

PLANNING COMMISSION
January 25, 2023

Meeting Minutes

The Planning Commission of Monroe County conducted a hybrid virtual and in-person meeting on **Wednesday, January 25, 2023**, beginning at 10:00 a.m.

CALL TO ORDER by Chair Scarpelli

PLEDGE OF ALLEGIANCE

ROLL CALL by Ilze Aguila

PLANNING COMMISSION MEMBERS

Joe Scarpelli, Chair	Present
Ron Demes, Vice Chair	Present
George Neugent, Commissioner	Present
David Ritz, Commissioner	Present
Rosemary Thomas, Commissioner	Present
Douglas Pryor, Ex-Officio Member (MCSD)	Absent
Christina Gardner, Ex-Officio Member (NASKW)	Absent

STAFF

Cheryl Cioffari, Assistant Director of Planning
Mike Roberts, Assistant Director of Environmental Resources
Brad Stein, Development Review Manager
Devin Tolpin, Principal Planner
Peter Morris, Assistant County Attorney
Patrick Stevens, Planning Commission Counsel
Ilze Aguila, Planning Commission Supervisor

COUNTY RESOLUTION 131-92 APPELLANT TO PROVIDE RECORD FOR APPEAL

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

SUBMISSION OF PROPERTY POSTING AFFIDAVITS AND PHOTOGRAPHS

Ms. Ilze Aguila confirmed receipt of all necessary paperwork.

SWEARING OF COUNTY STAFF

County staff was sworn in by Mr. Patrick Stevens.

CHANGES TO THE AGENDA

There were no changes to the agenda.

DISCLOSURE OF EX PARTE COMMUNICATIONS

None.

APPROVAL OF MINUTES

Motion: Commissioner Neugent made a motion to approve the December 14, 2022 meeting minutes. Commissioners Demes seconded the motion. There was no opposition. The motion passed unanimously.

MEETING

AGENDA ITEMS

1. 94111 TAVERNIER, LLC, PROPERTY ALONG OVERSEAS HIGHWAY, KEY LARGO, MILE MARKER 94.5: A PUBLIC HEARING CONCERNING A REQUEST FOR A VARIANCE TO THE ACCESS STANDARDS SET FORTH IN CHAPTER 114, ARTICLE VII OF THE LAND DEVELOPMENT CODE. APPROVAL WOULD RESULT IN ONE ACCESS DRIVE TO U.S. 1 ON THE SUBJECT PROPERTY THAT WOULD BE SPACED TWO HUNDRED AND THIRTY (230) FEET FROM AN EXISTING CURB CUT TO THE NORTHEAST AND ONE HUNDRED AND FORTY (140) FEET TO A RIGHT OF WAY TO THE SOUTHWEST. THE VARIANCE IS REQUESTED IN ORDER TO PROVIDE ACCESS TO A PROPOSED SINGLE FAMILY DWELLING ON THE SUBJECT PROPERTY. THE SUBJECT PROPERTY IS LEGALLY DESCRIBED AS LOT 2, BLOCK 1, SEASIDE, ACCORDING TO THE PLAT THEREOF, RECORDED IN PLAT BOOK 1, PAGE 97, OF THE PUBLIC RECORDS OF MONROE COUNTY, FLORIDA, HAVING PARCEL ID NUMBER 00491580-000000. (FILE 2022-242)

(10:02 a.m.) Mr. Bradley Stein, Development Review Manager, presented the staff report. This property is zoned improved subdivision and the FLUM designation is residential medium with a Tier III designation. The property currently has a utility storage accessory structure on site and is now proposing a single-family dwelling unit. Mr. Stein presented the proposed site plan with the residential structure and the location of the access drive for the variance, if approved. The access requirement of this road section is 400 feet because of the 50 mile-per-hour speed limit. The site plan shows the approximate distance between the subject property and the legal neighboring accesses. The one to the southwest is approximately 140 feet away for a right-of-way, and the access to the northeast is approximately 230 feet away for a non-residential use. All planning variances are required to meet all of the criteria found in LDC Section 102-187. Staff finds that all criteria have been met. Staff recommends approval of this requested variance to the access standards as set forth in Chapter 114, Article VII of the Land Development Code with the following conditions provided on the slide. The conditions state that the variance is based on the site plan in this particular configuration and if approved, does not waive any other requirements under the LDC and Comp Plan.

Chair Scarpelli asked for questions from the Commission. There were none. Chair Scarpelli asked if the applicant wished to speak. Applicant declined to speak. Chair Scarpelli then asked for public comment. There was none. Public comment was closed.

Commissioner Demes stated that he did not have an issue with this but he noticed in the staff report that the commercial lot beside it to the south has trucks that pull out of that, and that's

where the commercial stops, and the residential must be accessing it from that commercial lot right now. The curb cut to the north has two utility poles cut off with a chain across it. Commissioner Demes does not have a problem with this because it's residential, but it does appear that where the entrance is going to be is a huge transmission line utility pole right in the center of the lot. On speaking with the owner, the start of the lot appeared to be near the public notice sign, which made him think there could be some issues here.

Motion: Commissioner Ritz made a motion to approve. Commissioner Neugent seconded the motion. There was no opposition.

Roll Call: Commissioner Demes, Yes; Commissioner Thomas, Yes; Commissioner Neugent, Yes; Commissioner Ritz, Yes; Chair Scarpelli, Yes. The motion passed unanimously.

2. JAVIER TRUCKING INC., 102091 OVERSEAS HIGHWAY, KEY LARGO, MILE MARKER 102: A PUBLIC HEARING CONCERNING A REQUEST FOR A VARIANCE TO ACCESS STANDARDS SET FORTH IN CHAPTER 114, ARTICLE VII OF THE MONROE COUNTY LAND DEVELOPMENT CODE. APPROVAL WOULD RESULT IN AN ACCESS DRIVE TO U.S. 1 THAT IS SPACED APPROXIMATELY 25 FEET FROM AN EXISTING CURB CUT TO THE SOUTH AND 125 FEET FROM THE LIME DRIVE CURB CUT TO THE NORTH. THE VARIANCE IS REQUESTED FOR THE DEVELOPMENT OF A LIGHT INDUSTRIAL AGGREGATE STORAGE YARD WITH AN OFFICE ON THE SUBJECT PROPERTY. THE SUBJECT PROPERTY IS LEGALLY DESCRIBED AS ALL OF LOT 13, AND THE NORTHEASTERLY ONE HALF OF LOT 14, TOGETHER WITH AN EASEMENT FOR INGRESS AND EGRESS ACROSS THE SOUTHEASTERLY 10 FEET OF THE SOUTHWESTERLY ONE HALF OF LOT 14, BLOCK 5, PAMELA VILLA, ACCORDING TO THE PLAT THEREOF, AS RECORDED IN PLAT BOOK 3, AT PAGE 125, OF THE PUBLIC RECORDS OF MONROE COUNTY, FLORIDA, HAVING PARCEL IDENTIFICATION NUMBER 00464610-000000. (FILE 2022-214)

(10:08 a.m.) Ms. Devin Tolpin, Principal Planner, presented the staff report. This is property is located in the suburban commercial zoning district and is designated as mixed use commercial on the future land use map. The property is approximately 10,080 square feet. There is currently no approved use on the property. The applicant is working through the process and has submitted an application for a minor conditional use permit for a light industrial aggregate storage site on the property. A year or two ago, this applicant did come before the Planning Commission requesting a setback variance. That variance request was denied. The applicant has reworked the site plan from all aspects into compliance, aside from the location of the driveway. The County's Land Development Code requires a separation distance of 245 feet from curb cut to curb cut. Ms. Tolpin presented an aerial of the proposed site plan showing an 810 square foot proposed office and the various aggregate storage areas. All comply with the LDC standards. There is a driveway about five feet from the southern property line which is 25 feet from the curb cut of the adjacent property and 125 feet from the curb cut for Lime Drive to the north. Due to the configuration of this property, the way the block is set up and the development of the adjacent parcels, there are not many other options, if any, for this applicant to access this site or have a driveway anywhere else on the property. Ms. Tolpin noted that there is an alleyway behind the property which is owned by the County; however based on conversation with the

required engineering standards it is not of an appropriate width for permanent ingress and egress to the site.

Ms. Tolpin then presented an image of the property and the location of the other adjacent properties and their driveways as well as the required 245-foot access drive location, and showing the variance the applicant is requesting. When reviewing variances, staff ensures compliance with all eight of the required standards set forth in Section 102-187 of the Land Development Code. Staff has found that this development proposal does comply with all eight of these required standards and is recommending approval of this variance with conditions. Two of the conditions are the general conditions stating this variance is based on the specific site plan proposal and no other changes can be made without additional Planning approval; and, that this variance approval is contingent on approval of the actual minor conditional use of the site which then would require building permit requirements to construct or relocate some of the structures that may be in existence today to ensure that they do comply with the site plan as proposed and the Land Development Code overall. There is a fourth condition that is essentially stating that this variance does not exempt or discharge the applicant from any existing unpermitted or unlawful development either on site or in that County right-of-way, and that all of those current issues will have to be brought into compliance at the time of lawful development of the site.

Chair Scarpelli asked for Commission questions. There were none. Chair Scarpelli asked if the applicant wished to speak. Applicant declined. Chair Scarpelli thanked the applicant for reworking the configuration of this site and coming back before the Planning Commission. Chair Scarpelli then asked for public comment. There was none. Public comment was closed.

Commissioner Ritz stated he had visited the site and there is a bike path that goes the whole length of Key Largo and a lot of gravel ends up on the bike path from the gravel drives that cross it, and this will be one more gravel drive from an area that's going to be storing gravel. He asked if the Commission could ask the applicant to have a paved drive or the portion nearest the crossing of the bike path so the gravel doesn't carry onto the bike path. Ms. Tolpin responded that it may be a question for legal regarding the ability to add that as a condition of the variance, but the Land Development Code does require any access drive onto U.S. one be constructed of either compacted fill or be paved. So that is already a requirement of the code. Commissioner Ritz replied that the site plan shows gravel and that's why he was asking. Chair Scarpelli thought that may be at the truck wash-down area. Commissioner Ritz clarified that he was speaking about the area which crosses the bike path.

Ms. Gelly Juvier, applicant, responded stating that between the fence and bike path there is an asphalted area that is not gravel which was done by FDOT when they did the entrance on this lot. It's actually going to be only from within the fence and inside that will be gravel. Right now in that area is a small section of pavers that was done through the previous owner who installed pavers, and he did a little design pattern there. She had thought about removing those as she does not believe it's allowed to be there because it's so close to the setbacks. She could leave it if that is allowed. Commissioner Ritz confirmed that she was allowed to have a paved driveway even in the setbacks. Ms. Juvier asked if the pavers left there would be allowed. Ms. Tolpin responded that she would need to see it on the plan or survey. There is a front yard open space requirement which she believes, from recollection of the plan, would comply, but would need to

be confirmed. That would require that new plans be submitted for the conditional use permit, but because of the location of the driveway for this variance application, she does not believe it would be an issue with it being approved as-is today while waiting for new plans for the conditional use. Ms. Juvier responded that she has been going back and forth since 2019. Commissioner Ritz stated he is in sympathy with the applicant but if there is any way to pave the driveway from the bike bath in toward the private property, that that would be great. Ms. Juvier stated that that part is already paved. Commissioner Ritz stated that he would leave it at that.

Commissioner Demes commented that he had driven up there and was taken aback by this whole area. It's a classic example of why you just don't go off of a paper. Talking about this fifteen-foot right-of-way and thinking of emergency vehicles, there is no fifteen feet. There may be fifteen feet on the plan that goes across the property but it's fenced off on one side and the other side looks like it is completely occupied, you can't transit the yard, and it has dense vegetation through the whole thing. The thought that this has any type of transit area is ridiculous. He believes the County should take a bulldozer out there and clean it all out for emergency vehicles because it's set up for encroachment, people putting buildings on it that they shouldn't, using it as a basis of their yards and not paying taxes on it. Chair Scarpelli confirmed that he was speaking of the alleyway. Commissioner Demes replied that, yes, he was, and that it is a mess. Additionally, Commissioner Demes stated the City of Key West had an issue like this and the way they solved the problem is by transferring all the right-of-ways to Keys Energy Services and now they're stuck with it. In July of 2021, the request was denied, and he is taken aback that absolutely nothing has been done to come into compliance with the setbacks. There are things right up to the southeast corner with construction demolition debris and concrete rubble piled up. There's a tractor-trailer section within the fence used for storage right up against the fence. Nothing shows any attempt towards compliance within the last eighteen months. It bothers him that the Commission is trying to accommodate someone who has shown no consideration for compliance. That being said, staff has confirmed that there is a use permit to correct all this and he hopes that when this gets approved that this lot comes into compliance before that easement or right-of-way variance is granted. Ms. Tolpin confirmed that in order for the building permit to be closed, there would be inspections to make sure it's built according to the plans being reviewed today. Chair Scarpelli confirmed the County would be doing inspections to confirm all setbacks including stormwater are in compliance.

Motion: Commissioner Demes made a motion to approve. Commissioner Ritz seconded the motion. There was no opposition.

Roll Call: Commissioner Demes, Yes; Commissioner Thomas, Yes; Commissioner Neugent, Yes; Commissioner Ritz, Yes; Chair Scarpelli, Yes. The motion passed unanimously.

3. 7-ELEVEN (DANIEL BARRY, Jr. & ARCHER BARRY), 98200 OVERSEAS HIGHWAY, KEY LARGO, FL 33037 MILE MARKER 98: A PUBLIC HEARING CONCERNING A REQUEST FOR A VARIANCE TO ACCESS STANDARDS SET FORTH IN CHAPTER 114, ARTICLE VII OF THE MONROE COUNTY LAND DEVELOPMENT CODE BY AXIS INFRASTRUCTURE, LLC. ON BEHALF OF DANIEL & ARCHER BARRY. APPROVAL WOULD RESULT IN FOUR (4) ACCESS DRIVES ON THE SUBJECT PROPERTY THAT ARE SPACED LESS THAN THE REQUIRED DISTANCE OF 245 FEET FROM ONE ANOTHER AND ADJACENT CURB CUTS. THE VARIANCE IS

REQUESTED FOR THE DEVELOPMENT OF A HIGH INTENSITY COMMERCIAL 7-ELEVEN CONVENIENCE STORE WITH 11 FUELING STATIONS, ON PROPERTY DESCRIBED AS LOTS 1 THROUGH 6, BLOCK 1, ROCK HARBOR ESTATES, ACCORDING TO THE PLAT THEREOF, AS RECORDED IN PLAT BOOK 3, AT PAGE 187, OF THE PUBLIC RECORDS OF MONROE COUNTY, FLORIDA, HAVING PARCEL ID NUMBER 00519590-000000. (FILE 2022-206)

(10:23 a.m.) Ms. Devin Tolpin, Principal Planner, presented the staff report. This is another variance request to the access standards as required in the Land Development Code. This property is currently developed with a commercial retail use, and the applicant is proposing to completely redevelop the property with a commercial retail high-intensity convenience store of 4,730 square-feet with eleven fueling stations. Concurrently, the applicant has submitted a request for a major conditional use permit that will eventually come before the Commission again for ultimate approval. Today's request is for the technical aspect of the site plan. The property is located in the commercial suburban zoning district, designated mixed use commercial on the County's future land use map and is designated as Tier III. Though there is an existing commercial retail use on the property and there are already four driveways similar to what is proposed today, the Land Development Code requires that when a site such as this is redeveloped it must come into full compliance with the access requirements. For this property, the code requires 245 feet between curb cuts, and the County defers to the Florida Administrative Code. The applicant is proposing approximately 146.5 feet and 147 feet between curb cuts on the north side and south side of the property with smaller distances between the curb cuts of driveways from the Grand Street cut-through and the driveways of the adjacent property.

Ms. Tolpin presented an aerial of the site plan highlighting the driveway locations and distances. There are two adjacent driveways in the northbound and southbound lanes. Each driveway is one-way in and one-way out so it's not for two-way traffic, which is different from what is currently proposed. When reviewing an application for a variance, staff confirms compliance with all eight of the required standards. The staff report contains a detailed explanation of the required standards and why staff has found that this applicant has not complied with three of the required eight. Those three include a demonstration of good and sufficient cause, that failure to grant the variance would result in an exceptional hardship to the applicant, and also that the variance is the minimum necessary to provide relief to the applicant. With this property there are two driveways on each side and there appears to be opportunities to reduce that from two potentially with one. There also may or may not been an opportunity to achieve access from Grand Street. There has not been documentation submitted indicating why or why not that is not an option. Staff is recommending denial of the requested variance.

Chair Scarpelli asked for questions from the Commission. There were none. Commissioner Scarpelli asked if the applicant wished to speak.

Ty Harris, attorney, stated he is representing the applicant. Mr. Patrick Stevens asked if the County had an agent authorization for him. Mr. Harris responded that if not, he could get it to them. Mr. Stevens stated that as of right now, Mr. Harris is not the applicant and does not have an agent authorization on file with the County. Mr. Jason Green stated that he represents the developer. Chair Scarpelli responded that without the applicant or an agent authorization form,

the Commission could not hear what they say. Mr. Stevens responded that this time is for the applicant or the applicant's agent, or he could be limited as a public speaker to that time and scope. Ms. Tolpin stated there is agent authorization for Axis Hutton, the developer. Mr. Jason Green stated he was part of Axis Hutton. Chair Scarpelli asked if a form needed to be filled out. Mr. Stevens stated the manager of the LLC needs to be present. Mr. Stevens confirmed that Mr. Green is a member of Axis Infrastructure and has authority to sign documents that are legally binding by them. Mr. Jason Green, Director of Planning for Axis Infrastructure, stated that he did not realize attorneys also needed to have that form, and that he is able to sign documents. Also before the Commission is the developer so both parties have authorization to allow Mr. Ty Harris to speak on the applicant's behalf. Chair Scarpelli stated that while the paperwork was being taken care of, Mr. Harris could begin speaking.

Mr. Ty Harris stated that he represents Axis Hutton and has had a long-term relationship with them. Mr. Green was the Planning Director for Fort Myers Beach, and Mr. Harris met him while he was the Development Service Director for Charlotte County. Mr. Harris wants to qualify Mr. Jason Green and Mr. Ian Rairden as experts. Mr. Peter Morris stated that if he was going into expert witness testimony, he would need to do the same thing with Ms. Tolpin.

Peter Morris then questioned Ms. Devin Tolpin, AICP, and she was accepted as an expert in planning by the Commission. Mr. Harris had no objection to Ms. Tolpin being qualified as an expert. Mr. Jason Green, AICP, listed his background credentials and was accepted as an expert in planning by the Commission. Mr. Ian Rairden of Kimley Horn listed his background credentials and qualifications, and was accepted as an expert as a professional engineer in transportation planning by the Commission. Mr. Morris had no objections with the qualifications of either witness.

Mr. Harris then requested that anyone who purported to represent an HOA or other group provide a resolution from that organization giving them the authorization to speak as a representative, and that it be produced as part of the record. Mr. Morris responded that the Planning Commission's adopted rules of procedure already impose that requirement. Chair Scarpelli added that the public would all have a chance to speak after the presentation, and public comment would be limited to three minutes per person, and five minutes for a representative of an organization. Mr. Harris stated that he would have a standing objection that if someone purports to be an expert in planning or transportation or some other field that he have an opportunity to voir dire them and they be approved by the Commission. Mr. Morris stated that this is also already a requirement of the Commission's adopted rules of procedure.

Mr. Harris, representing Axis Hutton, the developer of the site, stated that out of the eight criteria for a variance, five have been met. The issue is that this is a state road which requires a state permit for access, so the primary decision maker for access is the State of Florida or FDOT. The issues come up with the code Section 114-199 which states that no use fronting on U.S. 1 or County Road 905 shall receive a permit for a change of use, expansion or substantial improvement unless it is brought into conformance with LDC Chapter 114, Article VII. The operative language is, "By provision of combined drives for peril access and with any access standard requirements from FDOT." There are two standards that are incongruent. The County standard sets forth separation between drives, and the FDOT standard is different. In planning

terms, this is the double jeopardy of planning and zoning with two regulating agencies that have different standards on the same subject. That necessitates a variance from either the County's standard to move the project forward or from FDOT. This is where the experts come in. The driveway proposal as part of the site plan with one-way in and one-way out seems to be the safest way of accessing the property. The experts will speak to that regarding standards one, two and eight, which are the three of the eight that staff has determined are not met for purposes of a variance.

Mr. Jason Green of Axis Infrastructure testified that part of his role on this project is being involved in the pre-application meetings with FDOT and managing the project for their team. Part of the conversation with FDOT was the separation of the driveways and the one-way in and out. There is an access permit in with DOT that has been reviewed that has zero comments regarding the proposed locations, which is consistent with the pre-application meetings with them about separating those driveways. He has gotten confirmation from the FDOT reviewers that there is not a variance from DOT required based on this layout, as this is their preferred layout.

Commissioner Ritz asked about the alignment of the driveways with the street across the highway. Mr. Green stated that there is a side street on the east side that the proposed driveway would align with to reduce any conflicts of turning movements. Commissioner Ritz asked if the one-way in and out doesn't go with the flow going southbound. Mr. Green stated that part of the concerns were accidents or quick stops, and a lot of that is mostly due to driveway cuts being right on top of each other or not being able to see a business until coming to a complete stop. The whole premise with FDOT was to have the entrance at the end of the site so a driver would have the whole length of the site to see it as approaching to give sufficient deceleration time to be able to turn in. The exit allows acceleration outside of that site with a break in traffic with that intersection which creates a more safe condition. Commissioner Ritz asked for the distance between ingress/egress and Grant Street. Mr. Green responded that he could not remember the exact number. Commissioner Ritz stated that it looks like 20 to 25 feet. Mr. Green explained that the idea is to provide safer, reduced conflict points with turning left across the car that's coming out. FDOT considers it one driveway because of facilitating a separate in and out, which is an improvement from the existing conditions.

The other issue mentioned in the staff report was about getting an access permit from FDOT. They do not issue and grant access permits until the local jurisdiction has approved the use, which would be the major conditional use. The review so far with the access permit is a minor one comment drainage issue. There have been no comments relating to access. FDOT will not issue an access permit until the variance and major conditional use is approved by the local jurisdiction. Chair Scarpelli asked if an access permit with FDOT was needed if the property already has access. Mr. Green responded that FDOT requires a new access permit if the site is redeveloped.

Mr. Peter Morris objected, stating that there have been sheets of hearsay that are being elicited from the witness. The testimony to the extent it purports to represent the truth of the matter asserted by FDOT professional staff is hearsay and there is no supplemental evidence to corroborate those representations. Mr. Harris responded that this is a quasi-judicial hearing and

the rules of evidence are relaxed in this. If this was going to some type of court action, then there would be other evidence that he would have to provide. But for purposes of this type of hearing, the rules of evidence are relaxed. Mr. Morris interjected that the Monroe County Code of Ordinances specifically provides that standalone hearsay evidence is not admissible. The rules of evidence are relaxed in that unlike a formal judicial proceeding, hearsay evidence can come in if it's corroborated from independent additional evidence. But this is not open mic night where hearsay can be let in because we happen to not be in a judicial forum. It is still a quasi-judicial forum and under longstanding decisional law as well as the Monroe County Code, hearsay evidence is not permitted. Mr. Harris stated that it was part of the conversation. Chair Scarpelli asked if the fact that the applicant needs a major conditional use in order to get an FDOT access permit, if that was reason number one showing good cause, and asked if that is the road he's going down because otherwise, what does FDOT have to do with showing good and sufficient cause. Mr. Green responded that they need a variance from the Commission to finalize the permit. If the County denies the variance or requires something different than FDOT, then FDOT will more than likely reject the permit and they will be stuck without getting an access change. Chair Scarpelli noted that another jurisdiction's approval of a permit has no bearing on the County's reasoning for good cause. Mr. Morris suggested Ms. Tolpin or Ms. Cioffari speak to that, and added that it would be proper for that representation as to what FDOT will or will not do with respect to its administration of permit to come from FDOT, it does not have an organic connection to the independent permitting authority of the County, and this witness isn't qualified, competent or authorized to make representations for FDOT. If the applicant is relying on a statement from a witness as to what FDOT will or will not do as a contingent fact in the future, they should have come prepared with a witness or some evidence from FDOT. Chair Scarpelli stated that he does not think the FDOT's approach should be a point of contention here. Mr. Morris agreed, adding that there are two layers of problems.

Ms. Cheryl Cioffari stated that County staff is aware of FDOT's permitting and approval procedures, but the main focus and chief issue before the Commission is whether the code is being met. The County code may be more restrictive than other agencies, which is permissible. The applicant in this case needs to demonstrate that they meet the criteria set forth in the variance procedure. As noted in the staff report, those criteria have not been met. Chair Scarpelli stated that the criteria for item number one which is good sufficient cause, is not met by meeting another jurisdiction's requirements. Ms. Cioffari confirmed that to be correct. The County is not obligated to approve a permit because an applicant needs the approval to obtain FDOT approval, for example. Mr. Green continued that they had had two neighborhood meetings and he understands there are a lot of people that don't want to see Anthony's become a 7-11 and another gas station. At the same time, talking about access, the applicant is providing the safest access possible which is the whole exercise here. The reason the variance is needed is that this is the safest access and this is what a professional transportation planner can testify to, which is Mr. Ian Rairden, which is what he's going to do. If the Commission doesn't grant the variance then they will pull the variance, follow the County's standards, have a less safe access point and move forward that way, which is one way of doing it. Mr. Rairden will testify that what is being proposed is much safer than following the County's guidelines. Chair Scarpelli stated that the Commission is here to listen to these things and have the professionals speak to that matter. The point is that FDOT is not the point. Rather, talk about the real subject. Mr. Green stated that it's part of the staff recommendation and staff report. Mr. Morris stated that

the County shares Chair Scarpelli's expression of what is appropriate for this panel to consider. Chair Scarpelli also clarified that the staff report reflects what recommendations were made by FDOT, and the Commission has heard that part of the testimony. Mr. Green insisted the purpose of these variances is to resolve these types of issues between equal government bodies. The state controls the highway. It is not a county road and the state has to give the access permit. Further, this is did not come up in the prior access cases heard today. Chair Scarpelli added as a point of fact that the previous two variances have no bearing on this one, and they were all in compliance with all eight criteria.

Mr. Ian Rairden spoke about the advantages of the design. On the northernmost driveway location, as it is today, it is offset from the street on the other side. With an offset street like that traffic is not only worried about traffic on U.S. 1, but also are potentially not seeing someone making a conflicting movement just a little bit down the road. Bringing the driveway in alignment with Almay Street allows drivers on Almay Street to see what's happening across from them as well as the gaps they're looking for on U.S. 1. In this case, with one-way in, they are only worried about people going northbound on U.S. 1 and whether they are going down the street or making a left into the site. Chair Scarpelli added that they have to worry about people coming onto U.S. 1 right before they're getting off. Mr. Rairden responded that it is a further space and they have more time to look for it. Mr. Rairden also stated that there is currently a two-way driveway at each of the driveways. Converting these to one-way reduces the conflicting traffic at each intersection. Chair Scarpelli asked if someone was turning into a two-way drive, wouldn't that allow a person waiting to get onto the highway an opportunity to do so. Mr. Rairden stated that it could provide additional spacing, but they wouldn't be exactly sure if they were slowing down for this driveway or the next driveway. Chair Scarpelli asked why Grand Street wasn't being utilized considering it allows traffic in both ways. Mr. Rairden responded that he had not analyzed the Grand Street entrance so he could not speak to the amount of traffic going in and out there. The level three traffic study analyzed the one-way drives.

Commissioner Demes stated that he would be willing to take a hard look at using Grand Street because of the three ingresses/egresses there and how close they are to the exit-only drive with the business right beside it, only 20 to 30 feet away. This looks like an intense place for a lot of traffic and people that are local, depending on what they see, are going to cut across this area just to go southbound. The traffic that will happen with the 7-11 station is going to be hugely increased over the clothing store. The traffic impacts are huge. Commissioner Demes thought a deceleration ramp may be able to help. The speed is 45 there which means people are going 55 to 60, so it is dangerous. He believes there are too many ingresses and egresses. The street that would be used the least would be Grand Street, it has potential, and he would have liked to have seen that explored.

Commissioner Thomas stated that she believes there will be significantly more large trucks and a lot more traffic slowing down in this area with the gas station and 7-11 versus the clothing store, and she is very concerned about people stopping trying to get in and out and right now, she is not pleased with the proposed solutions.

Mr. Green stated that part of the reason Grand Street was taken off the table was due to the public comment during the meetings. There was a lot of conversation about how ridiculous the traffic is on Grand Street trying to get out. The thought of dumping more traffic and creating more conflicts on the turning movements was mostly in response to that input. Chair Scarpelli stated that he could see the potential for a stacking issue with traffic. Mr. Morris interjected the rule that categorically precludes hearsay which is Section 202(d) of the Monroe County Code of Ordinances, "Hearsay evidence may be used for the purpose of supplementing or explaining any direct evidence but shall not be sufficient, in and of itself, to support a finding."

The Commission had no further questions of the experts. Chair Scarpelli then asked for public comment. Mr. Patrick Stevens swore in all speakers simultaneously.

Mr. Michael Holler stated that he is not an attorney but does a lot of forensic work as a licensed mental health counselor. He is also on the board of the Pirates Cove POA, but understands that without a resolution he cannot represent that board. With all due respect to the Commission, since the law is based on what the reasonable and prudent person would do in any circumstance, it would be reasonable to notify them that they need such a resolution as he would have been happy to provide one. That being said, he is a direct witness to having polled in several meetings the neighborhood citizens and there is not a single person who wants this station, not one, in the neighborhoods. Understanding FDOT and the statistical research that's done, he believes the people who are building this do not live in this community. Just because there might be a left turn about to happen in this lane does not mean that a tourist cannot come from the right lane and cross both. The citizens do not believe that this is improving conditions, rather they are being deteriorated. The way this is defined, as you're going in either direction there is an ingress and an egress, and the suggested ingress is the second driveway that you come to that you're supposed to turn in. On holidays, there's mostly truck and boat traffic. If there are two of those trying to turn in and there are a bunch of people fueling, that has now blocked the egress and stopped that lane on the left side which will promote a whole lot of accidents. The pool that we drink from is being polluted. We do not want this station here. Not to mention it's going to look like the alien landing zoning with this bank of lights.

Ms. Susan Holler, a realtor with locations in the Keys, stated that she is up and down the highway all the time. The neighborhoods on the ocean side have been discussed, getting in and out off of Grand Street, but what about Buccaneer Cove, Pirates Cove and Caribbean Heights. There is one way to get northbound and that is to go through Grand Street unless you choose to make an illegal turn on Treasure. Ms. Holler is wondering whether the traffic study took into consideration the homeowners on the bay side. There are 390 homeowner and parcel owner just in those three named subdivisions, not to mention the nearby condos. Nobody wants the gas station.

Chair Scarpelli interjected that the Commission understands everyone has emotions about the gas station as a project overall, but right now comments should be kept to the access variance. There will be time to speak on the whole project overall when it comes before the Commission in future months.

Mr. John Kocol owns the company that owns Island Hammock Pet Hospital, the commercial property across the street from the proposed development, which has 190 feet of linear U.S. 1 frontage. He sees this as a public safety issue. Since purchasing this property 12 years ago he has witnessed numerous rear-end collisions in the northbound lane. Tourists in a hurry to exit the Keys are not expecting left-lane traffic to rapidly decelerate to turn left, nor would they be expecting vehicles pulling trailers to turn left onto U.S. 1. Prior to any public hearings on this subject, he proactively contacted the applicant, realtor and developer to express concerns about public safety and suggested deceleration lanes. He was repeatedly told that the idea would be given serious consideration. At other public meetings he has also expressed the same concern. This site plan is cramming five pounds into a three-pound bag. When he redeveloped his property in 2010, he was told by Monroe County that direct ingress and egress off U.S. 1 would not be allowed and he was required to provide direct access off of Grand and Almay Streets. It was cited as a public safety hazard, and he was happy to redesign his site plan to comply and ensure the public safety of his patrons, tenants and the surrounding community. Clear site triangles were of paramount concern coming off of the side streets, not even off of a major highway where the speed limit is 45 miles an hour. He does not see the clear sight triangles on this project. He requests the Commission deny this variance based on public safety and have the applicant resubmit a site plan that contains deceleration lanes or access off of Grand Street.

Mr. Donald Bower, Jr. stated that he has owned a property on Grand Street for 28 years and considers himself to be a quasi-expert due to using that road daily many times. All the things about the traffic concerns are true. He's seen many accidents and walked the path. He once saw three cars in one week, immediately after walking the path, on the path in accidents. People are coming down using the normal lane that they would for high speed and then slowing down, or somebody stopping and then not seeing them and diverting and causing accidents. Mr. Bower is against this proposal due to safety concerns.

Commissioner Demes asked if the speakers could spell their last names. Mr. Jethon Williams, internet technician, stated that he would provide the Planning Coordinator a list of all webinar attendees.

Mr. Gary Boswell, retired deputy fire chief, Monroe County, has lived at 9812 Windward Avenue in the Landings of Largo for over 20 years. There are 126 unit owners already experiencing a number of traffic issues. There is a short deceleration turn lane coming into this development which helps a lot, and makes him very leery of those businesses that won't have that. Egress is difficult due to the heavy volume of southbound traffic. It can take easily a couple of minutes to get out and even then it's not safe. Anything that will increase that traffic is of concern. This is a high-volume business. Trucks and boats will be the larger issue along with someone blocking a lane in the parking lot which will cause stopped traffic on U.S. 1. There are problems in Key Largo where people will be in the right lane and if they see some place on the left that they want to turn into, they will turn immediately across the person in the left lane. Mr. Boswell cannot imagine this business not having deceleration and acceleration lanes. There will be people southbound stopping suddenly to turn in there, towing a boat, and there will immediately be a rear-end collision. Mr. Boswell is very opposed to this and has other issues that he will bring up in future meetings. Mr. Boswell also requested any future meetings be held in Key Largo.

Ms. Jennifer Powell stated that if more space was needed for safe turning, a solution to this problem would be to reduce the size of the development itself from eleven fuel pumps to eight or nine, and use the extra space for the turning.

Ms. Ann Helmers, currently serving as President of Rock Harbor Estates HOA, had a point of order. She had been told about a week ago that the only requirement to designate a representative at the meetings would be to notify Ms. Ilze Aguilla. With the update requiring a resolution, she had submitted an email designating two individuals in attendance, JD Carballo and Jean Brennan, to speak for the HOA. Regarding this variance, it appears the planning staff has exercised extraordinary diligence and care in making their analyses and recommendations and she is appreciative for their skill, responsiveness and support. It is clear the Board takes this matter seriously which is a huge benefit to this community and county. Listening to the points being made today by the professionals hired by the developer, it seems we are losing site of the meta within the minutia here. This question primarily concerns the fact that this is a major conditional use permit, a major redevelopment, which is by recommendation of the traffic planning company itself going to turn what is currently a business yielding approximately 60 trips a day into one yielding approximately 600 plus. With that said, it seems clear that a variance needs to be carefully considered. It has been recommended for denial by the office that is charged with making recommendation and which has done their due diligence. Ms. Helmers asks the Commission to please concede to the points made by staff, deny this variance, and allow the applicant time to either modify this plan or attempt to ameliorate some of these serious issues. The Commission is well aware of how the community feels. This is a community of concerned residents, voters and taxpayers who frankly are talking not only for those in Key Largo but the Upper Keys and entire Keys. This will negatively impact everyone who uses that road, which is everyone who lives, travels, works or vacations in the Keys.

Ms. Patricia McGrath is concerned for public safety and more for the children who must catch school buses and cross the road. These variances are tied in with another major conditional use in a suburban commercial land use. Quote, "Suburban commercial established areas for commercial uses designed and intended primarily to serve the needs of the immediate planning area." Ms. McGrath is opposed to the development of this parcel and appreciates the Commission's consideration.

Mr. Burke Cannon of Hammer Point, mile marker 92, stated that as an expert witness and driver on U.S. 1 for 30 years and passing this area, everything he has heard about the traffic is right on point. The planning staff has been great, but the traffic is terrible. He travels back and forth to Florida City multiple times a month. When people get through the light at mile marker 99, it's already backed way up and takes several miles for them to finally find out where they're going, and it looks like once the traffic thins out, boom, here comes a rock truck coming out of 7-11 and they will be stopped back up again, and the same thing going north. The staff has done great and he thanked them and the Commission. This project needs to be vetted out a lot better than it is now.

Mr. Buck Donnelly, aka Chef Buck Naked, operating in Key Largo for 30 years, 23 of those in Rock Harbor Estates, has been a member of the HOA for many of those years. He has a great

deal of vested interest in not only his neighborhood but the community, being supportive with the family, neighborhood and businesses over the years. Rock Harbor Estates is a very old, long-time neighborhood. Going back to June 1952, Key Largo was renamed from Rock Harbor Estates to bring more tourist attention stemming from the movie Key Largo. Now, X amount of years later that has succeeded so much to the point that it has become problematic. Mr. Donnelly and his association requests that this be denied, thanked staff, specifically Ms. Tolpin and Mr. Morris for being so supportive and professional in dealing with this. This concerns safety. He has two kids driving, true Conchs born in the Keys, who have to cross the road in this exact area to go to and from school, work, and be involved in their commitments as young members of the Monroe County community. There is nothing more important to him than their safety. The only people he's heard in favor of this are on the paycheck side of things from the proposed builder. They talk about improving existing sites from the conflicts. Right now there are no conflicts with the existing site, but this proposal creates a huge amount of conflicts with this additional traffic, particularly large vehicles towing boats. Mr. Donnelly has been involved in two accidents and nearly missed several others, almost got hit again yesterday when dropping off information to the four surrounding businesses, all of which oppose this. Mr. Donnelly thanked the Commission for their time, requested they please deny this variance, and asked for any future meetings to be held in Key Largo.

Mr. Steve Hartz, a retired lawyer, spent most of his career as a litigator representing business owners, and some years with the prosecutor. He commended attorneys on both sides for a good presentation and argument. It is not always easy to represent unpopular causes. He commends the staff for its report, opposes the variance, and echoes the comments of many others. Getting onto U.S. 1 with traffic, pedestrians and cyclists is always a hazard, and this will make it much worse. There is apparently no deceleration lane in the plan, even though the applicant spoke of an 80-foot deceleration lane in their written presentation. As an experienced safe driver in the State of Florida, an 80-foot deceleration lane would not be sufficient. He has checked traffic calculators and made a determination for himself that he would not be able to decelerate safely in 80 feet, even if they put it in, which they have not. This is complicated with one-way ingress and egress, and it depends on the perception time of the drivers. If we had no elderly or intoxicated people in the Upper Keys, that may be one story, but unfortunately we have both. Mr. Hartz reiterated his concern about the pedestrians and cyclists, and the additional burden on the Sheriff who has repeatedly warned that U.S. 1 is beyond capacity. The first responders are our friends and neighbors who will suffer stress and trauma in dealing with these events. The applicant says they're making it safer but they are not. This application should be denied.

Ms. Janice Hartz has lived in Pirates Cove for 36 years, is a biologist, a licensed psychologist and an active artistic photographer. She supports the comments previously made, but wants to address traffic studies. From everything she's seen from the traffic studies, the main focus seems to be the affect on the speed limit flow of traffic on U.S. 1, and she does not believe any of them look at the impact on the hundreds if not thousands who live in all of the nearby neighborhoods. Pirates Cove has over 300 homes, there is Buccaneer Point, Landings of Largo, Rock Harbor, the neighborhood on Grand and Almay Streets, and she would beg the county to please do a traffic study that looks at the impacts of those in the neighborhoods. This is an intense residential area that needs ingress and egress to and from U.S. 1. The cross street, Bahama Road just north of this property, has the same problem. These cross streets were not designed for commercial

traffic. When she can cross two lanes of traffic and go across Bahama Road and tries to turn left onto U.S. 1, if there is a big commercial truck coming and they try to turn left onto Bahama Road, she frequently has to back up because they almost hit her. It is just not designed for this. If there is a car behind her, then she can't back up. If someone comes out of 7-11 and goes the wrong way, they will have to do a U-turn. It's not just Grand Street, but the cross streets to the north and south. This is a traffic nightmare and a safety concern. Ms. Hartz supports the staff's report to deny this variance and thanked everyone.

Ms. Joy Martin, a Rock Harbor resident for 30 years, has seen a lot of growth in terms of highway congestion in this immediate area and has great concerns over this development and the variance request. She agrees with staff's recommendation and asks the Commission, as stewards of the community, to uphold their recommendation. With the amount of traffic in the immediate area, with no deceleration lanes, and stopping and going and the towing of boats, it is a recipe for disaster. There are already hazardous conditions so anything that will increase that is not welcome within the community. This is a sensitive topic for all residents, this is their home, and the residents would appreciate it if the Commission would uphold staff's recommendation.

Mr. JD Carballo has lived on Grand Street for 43 years. He has a bachelor's degree from University of Florida and a master's degree from the University of Texas at Austin. His master's degree research was done on Upper Sugarloaf Key under a permit issued by the National Key Deer Wildlife Refuge which required him driving from mile marker 98 to 20 on a daily basis every summer from 1980 through 1983. At that time, there were no traffic lights between Florida City and Marathon. Most of the bridges still had railroad beams, they were the old bridges. With all that driving and time spent observing, he's seen firsthand the evolution of the traffic nightmare that the Keys have become. This project is another stone in that wall that will congest and block safe roads for all. Rock Harbor is a small community on the ocean side of this development which fronts Anthony's and the boat yard. Both of those small businesses have been very good neighbors, are quiet, low impact and operate in harmony with the neighborhood as intended by the present zoning and land use designation. A lot of points have been made, but the cuts that are shown on the plans are far too close together. Realistically, if you drive in your car, you can see it's tough. Going to the other side of the Marathon station and down to Grand Street is about 500 feet, and there will be five cuts. This being a major redevelopment they should upgrade their access to the current standard. Regarding the one-way in and out, in Tampa he went to a brand new Publix and he drove in the exit. The entrance was beyond, just like this diagram. As close as these cuts are, will be a problem. Regarding the boat fueling station, a 25 or 28-foot boat tied behind a three-quarter-ton pickup is about 50 to 52 feet, about the size of a fuel tanker without the cab. If you are pulled in there, you will not swing the vehicle around within that property to return southbound the way it's drawn. You will pull out in northbound on U.S. 1, go to Bahama Avenue, make a left turn on Bahama and a left turn back to go south; three left turns into left lanes with a big heavy slow accelerating vehicle. There will be big headaches with this design. Mr. Carballo stated he is not a lawyer, he is a geologist, but it is funny that there is a hardship issue for 7-11 who owns more convenience stores than anyone in the world. This is not hardship. He opposes this.

Ms. Jean Brennan has a bachelor's of science and a master's degree in geophysics, and has lived on Grand Street for 30 years. Ms. Brennan was designated as a person to speak on behalf of

Rock Harbor Estates. She appreciates and supports the staff report and recommendation to deny the variance request. The reduced cuts are not safe and there is not sufficient space between the confusing ingress and egress. One driveway is directly across from Almay which makes that intersection a little clearer, but there are two driveways right before Grand Street which is not shown on the site plan, so it can't be seen that that will be a complex intersection for Grand Street. There is no acceleration lane which is insufficient for the speeds in this area. People who work in the Keys further south from Key Largo are flying out of the Keys on that road, and the visitors are confused. Having a one-way entrance from the left-hand lane is a recipe for a lot of traffic problems, accidents, and there are pedestrians crossing that road. She does not even like to walk or ride along the bike path because there are so many curb cuts along the way it's not even safe, and this is adding more. She does not know why they haven't designed a plan with just two entrances. This makes the area much more congested. Ms. Brennan believes this facility is too large and is being squeezed onto the lot. The applicant mentioned the setbacks taking up so much space. That is a sign that too much is being squeezed onto the lot and this is over developing. There is a gas station and convenience store next door, a Tom Thumb a stone's throw away, and three more within a mile at mile marker 99.1. The locals don't need this station. Why increase traffic tenfold in this local area that doesn't want it. This doesn't meet a county need. There are plenty of stations for the locals and tourists. The number of driveways and distances between them are not safe. The applicant has not proven this is a safe plan and with 630 trips into this site, it can't possibly be a safe plan to have four driveways. Chair Scarpelli asked why the Grand Street community was against a Grand Street access. Ms. Brennan responded that it's very narrow and not really a two-lane road. The boat dealer people park on the grass shoulder already. If she's coming out in her little SUV and someone is coming in with a truck, it is already a squeeze play. It's not a passable street and it is only 100 feet long.

Ms. Nancy Trusdale (phonetic) lived in Landings of Largo for eleven years and for the last eight years has lived on Rose Street which is part of Rock Harbor. Rose Street does not connect to U.S. 1, so comes and goes on Estall or Grand to cross over U.S. 1 to go south. She has waited upwards of five minutes to make the cross at Grand Street as it is now. Having taught at Coral Shores High School for 17 years, every morning between 6:00 – 6:30 she crossed Grand Street to go southbound. Even at that time of day, she could wait to make that cross. This development will make that more difficult. Grand Street, although very small, serves a grand purpose for this area. If you live on the bay side, Grant Street is the best and most convenient way to cross over U.S. 1 partially because there are no entrances to businesses from Grand Street. It is a used primarily to cross U.S. 1. On the ocean side, it is a residential street. There are some parking spaces on Grand Street for the boat dealership but it's a very light use. This is why the homeowners did not want Grand Street to become the egress for this proposal. Not showing on this site plan, the street south of Grand has a bus stop which is a concern. Just north of this is another bus stop. This is not safe.

Ms. Dottie Moses, President of the Island of Key Largo Federation of Homeowners Associations whose membership represents over 2,500 property owners and 28 different subdivisions, stated that the idea of having a written official resolution was new to her. She has spoken to this Commission many times. But, she will keep her comments to three minutes. The community is represented to attempt to keep the community easy and safe to use, and quiet and pleasant to live in. This development doesn't help in that area at all. There are residents all around it. This will

be a traffic magnet, as discussed. Everyone who spoke today is a resident, a business owner, a local. 7-11 is a corporation from unknown, and are not going to be hosting the parade or joining the rotary or chamber, and are not going to be part of this community. She does not see why they should be given an exception to our development codes. Ms. Moses supports staff's recommendation and does not believe the variance is called for here and doesn't like the project at all, but if it's going to go forward, she would like to see more safety on the traffic side.

There were no further public speakers. Public comment was closed.

Commissioner Ritz stated that he, too, is a neighbor, having lived in Buccaneer Point for many years and now lives across the street from the Marathon station next to this one. He is proud of his neighbors who have spoken on this and made very cogent comments. One of the speakers spoke of going from 60 to 630 trips. Commissioner Ritz asked for confirmation that there are currently 60 trips with the current use. There have been many requests to move future meetings to Key Largo and he believes that that is in the process of happening. Commissioner Ritz agreed with staff, and with Mr. Boswell about the Key-Largo-left business as he has been a victim of someone turning left from the right-hand lane and whacking him on their way over.

Mr. Rairden responded that the traffic study used rates approved by the ITE trip generation book. The existing development was an apparel store with 492 daily trips. The proposed development of a convenience gas station is 630 net trips. Commissioner Ritz confirmed that a traffic study had not been done of the existing use. Ms. Tolpin responded that the traffic study that was submitted and approved states that there were 60 trips existing from the apparel store. Commissioner Ritz noted that this is a significant change. Chair Scarpelli noted that if a newer apparel store were there it could be 492. Commissioner Ritz reiterated that the affect on the neighbors would be going from 60 to 630, which was the point of the speaker. Mr. Harris then asked if he would get an opportunity to rebut, and Chair Scarpelli told him not to worry.

Mr. Rairden interjected that the 60 trips was for peak hour, not daily trips. Commissioner Demes stated that traffic studies, to him, are a bit voodoo and asked what the comparable number would be for daily trips. Mr. Rairden responded that an existing apparel store, the daily rate would be 92 daily trips, and the convenience store would be 630. A clarification on that is those are new trips that gas stations get a split in that there are trips already on the roadway that are considered pass-by trips. Commissioner Ritz confirmed that they did not put a traffic counter down and count trips. Mr. Rairden responded that there are traffic counts for peak hour, not daily, which there are three hours looked at; a.m. weekday peak hour are 67, p.m. weekday peak hour are 55, and then weekend peak hour is 49, being net new trips not including pass by. Chair Scarpelli stated that it is mind boggling to him that an apparel store and a gas station could have such comparable traffic. Commissioner Ritz stated that there aren't that many trips going to Anthony's. Chair Scarpelli agreed with Commissioner Demes regarding traffic studies being voodoo. Chair Scarpelli then asked what was going on with the deceleration lane, which to him sounded like a better idea. Mr. Green responded that they had submitted a site plan with the deceleration lane based on the community comments. FDOT is not requiring it, and it doesn't fit on either side. It basically destroys the whole right-of-way. It doesn't meet design standards in length, width and all other requirements so it couldn't be permitted and designed that way. There is also the trail which is in the right-of-way so there are additional conflicts and issues

with that. Mr. Greens stated that in his experience on these multi-lane roads, FDOT looks at the interior lane as a deceleration lane. He understands that this doesn't satisfy the public, but FDOT looks at that as the slow-down lane for the turning movement. Chair Scarpelli added that one point not addressed here is the turning radiuses for boat trailers. He does not see how more than one boat would be able to navigate this site and that it would have been helpful to see it on the site plan. 30-foot boats are a very real scenario. Mr. Green stated that the delivery trucks could get through. Chair Scarpelli noted there are the regular pumps near the entrances and egresses, so therefore that would create an issue for backing up onto U.S. 1 if there was more than one boat being fueled. Mr. Green responded that his understanding from the design is because there are two lanes, there is sufficient width to go around. Chair Scarpelli emphasized that if there are two boats on trailers there, which will happen, they are not getting through, they will not get into the gas station and there is nowhere to go. At the south side of the site there are two regular 90 pumps, so pulled in parallel to that drive with a boat is now blocking one of the traffic lanes to the right. Chair Scarpelli believes there are issues here with boats, which then becomes a problem at entrances and egresses because they are so close to those areas. Mr. Green stated he didn't want to get too in the weeds but he understands the concerns. Chair Scarpelli continued that this goes back to the access, and that there is a flaw to the access as it is, regardless of the variance. Mr. Green stated he understands this is a challenge with any site but he thinks it's at that one percent.

Chair Scarpelli then asked why the applicant is saying more accesses are better than a single point of access with two lanes. Mr. Rairden responded that the one-way in and one-way out eliminates one of the conflict points that a two-way driveway would have. Chair Scarpelli thought a two-way driveway would have more control. Mr. Green stated that before he goes too far down that path, he understands where Chair Scarpelli is going. Mr. Green then proposed and requested that the Commission consider a recommendation, based on staff's alternative option, which is one driveway on each side of U.S. 1 which would reduce the two, which was based on their de minimis evaluation. Chair Scarpelli asked if they would still need a variance, and Ms. Tolpin responded they would because of the locations of curb cuts for Grant Street and the property to the north. Chair Scarpelli asked if the Commission could do that because there was no staff recommendation to get to an approval for a variance in this particular report. Mr. Morris responded that the applicant would need to submit a site plan and staff would need to review it. Mr. Green stated that the FDOT conversation is relevant when they have to go back and permit, so if they are going from two driveways to one, that is a lesser request, and he agrees he doesn't know where that would be because he doesn't have FDOT permitting input on that one driveway. Mr. Green asking if the applicant could give deference to FDOT as to where that driveway would go based on their safety and design criteria as he is still caught in this back-and-forth no matter what he does.

Ms. Cioffari interjected that from staff's position, it is inappropriate to give a recommendation on a site plan that hasn't come before Planning. They would need the opportunity to review it. Staff is unable to ignore their code and go to FDOT and take their recommendation. If the applicant is stating that they wish to revise their plan and consider one access point or revise the access points, staff is happy to review that and provide a recommendation to the Planning Commission. Ms. Cioffari asked if the applicant was requesting to table the item to revise the site plan. If so, then staff can review the site plan based on the variance criteria and make a

recommendation on that specific site plan. Staff cannot give a recommendation on a hypothetical site plan. Mr. Harris stated that having seen where this is going, that further conversation needs to be around having one access on either side. Additionally, Grand Street will still be an issue.

Commissioner Neugent moved to table the item. Commissioner Thomas seconded the motion. Commissioner Demes stated that he still has some comments. Commissioner Neugent responded that Robert's Rules of Order are when a motion is made to table, that stops all discussion.

Motion: Commissioner Neugent made a motion table the item. Commissioner Thomas seconded the motion. There was no opposition.

Roll Call: Commissioner Demes, Yes; Commissioner Thomas, Yes; Commissioner Neugent, Yes; Commissioner Ritz, Yes; Chair Scarpelli, Yes. The motion passed unanimously.

Mr. Morris interjected for the benefit of the public that because this item is tabled and not continued to a date certain, if and when the item is brought forward to this body again pursuant to a new site plan and associated documentation, it will again have to be advertised and subject to the same procedures.

4. A PUBLIC HEARING TO CONSIDER REQUEST(S) FOR DISSOLUTION OF THE AUTOMATIC STAY, UNDER LAND DEVELOPMENT CODE SECTION 102-185(d), ASSOCIATED WITH THE ADMINISTRATIVE APPEAL FILED BY NEIL HEDRICK AS THE SOLE PRINCIPAL OF DALK LAND, LP, A PENNSYLVANIA LIMITED PARTNERSHIP, IN CONNECTION TO REVISION F, TO PERMIT NO. 09100217, OF PETER G. GIAMPAOLI.

(12:18 p.m.) Mr. Peter Morris, Assistant County Attorney, presented this item. This is a little unusual because it is not a typical proceeding, neither an appeal nor a development application, but under the code section referenced there is a process for the salient administrative official to certify that the automatic stay imposed by the administrative appeal to the Planning Commission should be denied or dissolved. As background, there is an administrative appeal of approval of Revision F to the subject permit, and that item is scheduled for next month's Planning Commission meeting, so that item will be to consider the merits or demerits of that decision. This proceeding is for this panel to consider the extremely limited question whether or not the standard for the stay to be denied or dissolved has been met.

Mr. Morris explained that he has handled extensive litigation involving these parties and certain of the Growth Management Departments before, and there have been many years of litigation in connection with this sort of general subject matter. In order to not inadvertently create any additional appellate issues, one object of extreme concern that he wants to ensure is obviated here is that the Commission stick to the straight and narrow question of whether or not the standard for the stay's denial or dissolution has been met and not inadvertently go into the merits or demerits of the appeal because that would create a number of due process issues for the parties as one or more of them will obviously not be prepared to offer witnesses or legal arguments on the merits or demerits of the appeal. The question is merely focused on whether or not the

standard for the stay to be denied or dissolved has been met based upon the building official's certification.

Dalk Land which is Mr. Neil Hedrick, and Mr. Giampaoli through their counsel, have requested to be recognized as intervenor parties. The County has no desire to quibble with that. Neither of the parties have voiced any opposition to each other being recognized as such. Just so the process is clear, heading toward an additional hearing with the same parties, it is not the department's position that the record created in this hearing is portable for purposes of error, preservation or waiver of similar arguments, is not portable to the appeal hearing. In other words, the parties are not expected or obligated to attempt to try to create and preserve arguments for appeal to DOAH that are more proper for the appeal hearing in February. The department will not be making any arguments that because some argument wasn't made today that whoever is on the wrong side of the appeal hearing in February should have made it today. This hearing is for this question of whether the stay should be dissolved and that question only. Mr. Griffin's certification that he rendered is of record with the Commission and he can offer anything in addition to that. This is mercifully a straightforward question regardless of where the members of the panel come out. Mr. Griffin did not have anything to add at this time.

Commissioner Demes asked Mr. Morris that if the stay was upheld, would it be resolved next month eventually with the appeal. Chair Scarpelli stated that then the appeal would be appealed, and then it continues. Mr. Russ Yagel, representing Peter Giampaoli, asked if he could address that. Commissioner Demes responded that he was asking the Commission's attorney first. What is the potential outcome if the stay is upheld to the February meeting. Mr. Morris responded that it would be more appropriate for Mr. Patrick Stevens to answer as general counsel to the Commission. Mr. Stevens responded that if the stay is upheld or denied, then there are multiple levels of appeal from Planning Commission. It can ultimately go to DOAH and then to the court system. This could be a prolonged appeal. As Mr. Griffin's letter states, due to the nature of the appeal status and the length the appeals could go through, he made the determination in his letter that the property could be at injury if the stay was not lifted. Chair Scarpelli asked if the Commission should hear from anyone. Mr. Morris stated that he has no procedural objection to each of the individuals or entities having party status, but it would be most appropriate for Mr. Giampaoli or his counsel to be heard next, followed by Mr. Hedrick for Dalk Land. Chair Scarpelli agreed, reminding them to keep this just to the stay.

Mr. Russell Yagel of Hershoff Lupino and Yagel, represents the owner of the project subject to the punitive stay. He used the word punitive because they dispute whether or not there is an automatic stay or not. Here nor there, he wants to address some comments, and he represents Mr. Peter Giampaoli. The County acknowledges that there is no transposition of what occurs here to next month. He wants to make it clear on the record that he reserves his right to challenge the jurisdiction of the Planning Commission to address the appeal next month and whether or not the appropriate procedure in invocation of jurisdiction was proper. This is a very, very limited scope and is solely to the question concerning the building official's certification. The certification is clear. This particular project has been the subject of 25 various activities; lawsuits, administrative appeals, appeals of lawsuits, you name it has happened. The very nature is if the stay remains in place that is what has been effective in the past is challenging everything because it stays the project. So what the building official has said, if we just continue to wrap

this project up, ultimately it will close its threat to the property and potentially to probably safety. The scope is very limited. Mr. Yagel then asked if he could provide rebuttal after opposing counsel speaks. Another critical factor to consider in determining this is if this punitive stay is lifted, risk of loss would be on his client. If in fact he is wrong, he's going to incur significant costs having to undo anything he did. So risk of loss is on us and that's a very critical point. Refusal to lift any punitive stay just encourages future litigation. For all of those reasons, primarily being limited scope, the building official has given a certification, it's a viable certification, and for those reasons he would ask the Commission go ahead and lift any stay that's there. One other thing, Mr. Yagel wanted to confirm the court reporter was present. Ms. Ilze Aguila confirmed.

Mr. Neil Hedrick stated that he resides full time adjacent to this property under question. The property is owned by Dalk Land, LP, his family limited partnership. Mr. Hedrick stated that he lives next to a no-code zone. He filed the appeal to the Planning Commission on July 14. On July 22, a TCO was issued. Construction started in August. There was no stay. It didn't stop. He sent multiple letters and finally someone listened to him. Mr. Griffin wrote his letter on December 13. Mr. Hedrick had submitted exhibits and referenced Exhibit 3, Mr. Griffin's letter. In that letter at the third or fourth paragraph, Mr. Griffin describes the scope of work and it has three bullet points, revising a one-inch gap, changing a beam, and changing some columns, but that's not all that was involved.

Mr. Yagel objected to this as going well beyond the scope of the inquiry which is the certification of the building official. Chair Scarpelli stated that he is speaking about the building official's letter, but Mr. Hedrick stating what is happening is not what's on this letter. The building official can't be expected to watch everything that's going on at every construction site in the county, every minute of every day. Chair Scarpelli asked Mr. Stevens what to do. Mr. Stevens read Section 102-185 (d) appeals. "Following a notice of appeal shall stay all permit activity and any proceedings in furtherance of an action appealed unless the administrative official rendering such decision, determination or interpretation certifies in writing to the Planning Commission and the applicant that the stay possesses an imminent peril of life or property, and which the appeal shall not stay further permit activity and any proceeding. The Planning Commission shall review the certification and grant or deny the stay of the proceedings." Mr. Stevens explained that this is a certification to the Planning Commission and based on that certification, the Commission has the right to make a determination whether that certification is correct or incorrect.

Chair Scarpelli asked when the opposing side is saying that the certification is wrong, is that a slippery slope for the appeal. Mr. Morris responded that it's obviously appropriate to speak on what are the four corners of the certification because that's the focal sort of fulcrum document on which the seesaw teeters in favor or against the building official's determination. Going into matters extrinsic to the certification is irrelevant because it's the certification that is militating toward dissolution or denial of the stay. It doesn't appear on the certification that the building official rendered that there were any kind of considerations factoring into his determination extrinsic to what's within the four corners of the document. He is not general counsel to the Commission, but for what it's worth, that's the Department's view. Chair Scarpelli stated that he feels they should listen to what Mr. Hedrick has to say, but opposing counsel is stating it's

outside of the scope of what the Commission can hear. Commissioner Ritz noted that he was debating something in the letter. Chair Scarpelli agreed, as long as he's debating something within the letter, he could just keep going with that. Mr. Stevens added that if it stays narrowly tailored to what's in the letter and objecting to the letter, the Commission can listen to it. Once it goes outside the scope of the letter, then that would be inappropriate for today. Chair Scarpelli told Mr. Yagel he would have an opportunity to rebut, and asked if that sounded fair.

Neil Hedrick continued that the fundamental question is whether the Commission is going to allow an activity to progress or stop an activity, and does the Commission know what the activity is that's going on as this letter doesn't state that. Mr. Stevens interjected that the letter clearly states that it's to the scope of Revision F. Mr. Hedrick stated that that is incorrect and he has additional exhibits where Mr. Giampaoli himself says what's in Exhibit F which is different than what Mr. Griffin says. And then there is Mr. Lupino's letter which is different than what Mr. Griffin says. Mr. Lupino is the representative for Mr. Giampaoli, and they say it's different than what Mr. Griffin says. Mr. Hedrick just wants the Commission to see what everybody thinks it is. Mr. Yagel interjected that the scope is up to the Commission, but he has to preserve his objections. Mr. Stevens added that the Commission can, based on the letter, make a determination to lift the stay solely on Revision F. If the developer goes outside the scope of Revision F, then there are other violations that are there and that would be an argument on the appeal. This decision here today is whether the Commission wants to lift the stay on Revision F based on the letter from the building official, or if they want to continue with the stay contrary to the letter of the building official. The Commission is not here to debate whether work is outside the scope of Revision F. If it's outside the scope of Revision F, it's outside the scope of the stay.

Mr. Hedrick stated he has evidence of more work beyond Revision F. Mr. Stevens stated that is not relevant to today. Mr. Hedrick stated that Revision F is more than what these three bullet points are, there is more to this than these three points. Chair Scarpelli asked if what was on the permit record card was not the three points for the revision. Mr. Hedrick stated that was some of it, but there's more on the permit than what's in these three points, and there's a part that isn't in the permit which is addressed in Mr. Lupino's letter dated October. Mr. Stevens stated that that is testimony. It's another matter whether they go outside the scope of their permit. That's a different violation. Today the Commission is being solely asked to either lift the stay or not lift the stay on Revision F. It is a narrow scope and the Commission cannot sit here and argue over what's happened in the last six months and what's going to happen in the next six months. The code is fairly clear and it doesn't necessarily authorize where testimony is. It says if the building official determines that the stay should happen, the Commission determines whether it should or should not. Chair Scarpelli stated that there is no point in hearing from Mr. Hedrick or Mr. Yagel, that they shouldn't hear from anyone. Mr. Stevens agreed, unless there were questions for Mr. Griffin or to the revision.

Chair Scarpelli apologized to Mr. Hedrick and told him that he needs to save his arguments for the next meeting, and the same thing for Mr. Giampaoli's counsel. Everything would be saved for next month and the Commission's decision is based on whether there are any questions for Mr. Griffin's letter as to the merit or validity of it. Chair Scarpelli asked if this should be opened for public comment. Mr. Stevens responded that it is a public hearing. Chair Scarpelli then asked if Mr. Hedrick could speak as public comment. Mr. Stevens stated he would get his three

minutes. Mr. Morris agreed it's under Chapter 286, and there is still an entitlement for people to speak under that aegis but he does not know of a lot of other people outside of the parties who would be interested in this.

Mr. Ira Gonzalez, representing Dalk Land and Mr. Neil Hedrick, stated that he wants to make sure the record is clear procedurally that Mr. Hedrick, although the conversation did take place that he would be provided intervenor status, he's being denied that and he is limited to public hearing comments. Chair Scarpelli stated the attorneys needed to help him out on that. Mr. Stevens responded that it could be done one or two ways. He could be denied intervenor status or maintain the scope. If he maintains arguing stuff outside of Revision F, then it's outside of today's hearing. Mr. Morris interjected that Mr. Gonzalez' representation is not exactly accurate. What is before the panel is, yes, the two private parties do have party status, they are entitled to speak but they have to hue to the scope of the question presented; so, no, there has been no denial of party status. Yes, there has been an imposition of the appropriate scope of issue for this panel to decide. Mr. Gonzalez added that there was an objection made by Mr. Giampaoli's counsel and this had gone off the rails a bit, and Mr. Hedrick was reading from the certification. What he was going into was the fact that the support from Mr. Griffin's certification is different from what was actually applied for, and that's where he was stopped. Chair Scarpelli responded that that's where it was starting to go where it wasn't supposed to go today, that Mr. Hedrick could make that statement and then move on. The appeal is a month away.

Mr. Hedrick asked if everyone knows what is going to happen or not going to happen depending on the stay, what the Commission is actually going to approve or disapprove, because they didn't know what was in this letter and that's not the full Revision F. There's more to Revision F than that. Chair Scarpelli stated that the Commission could ask the building official about that. Mr. Hedrick stated that on October 14, Mr. Lupino, counsel for Mr. Giampaoli, wrote a letter to Mr. Griffin which is Exhibit 2, and he is imploring Mr. Griffin to not impose a stay. If you look at the second page, paragraph five, "Mr. Giampaoli categorically disagrees with Dalk's claims. Nonetheless, the whole purpose of Revision F is to remediate alleged hazards and construct a structurally sound facility. If Dalk's own arguments are accepted as true, the stay of work creates an imminent peril to life and property." That's counsel for the owner/builder. That's what he says Revision F is. Looking at Exhibit 1, this was entered into the DOAH hearing in Tallahassee as evidence. In that, at the end of it, is a transmittal sheet which was for Revision F. Mr. Giampaoli describes Revision F as being solely in this transmittal sheet which, "This submission corrects the certifications on the construction plans to reflect revisions are designed to conform to the 2007 Florida Building Code and applicable codes and ordinances in effect on the date of issuance of the building permit in April of 2010." So that's the other part of Revision F, a retroactive claim and granting of vested rights. Another part of the certification is the last paragraph in Mr. Griffin's letter, Exhibit 3, "Along with the applicant's complete and exclusive assumption of any and all risks attendant." Neither Mr. Griffin nor Mr. Giampaoli has offered to indemnify Dalk Land or Neil Hedrick. We wouldn't be here if we weren't concerned about what's going on next door. Chair Scarpelli noted that the Exhibit 1 relates to Revision D, not Revision F. Mr. Hedrick responded that in Revision F, they retroactively recertified an already-built house to codes that are obsolete. They went back and original Revision C and D were 2014

Florida Building Codes and current codes, and so they went back retroactively. Chair Scarpelli thought this was going a little far afield.

Mr. Yagel objected, stating this was well beyond the scope. The letter of the building official has three conclusions, which are the matters which are relevant; whether or not this presents an issue that will result in a threat to the property. So there are three simple things, not Revision F, not prior affidavits, not litigation by the other owner that has been unsuccessful. Chair Scarpelli asked Mr. Hedrick if he felt that maintaining the stay was going to be threat to public health and safety. Mr. Hedrick responded that there never was a stay. Chair Scarpelli stated that officially, there is one. Mr. Hedrick stated that they are working there today. Chair Scarpelli told him to call code compliance. Mr. Hedrick said he has called them multiple times and they don't respond. There are bigger issues here. Mr. Yagel interjected that those issues are for another day. Chair Scarpelli apologized, explaining to Mr. Hedrick that these arguments need to be saved for the next round. Mr. Hedrick asked if there was no stay, would that mean the milestones in the rest of the building code are effective like foundation surveys, elevation certificates and all of those things that need to be done on time. Chair Scarpelli stated that was part of the Building Department's scope of work, that any requirements required by the building code are submitted on time and in an orderly fashion. Mr. Hedrick stated that they are not. Mr. Yagel stated that the impact of the stay has to preliminarily be addressed by staff and then if they have an issue, they can take appeals, et cetera.

Chair Scarpelli again asked Mr. Hedrick if the stay were maintained, if that would pose a public threat for the general public, would the building be unsafe. Mr. Hedrick responded the stay represents a threat, but not the threat in Mr. Griffin's letter. The threat is there's two tons of plywood and two-by-fours 50 feet from his house, and with another storm like last fall, he will be buried in flying plywood. The plywood is not supposed to be there, there wasn't supposed to be any construction. Chair Scarpelli noted that that was another point of contention. Mr. Hedrick stated the imminent peril was created by the County in not enforcing Mr. Giampaoli. Chair Scarpelli then asked Mr. Hedrick to please step down. Though he wants to hear everyone out, the scope has to be maintained. Chair Scarpelli asked if there were any questions for Mr. Griffin.

Commissioner Demes stated that he lives in the neighborhood, the house is on his bike path that he likes to ride on, and he wants to see it done because it's beautiful house but he has a serious problem. His entire focus and the entire narrow scope being talked about are four words, imminent peril to property. He could not get up close enough and he wasn't about to ride onto Mr. Hedrick's property, even though the gate was open and it didn't have a no trespassing sign, but the property in question was fenced off with no trespassing signs so he could only see what he could see from the road. Maybe his view is a bit tainted from the Naval Air Station and being Engineering Director for 15 or 16 years, but looking at that site, that building is being built like a fortress. With the components he saw like the structural concrete having supports well beyond any seven-day strength of concrete that you would keep about 14 to 28 days, he does not see what is built as structurally in peril. The metal roof is in place and exterior windows and doors are in place. Commissioner Demes does not see it as if the stay stays in place that something is going to fall down or degenerate. Commissioner Demes asked Mr. Griffin, from the building

official's standpoint, what is really in peril on this property because from what he sees, the structure is not going to degrade or fall down from waiting to resolve this issue.

Mr. Griffin responded that the permit was pulled with the house and the pool together, which isn't done anymore, they are separated. Since the house has a TCO it needs to be CO'd, and any unfinished construction is unsafe. That means the pool has to be done, everything has to be cleared out, all the construction material, everything. That makes it safe and then he can issue a CO. Chair Scarpelli confirmed that it's not the building that's the problem, rather the active construction site is the problem, and technically the building can't be CO'd with this stay, and the construction can't be closed. Commissioner Demes added it's a very complex situation because he sees trucks all the time and knows what's going on, but it's kind of like awarding somebody for having kept going because they put all the stuff all over the place and that's not mindful of missile hazards like in Hurricane Ian that went through, and it's still standing. Commissioner Demes wants to see it done, but feels that imminent peril to property is a little bit subjective and for the wrong reasons to lift the stay, just so everything can continue to go on that maybe shouldn't have been going on to begin with. Chair Scarpelli stated that is a fair point. There were no further questions for Mr. Griffin.

Motion: Commissioner Ritz made a motion to dissolve the stay. Commissioner Neugent seconded the motion.

Roll Call: Commissioner Demes, No; Commissioner Thomas, No; Commissioner Neugent, Yes; Commissioner Ritz, Yes; Chair Scarpelli, Yes. The motion passed, 3 to 2.

BOARD DISCUSSION

Chair Scarpelli noted that next month will not have a full Board. Commissioner Ritz stated that he would not be present.

GROWTH MANAGEMENT COMMENTS

None.

ADJOURNMENT

The Monroe County Planning Commission meeting was adjourned at 12:58 p.m.