt asked Ms. Santamaria if staff's position was changed after hearing public input. Ms. Santamaria replied no. The boating traffic being complained about is not impacted by the land use change. Commissioner Miller suggested more work be done in clarifying Points 4 and 6 of the LCP. Commissioner Lustberg stated the LCP does indicate the community does not want a lot of development, but any development should be placed on US-1, and this property is on US-1.

Commissioner Miller asked to continue this item to take a closer look at the support for this. Ms. Bosold stated the applicant is comfortable with a continuance. Commissioner Wiatt noted that would also be consistent with the public notice concerns.

Motion: Commissioner Ramsay-Vickrey made a motion to continue the applicant's request to the December 16, 2015, Planning Commission meeting. Commissioner Lustberg seconded the motion. There was no opposition. The motion passed unanimously.

Ms. Creech then swore in any member of the public present who cares to speak on Item 7 or 8 not sworn in earlier this morning.

7. AN ORDINANCE BY THE MONROE COUNTY BOARD OF COUNTY COMMISSIONERS AMENDING THE MONROE COUNTY TIER OVERLAY DISTRICT MAP FROM NO DESIGNATION TO TIER I FOR PROPERTY LOCATED AT 610 ELMA AVENUE, BIG PINE KEY, MILE MARKER #30, LEGALLY DESCRIBED AS BAY BOTTOM WEST AND ADJACENT TO LOT 6 AND THE S ½ OF LOT 7, PINEY POINT SUBDIVISION (PLAT BOOK 3, PAGE 88) MONROE COUNTY, FLORIDA, HAVING REAL ESTATE #00112000-000000; AND AMENDING THE MONROE COUNTY TIER OVERLAY DISTRICT MAP FROM NO DESIGNATION TO TIER III FOR PROPERTY LOCATED AT HENRY LANE, BIG PINE KEY, MILE MARKER #29.75, LEGALLY DESCRIBED AS A PARCEL OF LAND IN PART OF THE SE ¼ OF THE NE ¼ (AKA 40' X 305' ROADWAY) OF SECTION 27, TOWNSHIP 66 SOUTH, RANGE 29 EAST, BIG PINE KEY, MONROE COUNTY, FLORIDA, HAVING REAL ESTATE #00111880-000210; AS PROPOSED BY THE MONROE COUNTY DEPARTMENT OF PLANNING AND ENVIRONMENTAL RESOURCES; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL OF CONFLICTING PROVISIONS; PROVIDING FOR TRANSMITTAL TO THE STATE LAND PLANNING AGENCY AND THE SECRETARY OF STATE; PROVIDING FOR AMENDMENT TO THE TIER OVERLAY DISTRICT MAP; PROVIDING FOR AN EFFECTIVE DATE.

(File 2015-166)

(4:38 p.m.) Mr. Roberts presented the staff report. Mr. Roberts reported that this is a tier overlay district map amendment for two parcels on Big Pine Key, but this does not require an amendment to the LCP map. Parcel A is part bay bottom on Elma Avenue and Parcel B is a strip of right-of-way that never received a tier designation at the time that the tier maps were adopted.

The surrounding tier designations of Parcel A and that portion of Big Pine is Tier I. The existing conditions is all native and natural habitat consistent with Tier I. The proposed tier for Parcel B is Tier III, which would be consistent with the tier designation on either side of that right-of-way. The proposed designations for both parcels are consistent with the mapped designations in the LCP. Tier I parcels are high quality Key deer habitat generally representing large contiguous patches of native vegetation that provide habitat for other protected species as well, consistent with Parcel A. House density remains high in the area for Parcel B. Parcel B is closer to US-1 than Parcel A is and the patch quality is much higher adjacent to Parcel A than Parcel B. Mr. Roberts recommended approval of the proposed amendment for Parcel A from undesignated to Tier I and Parcel B from undesignated to Tier III, as the parcels meet the criteria for the recommended tier designations in accordance with criteria in Section 130-130(D), the Habitat Conservation Plan and the Livable CommuniKeys Plan.

Ben Hodgers and Jerry Hodgers, property owners of Parcel A, stated this property has been in their family since 1957 and Mr. Hodgers' father developed the property. Photographs of the property were shown to the Commissioners. Mr. Hodgers stated there is a house already built on the property. Mr. Hodgers believes the Key deer numbers have grown from 50 to approximately 600. Dumping has occurred on the front of their property, so a fence was erected, which that permit took 14 months to receive. Mrs. Hodgers feels that there is no reason this parcel should not be designated Tier III since permits have been awarded for a fence and for electricity on the property. Ms. Santamaria clarified that staff is recommending Tier I to be consistent with the tier criteria. Mr. Hodgers asked what assurance there is that a building permit will be received for a Tier I parcel. Ms. Santamaria explained that there is no assurance because of the competition with everybody else applying for a permit. Mrs. Hodgers feels they are being punished since there was never a tier assigned to the parcel and they have been paying taxes all these years they have owned the property.

Mr. Roberts explained to Commissioner Miller there is no way to separate this parcel out because the recommended tier designation is consistent with all surrounding property, consistent with the code and with the LCP. Any other designation would be spot-zoning. Mrs. Hodgers noted that there are houses across the whole canal and it is sea-walled on two sides. Commissioner Ramsay-Vickrey commented to the Hodgers that there can be homes in Tier I, but those homes have either been there from before or they went through the ROGO process. There is a process for getting a building permit. The tier system goes hand in hand with the ROGO system and the HCP in directing development and Big Pine and No Name Key are very sensitive islands. The Hodgers stated they have been denied even entering the ROGO system and they will hire an attorney to appeal a Tier I decision. Commissioner Lustberg added that there are very specific and technical details that go into deciding what the tier designations will be.

Upon questioning by Mr. Williams, Mr. Roberts testified that he has been the Senior Administrator of Environmental Resources for Monroe County for the past six years. Prior to coming to the County he was an environmental consultant in the private and public sectors for 20 years. He has a Bachelor's in limnology from the University of Central Florida. He is very familiar with the tier overlays of Monroe County and without a tier designation the Building Department will not accept an application because there would be no way to score that property

in ROGO, which is why the Hodgers have been denied entering the system. Therefore, the Hodgers would have been aware for years of this deficiency on their property.

Commissioner Wiatt asked for public comment.

Alan Molland asked what changes the Tier III designation on Parcel B will make to the ownership of the road. Mr. Robert explained that the tier designation does not change anything about the zoning or any of the uses allowed on the property.

Commissioner Wiatt asked for further public comment. There was none. Public comment was closed.

Motion: Commissioner Miller made a motion for approval of staff's recommendation. Commissioner Ramsay-Vickrey seconded the motion. There was no opposition. The motion passed unanimously.

8.NORMAN WARTMAN, 1500 OCEAN BAY DRIVE UNIT R-3, KEY LARGO: AN APPEAL, PURSUANT TO SECTION 102-185 OF THE MONROE COUNTY LAND DEVELOPMENT CODE, BY THE PROPERTY OWNER TO THE PLANNING COMMISSION CONCERNING AN ADMINISTRATIVE DECISION OF THE SENIOR DIRECTOR OF PLANNING & ENVIRONMENTAL RESOURCES DATED SEPTEMBER 2, 2015, IN WHICH THE PLANNING & ENVIRONMENTAL RESOURCES DEPARTMENT WAS UNABLE TO APPROVE THE OWNER'S APPLICATION FOR AN EXEMPTION TO A SPECIAL VACATION RENTAL PERMIT PURSUANT TO COUNTY CODE SECTION 134-1(B)(1). THE SUBJECT PROPERTY IS LEGALLY DESCRIBED AS UNIT R-3, TOWNHOUSES OF KAWAMA, A CONDOMINIUM, ACCORDING TO THE DECLARATION THEREOF, RECORDED IN OFFICIAL RECORDS BOOK 854, PAGES 2439 THROUGH 2493, INCLUSIVE, OF THE PUBLIC RECORDS OF MONROE COUNTY, FLORIDA; HAVING REAL ESTATE NUMBER 00090493-004500.

(File #2015-184)

(5:07 p.m.) Mr. Bond presented the staff report. Mr. Bond reported that the subject property owner is appealing to the Planning Commission an administrative decision made by the Planning Director in which the Department was unable to approve his application for an exemption to a special vacation rental permit pursuant to Section 134-1(B)(1) of the Monroe County Land Development Code. The property is located in Key Largo and is known as Townhouses of Kawama, part of a larger development that fronts on the Atlantic Ocean. It is within the urban residential zoning district and the residential high FLUM category. The Townhouses of Kawama is a nine-building 60-unit apartment complex. In 2013 the property owner was cited with a complaint that he was operating vacation rentals without a permit or license from the County and this request is related to his attempts to come into compliance with County Code. Mr. Wartman was notified that his application was not able to be approved because the property needed to be located within a homeowners association or property owners association that expressly regulates or manages vacation rental uses. Staff found that the Townhouses of Kawama was a condominium and, therefore, could not approve the exemption.

Mr. Bond pointed out that vacation rental uses are permitted as of right within the urban residential zoning district with a permit. The County does not enforce private homeowner association rules, condo association rules or property owner association rules. Mr. Bond explained that the code does provide two exemptions to the vacation rental permit requirements. To qualify for the first exemption it has to be a vacation rental of a dwelling unit and it has to be located within a controlled access, gated community, which it is. Secondly, the property has to be located with a homeowners association or property owners association. After reviewing numerous documents submitted as proof of that requirement staff found that none of them proved that the Townhouses of Kawama was either a homeowners association or a property owners association. The Kawama Homeowners Association, Inc., Declaration of Covenants and Restrictions states within that document that Kawama Homeowners Association is a master association, not a true homeowners association. The Kawama Yacht Club website explains to its members that the Kawama Homeowners Association is not a homeowners association defined by Florida Statutes. Another prong of the exemption is that if the property is within an HOA or POA it has to expressly regulate or manage vacation rental uses. Staff did not even get this far, but had they been an HOA or POA, the documents that were submitted by the applicant did not expressly regulate or manage vacation rental uses. Mr. Bond recommended upholding the Planning Director's decision to not approve the request for exemption under Code Section 134-1(B)(1).

Michael Rajtar, Esquire, present on behalf of the appellant, stated this request for exemption to a special rental permit falls within the code. The denial letter from the County explained that staff determined the subject property is part of the Townhouses of Kawama, a condominium, and does not qualify for an exemption under Section 134-1(B)(1). In stating how they determined this, staff referred to www.kawamayachtclub.com, which states that Kawama Homeowners Association is not a true homeowners association. Mr. Rajtar pointed out that the website is an unofficial website posted by a disgruntled homeowner. The official website for Kawama Homeowners Association is www.kawamavillageofkeylargo.com. Mr. Rajtar agrees with staff that Townhouses of Kawama is a condominium, but there are two associations that manage the property and covenants that run with the land for Townhouses of Kawama, including Kawama Homeowners Association, which is a homeowners association, not only by title, but by definition according to the Florida Department of Business and Professional Regulation. Kawama Homeowners Association, Inc., is registered with the State as a homeowners association. Mr. Rajtar believes Kawama Homeowners Association, Inc., is a homeowner association under the definition in Florida Statute 720.301 and the DBPR. There are different examples in this application and exhibits to the application of how this homeowners association regulates the vacation rental uses.

Commissioner Wiatt noted that the language in the declaration sounds more like long-term lease language. Mr. Rajtar responded that the terms as a group expressly regulate and manage vacation rental uses. Mr. Rajtar also explained that the 24-hour manned security gate ensures all who enter are either a resident or a registered guest and handle distributing parking passes and the rules and regulations for the association. On the premises of Townhouses of Kawama there are flyers for vacation entertainment and information regarding pets and tenants available. Mr. Rajtar pointed out that there is no definition section for the language "expressly regulates or manages vacation rental uses" anywhere throughout the Monroe County Code. Mr. Rajtar

emphasized that today's meeting is to determine whether the applicant falls within the exemption only.

Commissioner Miller asked which other properties have been deemed exempt throughout the Kawama Homeowners Association, as stated in the appeal. Mr. Rajtar understands from the president of the association that there are numerous properties throughout Kawama Homeowners Association that have been deemed exempt, but does not know specifically which ones. Commissioner Wiatt asked how the number of people coming to one unit is managed. Mr. Rajtar replied that it is required in the declarations that it falls within the State and County regulations and there is no specific language in that regard in County Code. "Regulate" means that there are rules and regulations in place. Commissioner Wiatt noted that in the regulations and rules the word "vacation" does not appear. Ms. Santamaria explained to Commissioner Miller that there is no exemption on file for this location. When the County issues a vacation rental permit that permit offers some details on how things are going to be managed as far as number of people per bedroom and that sort of thing. Mr. Coyle pointed out that an important part of the regulations are that bed taxes are being paid to the TDC. Mr. Rajtar stated it does not say in the code that is what needs to be done by the association, but that is something the manager could do. Commissioner Miller asked the appellant why he is not getting a permit that staff says he could get. Mr. Wartman replied it is on principle.

Norman Wartman, the appellant, explained that he does collect the bed tax. The website for this rental property states for vacation renters how many people and how many vehicles are allowed and whether pets are allowed. The renters cannot get in the front gate unless they have an insurance certificate showing a \$300,000 liability for their jet ski or boat. Mr. Wartman lives on the site and meets the renters at the unit and explains the rules and regulations in person. Mr. Wartman is available by phone 24/7. Commissioner Miller again asked about the statement in the appeal that numerous other properties throughout the Kawama Homeowners Association have been either deemed exempt or have not been required to obtain a rental permit. Mr. Rajtar replied that this is at a minimum a 70 percent rental community that have not been taxed for this. Mr. Bond noted that the license for the appellant's address is for a non-transient apartment versus a transient rental tax receipt.

Commissioner Wiatt noted that it seems like the appellant is the one managing and regulating the vacation rental and not the property association. Mr. Rajtar reiterated that the code does not state to what degree one has to go to regulate. Commissioner Miller pointed out that the appellant is operating illegally right now. Commissioner Lustberg stated the major issue is that the homeowners association as a whole needs to manage vacation rentals, not just an independent owner. Mr. Rajtar replied it is not necessary for the property to act as a manager as long as the property is regulated for rentals. Commissioner Wiatt agreed with Commissioner Lustberg's comments. Commissioner Lustberg asked that Mr. Rajtar be allowed to finish his presentation and then allow other people to have input that might help clarify some issues.

Mr. Rajtar stated that this comes down to the Commission having an issue with the homeowners association expressly regulating vacation rental uses. Mr. Rajtar believes that the record reflects that Kawama Homeowners Association, Inc., expressly regulates vacation rental use, but maybe not to the degree that the Commissioners would wish. The code does not have any definitions of

what “regulate” or “manage” means. This association does regulate vacation rental uses to some degree. The code does not address the concerns of the Commission.

Commissioner Wiatt asked for public comment.

Olga Olivera, resident at Kawama since '97, stated she does not have a problem with the appellant renting his unit out if at some point he gets the permit, but fears him receiving the exemption will be the beginning of a snowball that will change her quality of life. Ms. Olivera explained that the gate does regulate entry and the master association regulates the common grounds, but does not regulate rentals. Upon questioning by Mr. Williams, Ms. Olivera testified that the bylaws allow rentals, but vacation rentals are not specified in the language.

Irene Rodriguez, resident of Kawama since '88, stated Kawama was originally meant to be single-family homes. Ms. Rodriguez agrees that owners should be able to rent, but not to the point of being a revolving door. The gate is regulated by the homeowners association, which has jurisdiction over common areas. Upon questioning by Mr. Williams, Ms. Rodriguez testified that the buildings at Kawama are all condominiumized. The security gate does not regulate the rentals.

Commissioner Wiatt asked for further public comment. There was none. Public comment was closed.

Commissioner Lustberg asked if anybody in the audience is the president of the homeowners association who gives authority to a management company to manage vacation rentals. Ms. Olivera, president of Townhomes of Kawama, stated each unit is managed individually by the homeowners. The association is there to follow the guidelines of the bylaws. The master association regulates the gate and the associations regulate themselves. Mr. Rajtar noted that Ms. Olivera is the president of the condominium association and is not on the board of Kawama Homeowners Association. Fernando Guisasola, president of Kawama Homeowners Association and owner at Kawama for 30 years, stated it is a gray area because the statute just says “regulate.” The association does not manage vacation rentals. The HOA rules and regulations has a section titled “Gate Access for Guests and Vacation Rental Arrivals.” Mr. Guisasola explained that Kawama has been renting on a short-term basis for the last 20 years. Two-thirds of those are where a realtor rents the property for the owners and another 25 to 30 percent do it on their own. Kawama is a gated community with a controlled access and regulates or manages the property. There is 24/7 on-site supervision to handle complaints. The different associations are working on an interphase agreement where the sub-associations are merging together with the HOA. Mr. Guisasola stated he understands the concerns of the residents, but a lot of the concerns are addressed in the bylaws. Mr. Guisasola is concerned about the disapproval from neighbors within 300 feet noticed as part of the application process. Ms. Olivera would like all of the homeowners to be regulated by the County’s more restrictive regulations. Ms. Olivera is also concerned about the financial impact if the community becomes totally commercial.

Milton Vescovacci, resident of Kawama and vice-president of the subject homeowners association, stated that the association does not manage the rental units. The association basically receives the renter, but does not receive the rental agreement. The interphase

agreement is a way to get the association to be more involved in the regulation of rentals. That agreement acts as an agency agreement between the master association and the townhouse association.

Commissioner Wiatt asked for further public comment. There was none. Commissioner Wiatt again closed public comment.

Mr. Rajtar pointed out that the association does expressly regulate vacation rentals, does not manage the properties, but the code says “regulate or manage.” Mr. Rajtar commented that there have been some issues with pending or past litigation involving some of the speakers and his client before the Commission today which may make those speakers biased against the appellant. Mr. Rajtar agreed that fact is not part of the record anywhere, though. Mr. Rajtar emphasized that staff has already said the appellant would be eligible for the vacation rental permit, but today is just about the exemption and the appellant has met all of the requirements to get that exemption.

Motion: Commissioner Miller made a motion to uphold the decision of the Planning Director to not approve the appellant’s application. Commissioner Ramsay-Vickrey seconded the motion. There was no opposition. The motion passed unanimously.

ADJOURNMENT

The Monroe County Planning Commission meeting was adjourned at 6:21 p.m.