

PLANNING COMMISSION  
April 26, 2023

Meeting Minutes

The Planning Commission of Monroe County conducted a hybrid virtual and in-person meeting on **Wednesday, April 26, 2023**, beginning at 10:03 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**

Emily Schemper, Senior Director of Planning and Environmental Resources  
Cheryl Cioffari, Assistant Director of Planning  
Mike Roberts, Assistant Director of Environmental Resources  
Brad Stein, Development Review Manager  
Jay Berenzweig, Principal Environmental Planner  
Devin Tolpin, Principal Planner  
Liz Lustberg, Senior Planner  
Savannah White, Planner  
Peter Morris, Assistant County Attorney  
Derek Howard, Assistant County Attorney  
John Wolfe, 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. John Wolfe.

**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. John Wolfe.

**CHANGES TO THE AGENDA**

None. Items 3, 4 and 5 were read together.

**DISCLOSURE OF EX PARTE COMMUNICATIONS**

None.

**APPROVAL OF MINUTES**

**Motion: Commissioner Neugent made a motion to approve the February 22, 2023 meeting minutes. Commissioner Ritz seconded the motion. There was no opposition. The motion passed unanimously.**

**MEETING**

**AGENDA ITEMS**

**1. DBA KEY LARGO FISHERIES, KLF RE, LLC, 1313 OCEAN BAY DRIVE, KEY LARGO, MILE MARKER 99 OCEAN SIDE:** A PUBLIC HEARING CONCERNING A REQUEST FOR A 5COP SFS ALCOHOLIC BEVERAGE USE PERMIT, WHICH WOULD ALLOW FOR THE SALE OF BEER, WINE, AND LIQUOR FOR CONSUMPTION ON PREMISES OF THE SUBJECT PROPERTY. THE SUBJECT PROPERTY IS DESCRIBED AS PARCELS OF LAND IN SECTION 33, TOWNSHIP 61 SOUTH RANGE 39 EAST, KEY LARGO, FLORIDA, HAVING PARCEL ID NUMBERS 00502870-000000, 00497620-00000, AND 00497600-000000. (FILE 2022-233)

(10:05 a.m.) Ms. Devin Tolpin, Principal Planner, presented the staff report. This item is a request for a 5COP alcoholic beverage use permit for the property doing business as the Key Largo Fisheries. A couple of months ago, the Commission approved a major conditional use permit to lawfully operate a restaurant with approximately 180 seats. The applicant currently has a 2COP alcoholic beverage use permit to serve beer and wine for consumption on premises. This is a request for a 5COP to serve beer, wine and liquor for consumption on premises. Staff has found that this application is in compliance with the five standards required providing the applicant moves forward and applies for a building permit to finish the required site improvements required for the major conditional use permits. Once this happens, staff recommends approval with the condition that it is not effective until the permit for those site improvements is issued and closed. No complaints or public objections have been received to date.

Chair Scarpelli asked for questions or comments from the Commission. There were none. Chair Scarpelli then asked if the applicant wished to speak. Mr. Bart Smith, agent for the applicant, stated that the applicant has applied for the building permit, is fine with all of staff's conditions, and he is available for any questions. Chair Scarpelli then asked for public comment. There was none. Public comment was closed.

Commissioner Demes commented on Code Chapter 3-6 which he had thought was amended, but the attachment here still has 6COP versus 5COP, and he asked if this had been superseded. Ms. Tolpin stated that it has been at this point. This item had been continued so it is not yet posted in the code books. Ms. Schemper added that all three applications on today's agenda were applied for before the amendment so they can be approved under either the old code or the new code.

**Motion: Commissioner Demes made a motion to approve. Commissioners Neugent and Ritz seconded the motion. There was no opposition. The motion passed unanimously.**

**2. HARBOR COURSE PROPERTIES, LLC; 610 CORAL LANE, HARBOR COURSE SOUTH, KEY LARGO, FL (OCEAN REEF CLUB):** A PUBLIC HEARING CONCERNING AN APPEAL, PURSUANT TO SECTION 102-185 OF THE MONROE COUNTY LAND DEVELOPMENT CODE, BY THE PROPERTY OWNER TO THE PLANNING COMMISSION CONCERNING A LETTER OF UNDERSTANDING REGARDING A SINGLE FAMILY RESIDENCE DEVELOPMENT ISSUED BY THE SENIOR DIRECTOR OF PLANNING & ENVIRONMENTAL RESOURCES DATED JULY 21, 2022. THE PROPERTY IS LEGALLY DESCRIBED AS LOT 6, BLOCK 8, HARBOR COURSE SOUTH SECTION FOUR, OCEAN REEF PLAT NO. 19, ACCORDING TO THE PLAT THEREOF, AS RECORDED IN PLAT BOOK 7 AT PAGE 54 OF THE PUBLIC RECORDS OF MONROE COUNTY, FL AND A PORTION OF SECTION 19, TOWNSHIP 59 SOUTH, SECTION FOUR, OCEAN REEF PLAT NO. 19, HAVING PARCEL IDENTIFICATION NUMBER 00573720-000600. (FILE 2022-165)

(10:11 a.m.) Mr. Jay Berenzweig, Principal Environmental Planner presented the staff report beginning with an aerial of the property in question which is bordered to the north by some developed family residences, fringing mangrove on the east, a vacant parcel to the south and Coral Lane to the west. A survey of the property was also presented depicting the landward extent of the wetlands on the property and the original platted lot with un-platted government lots one and two shown in the rear. Mr. Berenzweig then presented the 1985 existing conditions map depicting the front portion adjacent to Coral Lane which was originally mapped as salt marsh buttonwood depicting wetland, the central area was mapped as disturbed lands, the rear was mapped with the front as hammock and the rear as mangrove. Mr. Berenzweig then presented the general area within Ocean Reef, also from the '85 maps, and then the current site conditions showing the scarified area bordered by a mix of hammock and disturbed properties. Looking at the edge of the upland area, going back approximately 20 feet it leads to the fringing mangrove wetland habitat. Commissioner Ritz asked if the area was qualified as high-quality or poor-quality mangroves. Mr. Berenzweig responded that it is high-quality, undisturbed fringing mangroves.

What is being appealed is the letter of understanding regarding development of the property for a single-family residence. The owner is appealing because he does not believe the property is subject to the wetland and shoreline setback requirements of the land development code. The wetland setback is detailed in item number 19 of the letter of understanding. The appellant is stating that there was a settlement agreement that laid this property out as having a fill pad on the property. It needs to be noted that the settlement agreement specifically called this property out as one of the Coral Lane lots specific to extensive mangrove trimming. Then it set aside a different set of properties called out as the Cinnamon Bark Lane lots which were subject to illegal fill at the time and it kind of lumped them together under one settlement agreement but was different as to each set of properties. The letter of understanding determines that the portion of the property adjacent to the wetland is scarified and there is a remnant fringing disturbed hammock area, but what would apply here is LDC Section 118-10(e)(7)(b) where on properties classified as scarified adjacent to wetlands, wetland setback may be reduced to 25 feet without regard to buildable area if the entire setback area is planted and maintained with a Class D buffer, contains site suitable stormwater management, and is placed under a conservation easement. The appellant believes the previous section of the code should be applied which is disturbed salt marsh and buttonwood wetland that has been filled in accordance with issued DEP and/or Army Corps permits. However, none of that was obtained. The settlement agreement did not contend that the Coral Lane lots

were filled or unlawfully filled, only that they had unlawfully trimmed mangroves. For the full exemption, a fill permit must be issued by DEP and/or Army Corps for disturbed salt marsh buttonwood wetland which never was established with this property so that would not apply. The appellant submitted a DEP Exemption Verification and was trying to have that construed as an actual exemption from the County's wetland setback requirement. However, this DEP exemption was only to fill upland area. It has no mention of filling wetland or anything applying to the County's previous code section for filling of a disturbed salt marsh buttonwood wetland. That is not the case here. The appellant is basically saying this is upland area and they did not need to see this permit, that's why this was exempted.

The second item being appealed within the LOU is the requirements for a shoreline setback. The appellant attempted to classify the property as two separate parcels having one parcel that was combined by the property owner, the original platted parcel, with the rear parts of government lots one and two. There is no provision in the comp plan or development code that limits a shoreline or habitat setback based on the boundaries of a property. The rear of the parcel contains the fringing mangroves that run contiguous to the Atlantic Ocean. The code defines for the shoreline setback either the mean high water line or the landward extent of the mangroves, which in this case extends landward above the mean high water line on this property so that's why the shoreline setback must be taken from the landward extent of the mangroves. The idea that there is an additional parcel waterward of this parcel does not define the limits of habitat or shoreline based off the property line.

There was a previous permit issued in July of '99 for a single-family residence on this parcel, and at the time this permit was issued it was viewed that the upland area was considered hammock and it limited the clearing. There was a code memo involved where it appeared the previous property owner had over-cleared the property. The only inspection that was done pertained to that over-clearing had occurred. The permit expired and that was it. There is an old site plan for the expired permit which was subject to different land development codes. Based on all of this, staff recommends the Commission uphold the decision of the Senior Director of Planning and Environmental Resources, that the property is required to meet wetland setbacks established in LDC Section 118-10(e)(7)(b) and that shoreline setback requirements established with LDC Section 118-12.

Commissioner Ritz asked if staff's position was a wetland setback of 50 feet. Mr. Berenzweit responded that it was 25 feet, and that the shoreline setback for principal structure is 50 feet from the landward extent of the mangroves. The appellant's position is that it is to the upland line. Ms. Schemper interjected that the appellant is basically saying it's a zero-foot setback to the edge of the upland or edge of the fill. Mr. Derek Howard, Assistant County Attorney, added that the appellant is seeking use of Code Section 118-10(e)(7)(d). The department has determined that the applicable setback requirement is 118-10(d)(e)(7)(b). So it's whether or not there's a wetland setback or a full exemption from the setback. The department has already reduced the required setback from 50 feet to 25 feet. Their argument is that there should be no wetland setback. Mr. Bart Smith, speaking for the appellant, wanted clarification that Mr. Howard was speaking of the Planning Department and not the DEP. Mr. Howard confirmed he was speaking for the Planning Department, and explained that the code sought by the appellant applies when there has been a permit issued by a state or federal agency that provides for filling and setback requirements. No such permit has been issued by any state or federal agency. The settlement agreement doesn't stand as such a permit and only applies to mangrove trimming on the subject property. There was no allegation of fill and the settlement agreement does not answer the question of what limits a building or the setbacks applied to this particular property, nor does the verification of exemption that was later submitted. That verification specifically said all other state, federal and local requirements apply to the wetland. It expressly stated that it was not allowing any development within the wetland area. The proposed project was only a single-family residence in what they're referring to as the platted parcel, though they've tried to separate this out as two parcels, the platted parcel and the rear parcel, which is this

is one property with one identification number. That is the Planning Department's position and they have already reduced the setback as much as they possibly can under the code.

Commissioner Demes stated that the shoreline setback under the land development code is either set by the extent of the mangrove fringe or the mean high water line, and asked which is it in this particular case. Mr. Berenzweig responded that the shoreline setback is established by the mean high waterline or the landward extent of the mangroves, whichever is further landward. In this instance, the landward extent of the mangroves is more landward than the mean high waterline. Commissioner Demes asked how specific the County is on the density of a mangrove to call it a fringe and whether there is some criteria for that. Mr. Berenzweig responded that this is a definitive fringing mangrove community, not just one propagule. There is the vicinity of the wetland and the mangroves, until your feet are out in the open ocean. Commissioner Demes asked about when you go to the maximum landward extent, if that's subjective or if there is a set criteria in density or how that is done. Mr. Berenzweig responded that there needs to be at least a 10-foot buffer width of mangroves which this obviously far exceeds. But from taking the actual setback, it's generally where you have your vegetation and where that vegetative root structure and canopy overlaps is where that setback would be taken from. Ms. Schemper added that the line where the edge of the mangroves is has not been contested by anyone in this case.

Chair Scarpelli stated that the lot itself isn't on a shoreline, so how would a shoreline setback requirement be found. Ms. Schemper explained that it's within proximity to a shoreline where a setback would apply. Chair Scarpelli stated that every lot is in proximity to a shoreline, that he knows of dry lots that have wetlands on them that get tidal water but they're not a shoreline. Mr. Berenzweig reiterated that property boundaries do not define or limit the extent of a habitat or a shoreline. In this instance, by the definition of shoreline and the extent of the fringing mangroves, the shoreline setback would have to apply on this property. Commissioner Ritz stated that it looks like a dry lot to him and not on the shore. Mr. Berenzweig responded that it's not dry because portions of this lot are within the fringing mangrove wetland. Commissioner Ritz asked how close to the shore you have to be for a dry lot to become a shoreline lot, because the shore seems pretty far to the right. Mr. Peter Morris referred to the definition of shoreline in 101-1 which states shoreline means the interface between land and water, extending seaward of the mean high water to include fringing mangroves and adjacent shelf, and may also include a transitional zone landward of the mean high water. Ms. Schemper added that the mangroves within the parcel boundary are part of the shoreline per the definition. The shoreline includes the entire mangrove fringe. Mr. Morris added that this is not a new definition and has been in place for many years. Chair Scarpelli asked if there is an avenue with South Florida Water Management District where you're allowed to go to a zero setback to a wetland if you put up some type of protections. Ms. Schemper stated that that may be their rules. Mr. Morris added that presumably, a vested rights determination could be applied for if the applicant believed some legal agreement years past entitled them to development in lawful nonconformity with the longstanding rules of the LDC, but no vested rights determination application has been submitted. Mr. Howard stated he had no further questions of staff.

Chair Scarpelli asked for applicant presentation. Mr. Bart Smith, agent for the appellant, stated that he has a biologist, Mr. Robert Smith, present with him. Mr. Bart Smith noted there are two parts being applied, number 19 being the wetland setback. The applicant agrees that there is an adjacent wetland and that it is a mangrove wetland. The applicant disagrees that it's called fringing mangroves because it is several hundred feet long and at that point, it's not a fringe, it is a wetland. At a certain point, a mangrove wetland is no longer associated with that shoreline. If this is called a fringing mangrove of this shoreline, then every property is part of the shoreline; not just this parcel, but every parcel in Harbor Course. The applicant's position is this is a historic fill pad, lawfully permitted and as shown on the '85 maps, and it was salt marsh. So it's a historic fill pad of a wetland. Mr. Robert Smith was involved with the filling of this and will go through the history side of the fill pad. Because of that, the edges of the allowed

development are the edges of the fill pad. To provide further documentation of the historic fill pad and where it's allowed to now be built, the applicant went to the DEP and requested verification, and got a permit that allows for the development of this home in the place it is situated. The applicant is requesting that the property to be found to be not on a shoreline, that there is no shoreline setback, and secondly that this is a lawful fill pad and, therefore, because there are no setbacks, that the full fill pad can be built on just as everyone else with a lawful fill pad. Mr. Bart Smith presented a slide of platted lot 6 which also showed a house built to the maximum of its fill pad on platted lot 5. All of these lots are along a mangrove wetland that extends hundreds of feet if not yards beyond the properties. There are two things being appealed. One is Monroe County determined that the property was scarified adjacent to mangrove fringing wetlands and as such required a wetland setback of 25 feet with a vegetative buffer, placed under a conservation easement in accordance with Section 118-12(b)(7)(b). The applicant is exempt from this as pointed out under 118(e)(10). The County determined that the property contained a shoreline and would require a shoreline setback for accessory structures of 25 feet from landward extent of mangroves in accordance with 118-12(c). The applicant's position is this is not adjacent to a shoreline, that if you look at the distance from where the shoreline is to this property, it is no longer associated with the shoreline. It is simply a mangrove wetland and therefore, the shoreline setback is not applicable.

The key component of wetland setback under 118(e)(7) is that under (e)(7)(d), wetland setbacks required by Code Section 118-10(e)(7) shall not apply to areas filled in accordance with Code Section 118(d)(6) where state and/or federal permits establish the limits of the fill. The correct cite is 118-10(e)(6). Mr. Bart Smith introduced Mr. Robert Smith, and asked for his background, education, field of expertise, along with his background and experience with Ocean Reef. Mr. Robert Smith was sworn in and stated that he has bachelor's degrees in mathematics and biology, a master's degree in ecology, and a PhD in biochemistry immunology. He has worked for the National Science Foundation as a federal ecologist, and also for NOAA as an ecologist in wetlands. He is certified by the National Wetlands Training Institute out of Washington, DC, and originally worked for Monroe County on writing their land use plan from 1984 until finished at the end of 1985. After that, he served as the County's senior biologist. At that time, the senior biologist was the person that came before the Commission here as Mike Roberts does. In this particular case, he is familiar with Ocean Reef because part of the comp plan meant rezoning pretty much every property in the Keys, so he had to go to Ocean Reef and meet with the president on a number of occasions to determine zoning. Mr. Robert Smith has been to this particular area of Ocean Reef since 1984. During the 11-year time period working for the County, he worked on the referenced plat for the legal description of the property. This was a re-plat of an old plat and he represented the County in the review of that plat. After leaving Monroe County, he did habitat studies on every property in the Harbor Course section of Ocean Reef Club, privately, which is the southern portion of the Ocean Reef Club. It was developed later than the rest of the Ocean Reef Club. He did the environmental reports required for the building permit that the County issued which allowed for additional filling of that lot, around 300 cubic yards of fill to place on top of what was already there. He then moved to Costa Rica. Mr. Robert Smith was called in the late nineties for an alleged violation case related to Harbor Course and was hired by the attorney representing the property owner at that time, which is not the same property owner now. There was a violation case there and it was resolved in a settlement agreement that was negotiated with the State Attorney's Office and Ken Plant who was chief legal counsel for DEP, and their violation officers including the Park Service. The entire area had a mangrove trimming permit that he'd had nothing to do with and they had waxed all the mangroves there. There was a settlement agreement with the State and he personally planted everything there now. There wasn't anything there when he replanted mangroves and it came back and looks pretty pristine because it was done correctly.

Mr. Bart Smith asked Mr. Robert Smith if the mangroves he had planted were the mangrove fringe associated with the shoreline or a mangrove wetland. Mr. Robert Smith responded that it was a mangrove wetland. The area that he planted was across three different properties, not just this one. He met with

DEP and the Park Service and they accepted two of the three lots in question at that time as having historic fill pads, and a third one that did not. Mr. Robert Smith explained that a historic lawful fill pad is something that had been filled before Monroe County had rules and regulations regulating where you could and couldn't do certain activities, including placement of fill. There is no dispute that a portion of this property being filled was a wetland. The platted lot itself historically was a disturbed salt marsh. At the time when Harbor Course was building the golf course, they went in and excavated ponds in the middle of the golf course and put the fill along Coral Lane from one end to the other. Mr. Robert Smith was at the County and worked on the 1985 habitat maps. Mr. Bart Smith pointed out an area 740 which is scarified and 640 which is salt marsh, which is a type of wetland. This area has now been filled and the DEP recognized it as being lawfully filled. Mr. Bart Smith asked if the verification from the DEP is the recognition of an area that's been lawfully filled, and Mr. Robert Smith stated that was correct. The survey of the upland wetland delineation was done by him. He is certified nationally, federally and with the State of Florida to do that type of activity. This was superimposed on an aerial so the DEP would know what they were looking at from the application from Glen Boe. The DEP was requesting from Glen Boe that the rear portion of the property where the fill pad abuts onto the wetland area was not done according to current standards and Mr. Robert Smith was trying to come into compliance with stormwater control activities. There is rip rap there now, but it wasn't woven with filter clothes to protect it like it should be, environmentally speaking. He was asking DEP to allow him to fix the limit of the fill pad there and they sent two inspectors out and they dug holes here and there to see how much fill was there and how far down they had to go before reaching the original cap rock in the area. They determined that if the new filter cloth and rip rap stone was to be put along the edge where it currently exists, that that would not be considered to be within their wetland jurisdiction. They more or less sanctioned it as being an historic fill pad.

Mr. Robert Smith continued, in conjunction with that, he went back through aerial photos to see what things looked like at various times, and he saw an aerial photo in the Ocean Reef offices that showed it as being a transitional wetland in 1973, and then the next photo was in 1978 showing it being completely scarified and filled. The creation of that particular fill pad and every single one along the road of Coral Lane was done between 1973 and 1978, long before the Monroe County Comp Plan. It is Mr. Robert Smith's position that this fill pad is a DEP recognized lawful fill pad of a wetland, and that the property is rather far from the shoreline and at least 300 to 350 feet from the water. Mr. Bart Smith presented a slide showing that on the northern side it's about 350 feet to the shoreline, and on the southern portion of the same parcel it is approximately 250 to 275 feet. Mr. Robert Smith stated that all of this was referenced in the original mangrove trimming permit that was issued several owners back on the property. Mr. Robert Smith added that none of the other houses along this entire street have been treated in this fashion. Mr. Bart Smith summarized that it is the appellant's position that the property is exempt from the wetland setbacks as a legal fill pad, and that the shoreline setback is inapplicable because the property is not associated with a shoreline fringing mangrove. If this is the standard put in place, then every property in the Keys is connected to a shoreline.

Mr. Derek Howard cross-examined Mr. Robert Smith. Mr. Howard asked if Mr. Robert Smith agreed that Section 118-10(e)(7)(d) states that the wetland setback required by this section shall not apply to areas built in accordance with 118-10(d)(6) where state and/or federal permits establish limits of the fill. Mr. Robert Smith responded that he was not familiar with exactly what Mr. Howard was alluding to, but would say that these are not new laws, they have been in existence for quite some time, and there have been numerous instances where the County has accepted it. Mr. Howard asked if he could tell him the permit number of any state or federal permit that establishes the limits of the fill for this property. Mr. Robert Smith responded that the permit that was issued by DEP on November 17, 2022, does not indicate that there is any type of jurisdictional wetland on the property, and the permit number is 44-0427626-001. Mr. Howard asked where in that permit it established the fill limits for this property. Mr. Robert Smith responded that it is up to the applicant to determine what they believe to be in their best interests when

they apply for a building permit, designed with an architect or engineer. That's why that information is given to the DEP and Corps of Engineers, and they have requests for information for clarification if they believe it to be any different than what the engineers purport it to be and none of those were received at all. Mr. Howard asked if there were any permits that expressly limit the fill limits for this property. Mr. Robert Smith stated that the permit established the fill limits for the property. Mr. Howard asked if the exemption issued on November 17, 2022, states that no work in wetlands or other surface water is authorized. Mr. Robert Smith agreed. Mr. Howard asked if the letter states, "However, this letter does not relieve you from the responsibility of obtaining other federal, state and/or local authorizations that may be required for the activity." Mr. Robert Smith agreed that was correct. Mr. Howard asked if it was generally the policy of the County to defer to filling and setback requirements of state and federal permits. Mr. Robert Smith responded that he would have to ask the County, but normally what the DEP and Corps state, if you get a fill permit, they wouldn't do that over the heads of the County. Normally, they would consult with them on that. Mr. Howard asked if Mr. Robert Smith knew if they had consulted with the County prior to issuing this exemption of November 17, 2022. Mr. Robert Smith stated that he was not saying the County has faulted in doing one thing or another. They were only wishing to get verification from the state that what they had purported to be the case within the LOU pre-application conference was an accurate, legal representation of the property. Mr. Howard asked if when he sought the exemption verification from the DEP if he had explained what the County was saying were the setback requirements that applied to the proposed development. Mr. Robert Smith responded that only the County can tell another governmental forum what they believe, and he did not know. Mr. Howard asked if Mr. Robert Smith would agree that DEP does not review, approve or deny the application of the County's own wetland setback requirements pursuant to any state regulatory or statutory requirement or coordinated review agreement. Mr. Robert Smith was not certain what Mr. Howard was asking. Mr. Howard asked if the DEP had jurisdiction to override what the County was applying in terms of a setback. Mr. Robert Smith thought they would have to be asked that, but generally speaking when you get a permit from the DEP, it must comply with the DEO interpretation of what the County's plan states or they would send a request for additional information or clarification as to why or why not that has or has not occurred. Mr. Howard asked if that occurred in this case. Mr. Robert Smith did not know as it would be internal between the DEP and the DEO. The DEO is a commenting agency on the issuance of permits from the DEP as it relates to uplands and wetlands.

Mr. Peter Morris interjected that he had one clarification for the record, and asked Mr. Robert Smith if he was being paid by someone else in another permit or being paid to testify in this case. Mr. Robert Smith responded that he was not being paid. He had been retained by a different property owner of this property in 1999 or 2000. This present property owner is not paying him for his testimony, he has no formal retainer agreement, but does act as the consultant to the property owner because he has known the property owner for a very long time and they are friends.

Ms. Schemper noted that the 2022 fill exemption discussed is not regarding any fill in wetlands. The code sections being talked about in (7)(d) the wetland setback required by this section shall not apply to areas filled in accordance with 118-10-(d)(6) where state and federal permits establish limits of the fill. And 118-10(d)(6) is regarding development in disturbed wetlands, so that would mean fill permits issued by the state or federal to establish limits for fill in wetlands. The 2022 fill permit or exemption, per the application, is only about fill in an upland area, not about fill in a wetland area. Just because someone puts fill on their upland parcel does not exempt them from a setback from an adjacent wetland because you're not filling the wetland. This exception is about putting fill in wetlands. The application here made in 2022 stated it was only for fill in existing upland areas.

Commissioner Ritz asked if a permit had been obtained in 1975 to fill the wetland. Mr. Robert Smith stated there was no requirement at that time, nor is there any record in the County files prior to 1980,

more or less. Any records in Ocean Reef were destroyed during a hurricane. All records related to old permits associated with the Building Department of Monroe County were kept in Key West and got flooded and ruined in the early eighties. It is very difficult to get records prior to 1980. However, when going to the DEP to request a permit, they do a historical review to see whether or not it is legal, and they will not give you a permit. They will tell you if it's legal or illegal, and if it's illegal they will tell you that you need to remove the fill from there and restore it.

Mr. Peter Morris again interjected that though this is not his case, he cannot widely lean back, as this witness's testimony has been perforated with references to what DEP is doing or knows, and this witness is not a representative of DEP. He can testify to his personal experience handling permitting with DEP. Although Mr. Morris usually does not elbow in on someone else's case, as an attorney, it is impossible to lean back and ignore the plethora of hearsay. Mr. Bart Smith stated that Mr. Robert Smith was an expert testifying to his experience. Chair Scarpelli stated that that was how he was interpreting it. Mr. Morris agreed he could testify insofar as his experience, that's fine, but he wanted to make sure that is not imputed to what has actually happened in this case.

Commissioner Demes stated that Mr. Bart Smith had pointed out distances that would lead someone to believe there's an applicability of distance from the water or the depth of mangroves on a fringe where it wouldn't be a fringe anymore, and asked if there is any numerical value given to the depth of a mangrove fringe that means it's not a fringe anymore. Mr. Berenzweig responded there was not. Commissioner Demes appreciates the fact that mangroves worldwide are endangered and the State of Florida considers them an essential part of habitat to be protected. Mr. Mike Roberts, Assistant Director, Environmental Resources, stated that the code defines a mangrove community. In short, no, there is not a linear distance from mean high waterline or the shoreline that limits the applicability of a fringing wetland. Mr. Roberts read the definition of mangrove community from Section 101-1. "A mangrove community means a wetland plant association subject to tidal influence where the vegetation is dominated by one or more of the following three species of mangroves: Red, black and white." That's the definition. So if the mangrove system is subject to tidal influence it is considered by and staff applies that as a fringing mangrove as far as the wetland application of the shorelines.

Mr. Howard added that in the staff report, it does state that, "There is physical evidence of tidal inundation throughout the encroaching mangrove wetlands on the property. The transitional zone of the unaltered open water shoreline, including the fringing mangroves, exhibit natural functions including but not limited to natural filtration, shoreline stabilization, nutrient update, storm surge abatement and habitat for fisheries and wildlife."

Commissioner Ritz stated that he appreciates this, but there are lakes in the center of the golf course that are affected by the tide because the water goes up and down through the porous rock, not in and out. Almost all of the mangroves are affected by tides. There are just not left and right tides, there are up and down tides. Mr. Berenzweig then presented a photo of the fringing mangroves showing debris that's distributed by the incoming tide, so it is clearly evident on this property.

Commissioner Thomas stated she had a comment. Mr. Bart Smith interrupted asking how that could be shown that it was from a tide when it could be from any storm. That debris has obviously been there for a very long time based on how rotted it is. Chair Scarpelli asked where the mean high waterline is. Mr. Robert Smith responded that the mean high waterline is about 150 feet from the fill pad going towards the ocean. Mr. Peter Morris stated that Commissioner Thomas had been about to speak when Mr. Bart Smith interrupted her, inadvertently or advertently. Commissioner Thomas then stated that 1978 and 1985 have been talked about, but this is 2023. This is what the property looks like today, not going back to what it used to be. We're dealing with what it looks like today. She doesn't care about 1985.

Chair Scarpelli asked how the County looks at the fill pad that was there prior to the comp plan. Mr. Mike Roberts stated that it is in the letter of understanding, “We consider those uplands that have been lawfully filled prior to the establishment of the Clean Water Act or the Henderson Wetlands Protection Act of the State as being scarified adjacent to wetlands.” That is what is addressed in the letter of understanding, and that is the wetland setback that is applied in the letter of understanding. It was lawfully filled adjacent to wetlands, scarified, and that’s why there is the 25-foot setback in the letter of understanding. Chair Scarpelli stated that it is confusing in this neighborhood that there are so many houses on it, all along the same exact mangrove fringe, and asked how this property is any different from those properties as the mangrove community is clearly completely around this whole neighborhood.

Mr. Berenzweig responded that a lot of Coral Lane is developed but there is this whole swath that is currently undeveloped and/or was previously permitted in ’99 where those permits died on their face and expired. In short, there’s a reason some of these properties within the Reef are not currently developed. Chair Scarpelli interjected that that was because current codes have changed compared to ’99. Mr. Berenzweig continued, apart from that, each lot when you work down Coral Lane, you have multiple habitats come into play. This is a fairly unique situation but generally speaking, you’ll have upland and then transition into a salt marsh buttonwood, and then transition into the fringing mangrove. Conditions change and are slightly altered, but each property is looked at on its own face. Mr. Howard pointed out that also in the Emmert decision, what Mr. Berenzweig stated is absolutely correct, the development of Coral Lane has happened over a period of time, regulations have changed since other properties have been developed, and what the court in Emmert said in that case where they sought to be exempt very similarly from wetland setbacks, and the court stated, no, you don’t have a vested right from the application of wetland setbacks. Furthermore, they argued that the reduction of their buildable area by the application of the same wetland setback that’s being applied in this case did not cause a taking of that property. So you’ve got to look at when the properties were developed. That you have other properties developed, for them to say that they should also be able to develop their property similarly, well, they can build. There’s obviously a buildable area on this property but they’re not exempt from the current wetland or shoreline setbacks. The court has already determined that generally with respect to property in Ocean Reef.

Mr. Bart Smith stated that the two homes built to the north were built in 2001 and 2010, so it is the same code, it’s still the 1986 code. Ms. Thomas stated that a lot has happened since then. There have been hurricanes and the land has changed. As stated previously, it’s now 2023. Chair Scarpelli stated that it wasn’t the same 1986 code in 2001 and 2010. Mr. Bart Smith stated that 2017 was an update to the ’86 code. Chair Scarpelli stated that his concern is with the larger environmental impact to the area. Mr. Berenzweig added that the land development code has been amended, especially regarding wetland or shoreline setbacks, since ’99 multiple times. Commissioner Ritz disclosed that he has not talked to the applicant at all about this probably in 20 years, but he was the president of the Ocean Community Association for 27 years and is intimately familiar with this particular lot and the development of Harbor Course, including the house next door to this one, and the settlement agreement that’s been referred to. He has had no conversation with the applicant.

Ms. Schemper asked if the backup information has all of the detailed analysis of the other houses on Coral Lane with exact dimensions and surveys, et cetera, as she is uncomfortable comparing this to other houses given the scale of development and the scale of the shoreline and the mangroves in this area. By just looking at an aerial you may think something is right up on a wetland line and it may actually be set back. The farther you go up Coral Lane, the farther it gets from the actual shoreline, and there are some other wetlands in between, so things change. Even two lots up, things change and it starts to be a different scenario. Chair Scarpelli found it interesting that if this lot was still a wetland and they filled it, then they would have the zero-line setback, but since it’s not a wetland they can’t do it. Mr. Berenzweig

reiterated that the settlement agreement is very specific and that the Coral Lane lots were specific to mangrove trimming, where the Cinnamon Bark Lane lots were specific to illegal fill. Two separate animals combined into the same settlement agreement does not mean both conditions apply to all lots. Commissioner Ritz asked what the rear setback is for dry lots. Mr. Berenzweig responded that non-shoreline is 20 feet. The wetland setback is 25 feet, and that's to be maintained with a planted buffer, and the shoreline setback for a principle structure is 50 feet from the landward extent of the mangroves which is approximate with what's shown with the half circles, the jagged line behind the yellow line on the diagram. Commissioner Demes asked what the effective date was for the Clean Water Act. Mr. Roberts responded 1972 for the Clean Water Act and 1984 for the Warren S. Henderson Wetlands Protection Act which is the State's adoption of wetland regulations.

Chair Scarpelli then asked for public comment. There was none. Public comment was closed.

**Motion: Commissioner Thomas made a motion to uphold decision of Planning Director and deny the appeal. Commissioner Demes seconded the motion.**

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

Commissioner Ritz then congratulated Mr. Robert Smith for planting the mangroves seen as they look undisturbed but were planted by hand, so he must have done a good job recreating mangrove swamp. Chair Scarpelli added that you couldn't even tell. Commissioner Ritz then stated that he is still disturbed about this depth of the mangrove fringe, when it becomes a shoreline and when it doesn't. Chair Scarpelli responded that he could bring that up in General Discussion.

Staff has requested Items 3, 4 and 5 be read together, but having separate votes.

**3. AN ORDINANCE BY THE MONROE COUNTY BOARD OF COUNTY COMMISSIONERS** AMENDING MONROE COUNTY COMPREHENSIVE PLAN, ESTABLISHING GOAL 112, OBJECTIVE 112.1, POLICY 112.1.1, OBJECTIVE 112.2 AND POLICY 112.2.1, TO CREATE SITE-SPECIFIC DEVELOPMENT STANDARDS, DEVIATIONS AND EXEMPTIONS FOR OCEAN REEF, AS PROPOSED BY SMITH HAWKS PL, ON BEHALF OF OCEAN REEF CLUB, INC. AND OCEAN REEF COMMUNITY ASSOCIATION, 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; PROVIDING FOR AN EFFECTIVE DATE (FILE 2019-142)

**4. AN ORDINANCE BY THE MONROE COUNTY BOARD OF COUNTY COMMISSIONERS** AMENDING MONROE COUNTY CODE TO AMEND SECTION 130-141 TO CREATE THE OCEAN REEF OVERLAY DISTRICT AND ESTABLISH A PURPOSE AND INTENT, BOUNDARY, EXEMPTIONS FOR NONCONFORMING USES AND STRUCTURES, EXEMPTIONS FROM DEVELOPMENT STANDARDS ESTABLISHED WITHIN CHAPTER 114, AND MODIFICATIONS TO SETBACKS FOR ACCESSORY STRUCTURES AS PROPOSED BY SMITH/HAWKS PL ON BEHALF OF 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 CODE; PROVIDING FOR AN EFFECTIVE DATE. (FILE 2019-025)

**5. AN ORDINANCE BY THE MONROE COUNTY BOARD OF COUNTY COMMISSIONERS** AMENDING THE MONROE COUNTY LAND USE DISTRICT (ZONING) MAP TO APPLY THE OCEAN REEF OVERLAY DISTRICT FOR PROPERTIES LOCATED AT 100 ANCHOR DRIVE, 30 OCEAN REEF DRIVE, 90 ANDROS ROAD, 101 ANDROS ROAD, BEACH ROAD, OCEAN REEF DRIVE, 301 OCEAN REEF DRIVE, 650 BEACH ROAD, 314 ANCHOR DRIVE, 1 DOCKSIDE LANE, 31 OCEAN REEF DRIVE, 2 DOCKSIDE DRIVE, 395 S. HARBOR DRIVE, 100 COUNTRY CLUB ROAD, 120 NIRVANA LANE, 100 NIRVANA LANE, 314 ANCHOR DRIVE, TORCHWOOD LANE; KEY LARGO, MONROE COUNTY, FLORIDA, HAVING PARCEL IDENTIFICATION NUMBERS 00572797-003600, 00572795-001000, 00570460-000000, 00570450-000000, 00569510-000000, 00569500-000000, 00569470-000100, 00569490-000000, 00569470-000000, 00569480-000000, 00569482-000000, 00081780-000300, 00081760-000100, 00081760-000000, 00081880-000100, 00081760-000200, 00081740-000500, 00081720-000000, 00081710-000000, AND 00572797-003800; AS PROPOSED OCEAN REEF CLUB, INC., YACHTSMAN INN LAND, LLC, OR BUSINESS CENTER, LLC, GOLF MANOR I A CONDOMINIUM AND RACQUET CLUB AT OCEAN REEF 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 2020-088)

Prior to the presentation, Commissioner Ritz disclosed that he had been President of the Ocean Reef Community Association when this application started. He was on the Board of Directors of Ocean Reef Club for 27 years, and was also one of the applicants as an ex officio member, and a member of the Racquet Club. He has not been involved in this rendition today, after five years, but wanted to disclose his involvement and is happy to recuse himself if appropriate. Mr. John Wolfe determined that he had no financial interest in the outcome so he did not need to recuse himself.

(11:34 a.m.) Ms. Cheryl Cioffari, Assistant Director of Planning, presented the staff report. These three items are a proposed comp plan amendment to establish Goal 112, a proposed land development text amendment, and as well a land use district map overlay to establish the regulations on those specified properties listed in the application. All three items work in concert with one another but the main focus of the proposed amendment is on non-residential parcels owned by Ocean Reef Club, Incorporated.

Under Goal 112 is the establishment for Ocean Reef Club Master Plan Community to allow certain exemptions and reductions for properties owned by Ocean Reef Club as well as Golf Harbor Condominium. The main changes that the goal would establish is to allow specific nonconforming nonresidential structures to be rebuilt in their preexisting footprint even if they're 100-percent destroyed. It would allow for the repair, replacement and restoration of these structures provided there was a lawfully established nonconforming nonresidential structure.

It also specifies that similar to existing regulations for accessory uses developed after Irma, if there is an absence of an active concurrent permit for the redevelopment of a principal use or structure on the site, the lawfully established nonconforming accessory structures and uses could remain on the property up to five years from the date of that disaster event. The goal also allows for modifications to the open space and that the open space is not further reduced. It also provides reductions or exemptions for specific level of service with regards to county roads, potable water, solid waste, stormwater and recreation. Ocean Reef is a 100-acre master plan community that provides many of these services within the perimeters and boundaries of that area, so staff has found that these LOS standards are not applicable and it would not be inconsistent to exempt them from such standards. It would also provide for a reduction of the open space requirements on the shoreline setbacks provided stormwater is controlled, and it lists those reductions in percentages or increases in amount of impervious area in the policy, and then clarifies that the height exemptions would remain the same with Policy 101-5.30 and 101-5.31.

With regards to the policies for residential units, this is where Golf Harbor Condominium comes in. It is a development with a condominium-style ownership so the land surrounding these homes are owned by Golf Harbor Condominium and some of the situation that has occurred is there's limited open space available, so when a property owner goes to put pavers down to make a small patio, they're running up against a difficulty with the open space requirement. So there is the request to amend the open space requirement for those parcels within the residential low FLUM category to 50 percent. The modifications presented in the land development code just clarify and provide more specific regulations that are established through the proposed com plan text amendment.

Ms. Cioffari addressed the reduction for setbacks because there was some public input and feedback. There is a request for a reduction for setbacks for accessory structures in the front, side and rear yard. Due to the feedback provided from the community there was clarification included that those reductions are not available where the property line is contiguous to a residential use. So if there is an existing residential use on the property, those reductions are not available. There is also a proposed exemption from stormwater whereby Ocean Reef Club and Golf Harbor Condominium would comply with the SFWMD standards. Staff recommends approval of all three items.

Chair Scarpelli asked if there were Commission questions or comments. There were none. Chair Scarpelli asked if the applicant wished to speak.

Mr. Bart Smith representing Ocean Reef stated that he had been working on this for three, four years or longer. It all started post-Irma after there was a lot of damage to the buildings and they were looking at the nonconforming buildings. A lot of the zoning that was put on Ocean Reef looks like someone just took a crayon and drew around it; there's a hotel on sparsely settled, there's commercial on residential. So, ultimately, if they were destroyed, then they would have to conform to current code. What would be easier than dealing with that would be to provide that they could be replaced within their current footprint. While addressing that, they looked at other common issues that the Club had in providing amenities for Ocean Reef, and this list was put into these amendments. Mr. Smith is requesting approval and is available for questions.

Chair Scarpelli asked the Commission for comments or questions. There were none. Chair Scarpelli then asked for public comment. There was none. Public comment was closed.

Commissioner Demes commented that on Comp Plan Goal 112 and Policy 112-1.1, when saying the primary structure may be destroyed, there is five years for the accessory structure and asked if there was something magical about five years, and then he also sees a five-year extension. Ms. Cioffari responded that the five years came after Hurricane Irma. It is what was provided to property owners, stemming from RV and mobile home parks where the principal structure was destroyed leaving a pad to put the RV and mobile home on. To get through grants or any assistance, the BOCC wanted to provide adequate time for property owners to get those in place, so staff just stayed consistent with the five years. Commissioner Demes stated that he sees what is being done here and if this is good enough for Ocean Reef, it should be something that's good for the rest of the County.

**Motion: Commissioner Demes made a motion to approve Item 3. Commissioner Neugent seconded the motion. There was no opposition. Motion passed unanimously.**

**Motion: Commissioner Demes made a motion to approve Item 4. Commissioner Neugent seconded the motion. There was no opposition. Motion passed unanimously.**

**Motion: Commissioner Neugent made a motion to approve Item 5. Commissioner Demes seconded the motion. There was no opposition. Motion passed unanimously.**

(Five-Minute Recess 11:49 a.m. to 11:55 a.m.)

**6. AN ORDINANCE BY THE MONROE COUNTY BOARD OF COUNTY COMMISSIONERS** AMENDING THE MONROE COUNTY TIER OVERLAY DISTRICT MAP FROM TIER III-A TO TIER III AS REQUESTED BY SPOTTSWOOD, SPOTTSWOOD, SPOTTSWOOD & STERLING, PLLC ON BEHALF OF MARCIEJ JARZEBOWSKI FOR A PARCEL OF LAND LEGALLY DESCRIBED AS LOTS 2 AND 3 DOBIES SUBDIVISION AMENDED PLAT SUMMERLAND KEY PLAT BOOK 2 PAGE 135 AND A PARCEL OF LAND LEGALLY DESCRIBED AS BLOCK 2 PART OF LOT 21 SUMMERLAND KEY COVE ADDITION NO 2 PLAT BOOK 4 PAGE 100 SUMMERLAND KEY AND LOT 1 DOBIES SUBDIVISION PLAT BOOK 2 PAGE 95; HAVING REAL ESTATE NOS: 00188710-000000 & 00190940-000200 (FILE 2023-008)

(11:55 a.m.) Mr. Mike Roberts, Assistant Director, Environmental Resources, presented the staff report. This is a Tier Overlay District Map Amendment for the Jarzabowski family for two parcels on Summerland Key. Mr. Roberts presented an exhibit showing the area to the right of the subject parcels which is Mote Marine Lab for reference. Mr. Roberts presented the condition of the two parcels indicating a substantial fill pad on one and the other being scarified with no native vegetation. This has been the condition of these parcels for 20 to 30 years, if not more. For purposes of tier designation, the comp plan and the land development code both call out the criteria for designating land for Tier I, which is natural area where development is steered away from, intended to be natural areas including old and new growth, upland habitat, vacant land which can be restored to connect upland native habitat, lands required to provide an undeveloped

buffer, lands designated for acquisition for public agencies or known locations of threatened and endangered species, and lands designated as conservation or residential conservation on the FLUM. Obviously, these two parcels do not meet any of those criteria. Paragraph three of the criteria, lands located outside of Big Pine and No Name Key that are not Tier I shall be Tier III. Designated Tier III lands located outside of Big Pine and No Name with tropical hardwood hammock or pinelands of one acre or greater in area shall be designated Tier III-A. There is not an acre of pineland or hammock on these parcels. They are not contiguous or adjacent to an acre of tropical hardwood hammock. There are certain criteria that must apply. In this instance, paragraph six, data updates. The physical characteristics of the property are not consistent with the Tier III-A criteria just discussed and contained in Section 130 of the land development code and Policy 205.1.1 of the comp plan. Staff does not consider this amendment to impact the community character. The tier designation only has the effect of establishing clearing limits and points in ROGO. The parcels are more appropriately designated Tier III. Staff recommends approval.

Chair Scarpelli asked for Commission questions or comments. There were none. Chair Scarpelli asked if the applicant wished to add anything. Mr. Donald Craig, representing the applicant, thanked County staff for a comprehensive staff report and for recognizing that these parcels do not meet the criteria for Tier III-A. These scarified parcels were simply designated Tier III-A in error, and the County recognizes that. Mr. Craig is available for questions. There were no Commission questions or comments. Chair Scarpelli then asked for public comment. There was none. Public comment was closed.

Chair Scarpelli asked Mr. Roberts if the whole Tier III-A could be fixed in this whole area. Mr. Roberts responded that staff is not recommending any other tier changes at this point in time. Typically, they respond to private applications for tier map amendments. Staff is in the process of updating the habitat maps from 2009 and when that data is completed, staff anticipates reforming the Tier Designation Review Committee which consists of local, state and federal conservation professionals to review and reevaluate the habitat maps and potentially entertain amendments to the tier overlay district maps at that time, with no projection for what that time frame may be.

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

**7. TPG PARMERS FL, LLC, 565 BARRY AVENUE LITTLE TORCH KEY, MILE MARKER 29:** A PUBLIC HEARING CONCERNING A REQUEST FOR A 2 APS ALCOHOLIC BEVERAGE USE PERMIT, WHICH WOULD ALLOW FOR BEER AND WINE FOR SALE BY THE PACKAGE ONLY FOR REGISTERED GUESTS STAYING AT THE PARMER'S RESORT. THE SUBJECT PROPERTY IS DESCRIBED AS LOTS 5, 6, 7, 8, 9, 10, AND 11 MATE'S BEACH, ACCORDING TO THE PLAT THEREOF AS RECORDED IN PLAT BOOK 2, PAGE 131, PUBLIC RECORDS OF MONROE COUNTY, FLORIDA, HAVING PARCEL ID NUMBER 00218810-000000. (FILE 2023-043)

(12:03 p.m.) Ms. Liz Lustberg, Senior Planner, presented the staff report along with Savannah White, Planner. The applicant is requesting a 2APS alcoholic beverage use permit which would

allow them to sell beer and wine package sales only, and this would be specifically for the guests of their hotel. The property is a long-time lawfully established hotel. Ms. Lustberg presented the site plan, indicating that the sales were proposed to be in the lobby building. There are five items that the Planning Commission can consider and in staff's opinion, the applicant complies with all items. Staff recommends approval with conditions. Ms. Lustberg pointed out condition one which states the package sales of beer and wine are limited to the Parmer's Resort front office and for sale to registered guests staying at the resort only. All other conditions are standard conditions of approval.

Chair Scarpelli asked for Commission questions or comments. There were none. Chair Scarpelli then asked for public comment.

Mr. Jason Makuch has property adjacent to Parmer's Resort on the opposite side of canal on lots 34, 35, 36, 37. He is not a full-time resident but frequently comes down, and thinks his stance on this bears with Parmer's being there as long as they have, but for what purpose is there to pass this beer and wine for sales in bulk to guests only when in a golf-ball-hitting distance beer and wine can be purchased everywhere. There is always police traffic here, cops being called, loud parties and loud guests from the resort, resort traffic running up and down Barry Avenue at a high rate of speed, and he feels having alcohol beverages even for guests only on site will only make these things worse. He has seen today how easy it is to go from one tier of serving beer and alcohol to adding liquor once this is obtained. He is against this and does not see why it should be approved. This is a weekly rental area so people are going to be going to grocery stores to get food where beer and wine is very accessible, along with in at least a dozen locations within a five to ten-minute drive.

Ms. Lustberg clarified that this application is for beer and wine package sales only. If the applicant wants to alter that to add liquor, that would require an additional application, be reviewed separately, and would come back before the Planning Commission. Chair Scarpelli noted that those requirements are quite extensive. Ms. Lustberg added that there are different regulations based on different types of alcohol applications required by the state which is not necessarily what would be required by the county.

Ms. Claudia Neal also lives on Powell Avenue. Parmer's has not reached out to anyone in the neighborhood that she knows of. Ms. Neal does not think it's appropriate to have a package store, even just for the guests, in this neighborhood. This is a residential community with children. She already tells her children that they can only ride bikes on Powell and Heck because of the traffic on Barry Avenue going to Parmer's. Guests from Parmer's can walk to Kiki's to go to the bar. There is a lot of noise from Parmer's that travels easily, and she hears it quite often. Adding on-site alcohol availability is not a good thing for the neighborhood.

Lance Woodward, applicant, wanted to address some of these concerns and apologized about the cops being called numerous times. He has recently taken this property as of January last year. His assistant has been here longer than that and he remembers the cops being at the property less than five times in that time span. One of the most common reasons people love to come to Parmer's is because it's so quiet and they can enjoy peace. The goal is not to increase chaos,

rather simply to provide an amenity to the guests to have the convenience of not having to go to Kiki's or up to the store just to grab a beer and sit by the pool.

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

Commissioner Demes thought that having this on site would mean the guests won't be driving anywhere. There is no package store police department and he doubts there will be a card-carrying showing of your room number to buy the alcohol, but all in all, he believes it's a good idea to have the sales for the guests of the resort on site. Commissioner Ritz agreed, stating that he goes to lots of hotels and you charge it to your room, there's not even cash, and then made a motion to approve. Chair Scarpelli asked if there were proposed business hours for sales. Mr. Woodward stated that the front office closes at 9:00 o'clock so it would not go past then, and the pool hours are 8:00 a.m. to sunset.

**Motion: Commissioner Ritz made a motion to approve. Commissioner Thomas seconded the motion. There was no opposition. Motion passed unanimously.**

**8. MARY JANE'S ADDICTION, LLC, 22864 OVERSEAS HIGHWAY, CUDJOE KEY, MILE MARKER 23:** A PUBLIC HEARING CONCERNING A REQUEST FOR A 2COP ALCOHOLIC BEVERAGE SPECIAL USE PERMIT, WHICH WOULD ALLOW BEER AND WINE FOR SALE BY THE DRINK (CONSUMPTION ON PREMISES) AND IN SEALED CONTAINERS FOR PACKAGE SALES. THE SUBJECT PROPERTY IS DESCRIBED AS LOTS 11 AND 12, BLOCK 1, OF CUDJOE OCEAN SHORES, A SUBDIVISION OF A PART OF THE EAST ½ OF THE SE ¼ OF SECTION 28, A PART OF GOVERNMENT LOT 2, SECTION 27, AND ALL OF GOVERNMENT LOTS 2 AND 3, SECTION 34, ALL IN TOWNSHIP 66 SOUTH, RANGE 28 EAST, ON CUDJOE KEY, MONROE COUNTY FLORIDA, AS RECORDED IN PLAT BOOK 5, PAGE 107, PUBLIC RECORDS OF MONROE COUNTY, FLORIDA, HAVING PARCEL ID NUMBER 00186990-000000. (FILE 2023-049)

(12:16 p.m.) Ms. Liz Lustberg, Senior Planner, with Savannah White, Planner, presented the staff report. Ms. Lustberg wanted to note that this item and the prior item had been reviewed under the updated code. The main difference with the updated code is that instead of listing the different alcohol categories, it just references the state so that the county is not constantly out of alignment as the state changes their rules.

This application is for a 2COP alcoholic beverage use permit which would allow beer and wine to be consumed on premises and sold as package sales. Ms. Lustberg presented the site plan and floor plan, pointing out that it is important that it matches the site and floor plans that have been previously approved by permit. This application is only for a portion of the building. The last permit changed the use for the area outlined in red to change that from commercial retail to restaurant. So this approval is only for the portion of the property that is lawfully established as a restaurant since a portion of the permit would allow for on-premises consumption. Staff finds the applicant in compliance with all five factors and recommends approval with conditions. Ms. Lustberg wanted to focus on one condition, which she read into the record. "This alcoholic beverage use permit approval is for the portion of the property within established restaurant use.

At the time of this permit approval, only the 1,018 square feet approved as a restaurant use in Permit 21100984 and currently operating as a coffee shop, My Morning Joint, is approved as a restaurant use. If additional portions of the property are lawfully established as a restaurant use by a permit approval, this alcoholic beverage use permit will apply to those portions of the property as well.” There are two other standard conditions.

Chair Scarpelli asked for Commission questions or comments. There were none. Chair Scarpelli then asked for public comment. There was none. Public comment was closed.

Chair Scarpelli asked if the applicant wished to speak. Mr. Austin Gagnon, the applicant, stated that he appreciates the Commission reviewing this and looks forward to it hopefully being approved. He wants to be here for the community on Cudjoe. Commissioner Demes asked who made the stellar drawing of page five of seven in the staff report. Ms. Lustberg asked if he was referring to the circled portion that says “this is it,” stating that it was the applicant and it was useful because they had been going back and forth as to what exactly is the area that is being approved so there was no confusion. Commissioner Demes stated as a Penn State graduate in engineering, he must compliment that person because he always says, use the appropriate level of engineering required to get the message across.

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

### **BOARD DISCUSSION**

Commissioner Ritz brought up the earlier discussion regarding where a shoreline and mangrove depth is so deep, there seems to be a logical, cognitive disconnect between shoreline and what is actually seen because it’s so far from the shore. Commissioner Ritz asked if there should be a defined distance from the shore as opposed to saying tidal effect. There was evidence of a tide, but was that from Irma or from last week. Chair Scarpelli asked if a better word would be to define a fringe as far as the County’s land development code is concerned. Commissioner Ritz then asked if this is a one-off or if it is an issue elsewhere as well as he would hate to make a modification if this is the only place it applies. Ms. Schemper responded that she has not seen this frequently since she’s been here, but just setting a distance is not ecologically sound because that’s not how the environment works. It’s not based on distances, rather on characteristics, which is why we talk about tides. When Mr. Berenzweig presented the photo with debris from the ocean washed up into the mangroves and Mr. Bart Smith was trying to claim it was probably just from a storm, Ms. Schemper doubts it was just from a storm. You can get pretty far into the mangroves and it’s obvious it is connected to the ocean. Mr. Mike Roberts stated there are subtle but obvious signs of regular, frequent inundation that equate to the mean high water line, whether that be a rack line or ecological or biological adaptations of certain plants. There are other biological adaptations to plants other than red and black mangrove that indicate regular and frequent inundation. Professionally-trained biologists look at that in the field. As far as establishing what is a fringing mangrove or when does it change from a fringing, tidally-influenced mangrove system to a mangrove wetland, those signs and indicators are looked for. A lot of that has to do with the species of mangrove. It’s not an ecologically sound practice to assign a specific distance, though there may be validity to tightening up the definition of fringing

mangrove. Commissioner Demes was concerned about providing a license to legitimately kill the mangroves that wouldn't normally be intended. He does not see the National Marine Sanctuary engaging in the level that they could in routine business, but their criteria for the National Marine Sanctuary is mean high tide. They could get very involved in what the County does if it impacted the mean high tide area or something close to that, but he doesn't know the secondary impacts. He believes the intent is to protect the mangroves that still exist and taking it on a case-by-case basis may be the best thing. Mr. Roberts added that there are comp plan policies in the land development code regulations that prohibit any development within mangrove wetlands. The open space criteria is 100 percent for mangrove wetland. The setback criteria at issue earlier today was intended to do the exact same thing, protect those systems.

**GROWTH MANAGEMENT COMMENTS**

None.

**ADJOURNMENT**

The Monroe County Planning Commission meeting was adjourned at 12:28 p.m.