

PLANNING COMMISSION
May 24, 2023

Meeting Minutes

The Planning Commission of Monroe County conducted a hybrid virtual and in-person meeting on **Wednesday, May 24, 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

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
Tiffany Stankiewicz, Development Administrator
Karl Bursa, Senior Administrator, Floodplain Program
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

Item 4 removed from the agenda. Items 5 and 6 read together.

DISCLOSURE OF EX PARTE COMMUNICATIONS

None.

APPROVAL OF MINUTES

Motion: Commissioner Thomas made a motion to approve the April 26, 2023 and the April 28, 2023 meeting minutes. Commissioner Demes seconded the motion. There was no opposition. The motion passed unanimously.

MEETING

AGENDA ITEMS

1. A PUBLIC HEARING TO CONSIDER AND FINALIZE THE RANKING OF APPLICATIONS IN THE DWELLING UNIT ALLOCATION SYSTEM FOR JANUARY 13, 2023 THROUGH APRIL 12, 2023, ROGO (Quarter 3, Year 31). ALLOCATION AWARDS WILL BE ALLOCATED FOR ALL UNINCORPORATED MONROE COUNTY. (File 2022-140)

(10:03 a.m.) Ms. Tiffany Stankiewicz, Development Administrator, presented the staff report for the residential dwelling unit allocations for Lower and Upper Keys subareas and Big Pine and No Name Key subareas. The Planning Department is recommending approval of the following market rate rankings: Lower Keys applicants ranked 1 through 7 recommended for allocation award; Big Pine/No Name applicant ranked 1, recommended for allocation award subject to mitigation availability at the time of permitting; Upper Keys applicants ranked 1 through 8 recommended for allocation award. All other applications roll over to the next quarter.

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

2. A PUBLIC HEARING TO CONSIDER AND FINALIZE THE RANKING OF APPLICATIONS IN THE NON-RESIDENTIAL ALLOCATION SYSTEM JANUARY 13, 2023 THROUGH APRIL 12, 2023, NROGO (Quarter 3, Year 31). ALLOCATION AWARDS WILL BE ALLOCATED FOR ALL UNINCORPORATED MONROE COUNTY.

(10:04 a.m.) Ms. Tiffany Stankiewicz, Development Administrator, presented the staff report. There was one applicant for NROGO. Planning recommends approval of the one application.

Commissioner Ritz stated that he wanted to get everyone thinking about the purpose behind NROGO. There are lots of unused NROGO available. When ROGO was started, the idea was there was only going to be so much development in the Florida Keys and this is what we wanted, it was divided up into ten years and we are where we are with ROGO. Then there was a ten-year moratorium on commercial development. During that time we thought there was a ratio between residential and commercial. After studying that forever, NROGO was the result and he does not think they got it right. He believes it was thought there would be more need for commercial than there actually has been and the need for commercial didn't appear during this time period. Now we're coming to the end of ROGO but not necessarily NROGO. He believes there should be an end to NROGO and the question is when. Some brain power needs to be put behind this to think about NROGO and the future of it.

Ms. Emily Schemper, Senior Director of Planning and Environmental Resources asked if Commissioner Ritz was referring to ending the allocation system whereby it becomes open ended and people could just develop further floor area ratio, or an end meaning no more is given out. Commissioner Ritz responded that he was referring to the first option that it would be opened up. Ms. Schemper stated that this is something that is on staff's radar as they near 2026 when changes may happen with the ROGO system itself, that she would need to read all of the NROGO language in the Comp Plan and code one more time to be sure, but she believes the NROGO system would remain in effect as long as the ordinance is in effect. So this would need additional adoption of changes by the BOCC to change it. Ms. Schemper thanked Commissioner Ritz for bringing this up because it takes over a year to change the Comp Plan and this is something that staff will need to start processing. But, in answer to his question, NROGO is set up in a way where it will not get cut off as of July 2026, and would just continue.

Chair Scarpelli thought the bank of 772,000 square feet would never be reached without enough people to man that square footage. Commissioner Ritz believes the need for commercial was over estimated when created. Commissioner Neugent asked if there were legal ramifications to this as far as property being available to be developed and it then not being able to be developed. Commissioner Ritz stated that his point is to do away with the allocation system and let people develop like they do in the rest of the world as they would still have to come in and get all of the approvals. He believes it should at least be looked at.

Commissioner Demes asked about the end of the ROGO system. If it ends in July 2026, would the last allocation occur in May of 2026. Ms. Schemper responded that the last application deadline would be July 12 of 2026 which means the last Planning Commission approval would occur at the August 2026 meeting. Ms. Stankiewicz confirmed that to be correct. Chair Scarpelli noted that it was a long time before that would happen. Commissioner Neugent added that that's when the fun begins.

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

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

3. AN ORDINANCE BY MONROE COUNTY BOARD OF COUNTY COMMISSIONERS ADOPTING AMENDMENTS TO MONROE COUNTY LAND DEVELOPMENT CODE SECTION 134-2 AMENDING THE HOME OCCUPATION SPECIAL USE PERMIT REQUIREMENTS TO BE CONSISTENT WITH CHAPTER 2021-202, LAWS OF FLORIDA, SECTIONS 102-54-58, TO CLARIFY THE CONTINUING PURPOSE, REGISTRATION, AND REQUIREMENTS OF NONCONFORMING USES/STRUCTURES, SECTIONS 101-1-4, TO CLARIFY CONTINUING DEFINITIONS, RULES OF CONSTRUCTION, PURPOSE, AND APPLICABILITY, CHAPTER 114, ARTICLES I-VII., TO CLARIFY THE CONTINUING APPLICATION OF DEVELOPMENT STANDARDS TO DEVELOPMENT, SECTIONS 118-2(d)-(e), 118-4, 118-7, 118-9-10, 118-12-13, TO CLARIFY THE CONTINUING APPLICATION OF ENVIRONMENTAL PROTECTION REGULATIONS TO DEVELOPMENT, SECTIONS 130-1-2, 130-74, 130-156, 130-165, TO CLARIFY THE CONTINUING APPLICATION OF LAND USE DISTRICT REQUIREMENTS TO DEVELOPMENT, SECTIONS 131-1, 131-3, TO CLARIFY THE CONTINUING APPLICATION OF BULK REGULATIONS TO DEVELOPMENT; 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 AND INCORPORATION IN THE MONROE COUNTY LAND DEVELOPMENT CODE; PROVIDING FOR AN EFFECTIVE DATE. (FILE 2021-115)

(10:11 a.m.) Ms. Emily Schemper, Senior Director of Planning and Environmental Resources presented the staff report. Staff is proposing these amendments to the aforementioned sections of the Land Development Code. The main crux of this amendment is Section 134-2 which is an amendment to the home occupation special use permit requirements. All other amendments are to clarify continuing purpose, registration and definitions in the code. Ms. Schemper went through all of the changes and rewording of definitions and changes in the staff report, explaining that it is all for clarification and is consistent with Florida Statute. Ms. Schemper then went over the standards for development referencing both the Land Development Code and Comp Plan, again for clarification. The purpose, Section 130-1, has all of the permitted uses and zoning categories and Ms. Schemper went through the list of minor changes.

Mr. Peter Morris, Assistant County Attorney, then commented on the definitions reviewed by Ms. Schemper, stating that they are to clarify and bring the County's definitions into alignment with the current Florida Statutes and is articulated in ways designed to inoculate the County from a lot of the more frivolous litigation being seen, especially with the walls closing in on the number of allocations available going down. The County has seen more and more exotic claims and he would like to avoid unnecessary expenditure of public resources litigating all the way to a merits decision any frivolous claims that could be short circuited by ensuring the definitions are such that those claims can't even be brought with a straight face and would threaten the attorney bringing those claims receiving a sanctions order from the judge. There had been one question during the briefings regarding the definition of structure and whether that would embrace a more fanciful concept of what could constitute a structure under the land development regulations. Mr. Morris then read excerpts from Section 101-2 of the Rules of Construction. Mr. Morris stated that in his experience he has never observed a planning director hold that a child's lemonade stand constituted a building that required a permit and sic code enforcement on them, but inasmuch as we are concerned about something like that arising in the future, it would be impossible to make those kind of exotic claims in the future. In addition, 101-2(6) provides that non-technical and technical words and phrases shall be construed to the common and approved usage of the language. Technical words and phrases as may have acquired a peculiar inappropriate meaning in law shall be understood according to such meaning. Mr. Morris summarized that, as applied to permitting and litigation, that means you would look to statutory authorities and case law to see if there is a leg of support to justify an extremely exotic and irrational application of what constitutes a structure to embrace an inflatable Santa, a child's lemonade stand and absurd things like that. He believes the County is sufficiently sort of self insured against that possibility, in addition to the fact that there is no precedent of having a planning director that has ever done that. But, if we were ever to in the future, it would be virtually or actually impossible. Mr. Morris then added a couple of definitions at 101-1 in trying to ensure that the County is as aligned as possible with State Statute with regard to some of the definitions. Mr. Morris then read the definition of local planning agency which had been updated and is also up for approval with this item. Mr. Morris then asked to add a reference to the Comp Plan, to Section 102-185(a)(b) and (c), which basically inserts the words "or comprehensive plan" between land development code and the standards and procedures hereinafter set forth in all three sections.

Chair Scarpelli wanted to make it clear that this was just adding additional changes to the definition of what a local planning agency is, which is not in the packet but which he has summarized. Mr. Morris confirmed that to be correct. Commissioner Demes asked about the one thing that came before the Planning Commission that he thought was really strange was the Sugarloaf property dispute about the stay of the order to stop construction. It came to the Planning Commission to determine whether they

found in favor of the head building official's finding and asked where that fit in the definition of planning agency for the Commission to do that. Mr. Morris responded that the merits of that case will be heard by the Commission next month and will be very interesting. The reason that question came to the Commission was because under existing Section 102-185(d) it provides for a procedure which has only been exercised once in the entire history of the Planning Commission in Monroe County, being that case, which is to seek review of the automatic stay. It arose as a feature of the appellate jurisdiction which maybe people have never seen fit to seek a stay or maybe they just have never read the code and never figured out that that is a mechanism in which you can seek for a dissolution of a stay.

Commissioner Ritz stated that he had previously asked Mr. Morris about the structure, and that's on page four of fifteen. When you read that, it's a car, a truck, a trailer, or anything that's moveable, and clearly those aren't structures. That's why Mr. Morris said you have to read it in conjunction with other parts of the code. Chair Scarpelli added that that requires a location on a parcel of land, which a truck doesn't, but a mobile greenhouse would. Chair Scarpelli asked Mr. Morris if he was saying that with other areas of the code which further define structure, if that would prevent this term being utilized against the County for lawsuits. Mr. Morris responded that it also riffs off the definition of structure in the Florida Building Code. It is good to have consistency across the growth management rules from their various fonts. It makes those definitions consistent and the land development code and contains related rules of interpretation that kind of hem in to the world of what's reasonable. Interpretations are something of a line-drawing exercise. Commissioner Demes then discussed the issue of international shipping containers and whether it's a structure. Commissioner Ritz added that it depends on the use of that shipping container. Chair Scarpelli added that intent matters and the Commission would hear that case again, too, in the near future. Mr. Morris summarized that he would like these definitions added to the recommendation to protect the County from more frivolous litigation.

Commissioner Demes asked how what the Commission determined today would affect what may be in the process already. Mr. Morris stated that it depends at what stage it is in the pipeline and what kind of claim might be brought, on what the fact pattern is and the cause of action. Mr. Morris is not aware of anything that would be implicated by this in terms of active permitting. Chair Scarpelli noted that this was originally about home occupational permitting but now this being added has nothing to do with that. Mr. Morris responded that this had been publicly noticed as home occupation and other provisions.

Ms. Schemper then returned to the home occupation topic. Back in 2021 the State adopted a new law that preempts local governments from regulating certain home-based businesses. They included criteria, so as long as a home-based business meets the criteria, a local government cannot require them to get a special permit for it. The County already had on the books home occupation special use permit requirements and this portion of this amendment is to address the statutory change and includes a new exemption from the County's home occupation special use permit for those businesses that meet the statutory criteria. This amendment states that the special use permit is required but a statutory home-based business is exempt from requirements. This keeps the County regulations in place but gives an exemption. A definition is now included for statutory home-based business with the six criteria taken directly from the statute. Ms. Schemper then reviewed those criteria. The rest of the home occupational code remains in place. If this statute changes later, the criteria would then be updated. If it were repealed, the County's previous home occupational special use permit regulations would stay in place as they were.

Commissioner Ritz confirmed that no one needed to apply for the exemption, that they were just exempted. Ms. Schemper explained that no one would need to come in and apply for a statutory exemption. Staff is also looking for approval to include the additions made by Mr. Morris.

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

Motion: Commissioner Demes made a motion to approve, including additions by Mr. Peter Morris. Commissioner Ritz seconded the motion. There was no opposition. The motion passed unanimously.

4. DOLPHIN RESORT (LITTLE PALM DOLPHIN RESORT DEVELOPMENT, LLC), 28550 OVERSEAS HIGHWAY, LITTLE TORCH KEY, FL 33042, MILE MARKER 28.5: A PUBLIC HEARING CONCERNING A REQUEST FOR A MAJOR CONDITIONAL USE PERMIT BY DONALD CRAIG OF SPOTTSWOOD, SPOTTSWOOD, SPOTTSWOOD & STERLING. ON BEHALF OF LITTLE PALM DOLPHIN RESORT DEVELOPMENT, LLC, FOR THE CONSTRUCTION OF A 38 UNIT RESORT WITH 8 EMPLOYEE DWELLING UNITS ON THE PROPERTY. THE SUBJECT PROPERTY IS DESCRIBED AS A PARCEL OF LAND IN SECTION 28, TOWNSHIP 66 SOUTH, RANGE 29 EAST, LITTLE TORCH KEY, MONROE COUNTY, FLORIDA, HAVING PARCEL ID NUMBER 00113570-000100. (FILE 2021-248)

Removed from Agenda

Items 5 & 6 Read Together

5. AN ORDINANCE BY THE MONROE COUNTY BOARD OF COUNTY COMMISSIONERS AMENDING THE INTRODUCTION AND BACKGROUND, GOALS, OBJECTIVES, AND POLICIES, AND GLOSSARY OF THE MONROE COUNTY 2030 COMPREHENSIVE PLAN TO CLARIFY THE CONTINUING APPLICATION OF THE MONROE COUNTY 2030 COMPREHENSIVE PLAN TO DEVELOPMENT, TO CLARIFY THE GENERAL AND DEFINED TERMS SECTIONS, TO CLARIFY CONSTRUCTION OF CONFLICTS WITH THE MONROE COUNTY CODE(S), AND MODIFY ACCESSORY USES AND STRUCTURES; 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 2022-093)

6. AN ORDINANCE BY THE MONROE COUNTY BOARD OF COUNTY COMMISSIONERS AMENDING MONROE COUNTY LAND DEVELOPMENT CODE CHAPTER 101, SECTION 101-1 DEFINITIONS, AND CHAPTER 130 LAND USE DISTRICTS, ARTICLE III. PERMITTED AND CONDITIONAL USES, SECTION 130-83(A) IMPROVED SUBDIVISION DISTRICT (IS) AND SECTION 130-99(A) URBAN RESIDENTIAL-MOBILE HOME DISTRICT (URM), AND CHAPTER 118 ENVIRONMENTAL PROTECTION, ARTICLE I. IN GENERAL, SECTION 118-12 SHORELINE SETBACK, TO MODIFY AND CREATE CRITERIA APPLIED TO SPECIFIC ACCESSORY USES AND STRUCTURES TO ALLOW FOR LIMITED ADDITIONAL USES AND STRUCTURES WITHIN THE IMPROVED SUBDIVISION (IS) AND URBAN RESIDENTIAL MOBILE HOME (URM) LAND USE (ZONING) DISTRICTS; 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 LAND DEVELOPMENT CODE; PROVIDING FOR AN EFFECTIVE DATE.
(FILE 2022-094)

(10:44 a.m.) Ms. Cheryl Cioffari, Assistant Director of Planning, presented the staff report. These two items are a text amendment to the Comp Plan and Land Development Code. The changes in the Comp Plan are a little smaller and most of the substantive changes are in the Land Development Code. These items were directed by the BOCC to accomplish two things. One is to provide potential options and concepts for accessory structures and uses on vacant platted lots; and, two is to reduce potential takings liabilities.

Normally under the current code and comp plan, accessory structures are allowed on a primary lot or on an adjacent lot. The idea behind this amendment would be to create a new subsection to allow associated platted lots, and that would allow specific accessory uses and structures to be constructed or developed on these associated platted lots. In the Comp Plan the changes are within the glossary, so the first changes are basic to specify the rules of construction of how the glossary works within the Comp Plan, how it applies and the purpose of that. The changes to accessory structures is it provides a specific exemption for these accessory uses and structures within the urban residential mobile home and improved subdivision land use districts.

In the Land Development Code you will see that, generally, these uses and structures have to be under the same ownership as the lawfully established principal permanent residential unit, on the same key or island, and staff is recommending within three miles of that principal use, and within the IS or URM zoning districts. Ms. Cioffari presented the changes. First, it's a duly recorded lot in IS or URM. It's subordinate to and serves an existing lawfully established permanent residential unit on the same key or island, less than three miles away as measured in a straight line. The reason staff went with three miles is due to the concerns brought up at the community meetings and DRC meeting about the distance of potential accessory uses on some of the larger islands such as Big Pine Key and Key Largo. Key Largo is 21 miles long, so the idea that somebody could own a home in the north end and purchase a vacant lot at the south end, that's a pretty significant distance to travel. There has continued to be community input and feedback that three miles is too far, so that may be something that the Planning Commission wants to consider. Feedback has been that it should be on the same street. There would be a maximum of one platted lot per single-family residential unit, or a maximum of two platted lots per duplex. The lot for accessory uses and structures cannot be designated as Tier I. There is no authorization for removal of vegetation or clearing of upland vegetation or impact to wetlands authorized. A building permit would be required to establish the use and that building permit number must be in a visible location from the front property line.

Ms. Cioffari then explained the actual specifications of types of uses and structures. This change came from a discussion of potential docks and docking facilities and grew from there. The changes in Section 118-12(m) are to ensure that the allowances between 118-12(m) and what's proposed in the IS and URM districts are consistent. It goes into electrical and water service, and who can use the docking facility which is the occupants of the permanent residential dwelling unit. Temporary parking of motorized vehicles is only permitted during the time the property owner is actively utilizing the dock or docking facility. There was concern that people would purchase a lot, put their boat on a trailer and just leave the boat and trailer on the lot. It is staff's position that the intent was to allow people to develop a dock, utilize that dock, but not necessarily utilize the vacant platted lot as storage for a trailer with a boat on it. Liveaboard vessels would be prohibited. Under the IS and URM, these docks or docking facilities are limited to lawfully altered shorelines adjacent to manmade canals, channels or basins. A dock box is permitted five feet or less in height. Text shown in purple in the staff report is text that is not recommended by staff. A lot of feedback was received from the community about these enclosed

structures. The BOCC wanted this included to get community feedback. The reason 700 square foot cumulative total was specified is if there is a desire to allow an enclosed structure, 700 square feet would accommodate a typical RV or decent size boat, but staff is recommending to keep the amendment and proposed uses and structures smaller. If the program and regulations are successful, then it can always be opened up. There's allowance for gardens, play structures, tiki huts, and pools as a part of a homeowners' park. The declarations of restrictive covenants is a legal instrument approved by the County Attorney to retire all development rights on that vacant platted lot, prohibit the rental to a third party, prohibit commercial use, and lawfully tie the principal use and this previously vacant platted lot together. The accessory structures must comply with all setbacks and bulk regulations and minimum open space requirements. If they are within the shoreline setback, there are additional regulations. In section (L) there is a maximum height of 16 feet and in the shoreline setback that is smaller, so this is to ensure that if you are in the shoreline setback, all height, open space and setback requirements must be complied with. The maximum height of 16 feet would accommodate a typical RV garage height. Staff is recommending approval of the proposed amendments to both the Comp Plan and Land Development Code.

Commissioner Ritz asked if the purpose behind this proposal is for non-contiguous properties or would this also apply to contiguous properties. Ms. Cioffari responded that there are already regulations for contiguous or adjacent parcels, so this would apply to non-contiguous, non-adjacent parcels. Ms. Schemper added that an adjacent parcel can have any sort of accessory use per the current land development code, and directly across the street can have a dock as an accessory use. Chair Scarpelli asked if then this code would also apply to lots across the street, and Ms. Schemper stated that currently you can only put a dock across the street as an accessory use to your home, but that this code would open up more possibilities for lots across the street. Commissioner Demes stated that he understands this accessory lot is tied to the primary residence and that it would somehow reduce the County's liability for takings claims. Ms. Cioffari and Ms. Schemper confirmed that to be correct, that the development right would be retired off of the accessory lot and would no longer have density for a dwelling unit at any point in the future. Commissioner Demes stated that though this is huge for him, he doesn't see this being enforced. He can see the good in it but three miles is too much and lends itself towards abuse, and it's the person three miles away that is living with the abuse. Commissioner Neugent added that this started out being a contiguous lot and that means adjacent to, and Chair Scarpelli reminded him that that option remains in place today.

Mr. Peter Morris interjected that contemplating abuse of this tool should be as much a threat to the property owner as to the BOCC and the public. Though he hasn't had a chance to noodle the language to crystallize final form, he could build something into the restrictive covenants that provides remedies to the County that are separate and apart from Code Enforcement that essentially make it a situation of mutually-assured destruction. Some legal instruments incorporate remedies that are in addition to Code Enforcement and are not confined to just using the Code Enforcement process such as entitlement to an ex parte injunction, which is an injunction where you don't even have to provide notice to the other side because there's a presumption of irreparable or irreversible damage. So it's possible to explore building in tools that would be more severe and more efficacious in terms of the County exercising its own legal rights and seeing a result in a temporally compressed fashion as compared to Code Enforcement which would be substantially more severe such that no property owner would dare think to abuse this ability to do this.

Commissioner Ritz stated that he is not necessarily in favor of that, but is in favor of another regulation to Commissioner Demes' point. Such as, if someone wanted to hook up to water, they could do that because water is needed at the dock, but maybe they could be prevented from hooking up to sewer. Ms. Cioffari stated that water is only allowed with a docking facility and is limited to a five-eighths inch meter with a backflow preventer to a single hose bib located at the docking facility. Commissioner Neugent added that

they could also only have 30 amps of electricity. Commissioner Demes stated that he has seen it all, such as a speed bump that he thought was a traffic control device which was actually a three-quarter-inch waterline going across the road to vacant lots to supply them with water. So he would be interested in something along the lines of what Mr. Morris brought up, because he is living the nightmare, and asked if this could be approved contingent on that without having the actual language. Ms. Schemper thought something would have to be put in as a recommendation by the Planning Commission with the restrictive covenant items, retiring density and something else regarding enforcement built in. Commissioner Demes stated that he would be for that because the positive side when getting to August 2026 outweighs his personal issues, but he is concerned about the abuse. He's seen people do things that are very innovative but highly illegal. Mr. Morris thought that having language for due process purposes would be feasible and would suggest remedies to the County in the restrictive covenants such as automatic entitlement to preliminary and permanent injunctions enjoining any and all use of the property until such time as compliance is achieved or forfeiture of the rights to use that lot on which the principal use is not established pursuant to this section of the code until all violations are cured. Commissioner Demes stated he is all for that. Commissioner Ritz stated he would be opposed to that because this is an enticement for people to give up their right to develop because the County doesn't want to buy it and to reduce the County's exposure to takings. By putting the property owner's right in a guillotine is not the appropriate way to entice someone to go down this road. Commissioner Neugent asked if there was any restrictive language proposed where this square footage would end up not being attached to an existing residence. Ms. Schemper responded that there was not specifically, but that it is not necessary because the 700 square foot enclosed structure would be for properties that do not have a residence. If it's a property that has a residence then a whole different set of existing rules apply. This would only be to structures on a vacant lot. Chair Scarpelli noted that staff is not recommending approval for a structure so that whole thing could be nixed which would solve the problem, or it could be allowed with reduced square footage. Mr. John Wolfe reminded the Commission that this whole Comp Plan and LDC amendments is concerning non-contiguous lots. Commissioner Neugent asked about elevation on the 700 square feet. Ms. Cioffari clarified that it is noted in the staff report that FEMA would not consider these types of enclosed structures as accessory so they would need to meet floodplain regulation, so a proposed garage would have to be built to meet those regulations. Chair Scarpelli interjected that the structure also must be under 16 feet at the same time. Chair Scarpelli then asked for public comment.

Mr. Stuart Schaffer representing Sugarloaf Shores Property Owners Association stated that they strongly oppose this proposal, both the board and the members. Once you move away from a contiguous lot, the incentive to maintain and upkeep that property drops drastically. They also believe that whatever is put into the restrictive covenants is going to be hard to enforce as Commissioner Demes alluded to. There are presently a lot of contiguous vacant lots where there's a lot of bad stuff going on. He appreciates the staff putting in the three-mile limit but that can cover an entire community. Once you get off the street and get too far away the incentive for the homeowner to keep that lot looking good for his new neighbors three miles away drops drastically and it won't be able to be enforced. SSPOA disagrees that the benefits on taking cases would be huge, and rather believes that the takings cases won't be successful. ROGO has been in place for a long, long time. He understands staff is reluctant to put out a detailed analysis of the takings liability because it's not in the County's best interests when going to the State and asking them to share in the cost, but he believes the cost benefit is not here with this ordinance. He sees these being used as party lots and if the party lot is any distance from the residence, it will be a problem. SSPOA requests this is rejected completely. If the Commission chooses to move forward, he then suggests having it be on the same street and within a much shorter distance such as 100 to 200 feet, so just down the block where your neighbors are still in walking distance to complain about what is being done there. Staff has recommended not to move forward with enclosed structures and SSPOA agrees, as they are the most capable of being abused.

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

Mr. Peter Morris spoke about takings jurisprudence and recent developments. There was an opinion released by a three-judge Third DCA panel in the Shands case in which the judge who wrote that opinion cited dissenting opinions from federal cases and some Law Review articles which generally don't stand for precedence within state law jurisprudence. Notably absent was Florida precedent regarding takings law. To that end, he would push back against Mr. Schaffer's advocacy to not be concerned with takings liability in an era where there are political incentives to take whacks at local government regulatory bodies because it promotes their political interests to be elevated vertically along the bench. Regardless of what our victories have been defending the County from takings suits, we may be dealing with judges that treat precedence like an etch-a-sketch. He cautions investing too much confidence that precedent is something to hang your hat on.

Chair Scarpelli asked about trash pickup. Ms. Schemper responded that that was a good question. Mr. Morris stated that these are things that could be built into this code. Chair Scarpelli believes there are some benefits to this because even without this, going down Sugarloaf Boulevard there are probably ten vacant lots with somebody else's boat trailer illegally parked on somebody else's lot right now. If that person with the boat trailer there could buy that lot and do something right with it, there's something positive to fix a problem that already exists, but he agrees it needs to be closer. Commissioner Neugent asked if Mr. Schaffer's property owners' association could regulate as to a charter, and Mr. Schaffer responded that it could not. Commissioner Thomas stated that she lives in the City of Marathon and on her street there are a couple of vacant lots. Though she doesn't know who owns them, she knows it's no one in the area. She is not a fan of having this being up to three miles away. It should be a property on the street where you live. Commissioner Ritz stated that he understands everyone's point of view but eventually, the County, meaning everyone in the County, will have to pay the piper for all of these vacant lots. He personally would like to make that list as small as possible. The more we can chip away at the list of lots that we potentially have to buy, the better, and he thinks this is a very creative solution to reduce it. However, you have to make it such that somebody wants to play the game. If we make this so tight no one is going to play the game and the inventory is not reduced, then we will all end up buying these vacant lots we're trying to protect. Commissioner Demes stated that he appreciates Commissioner Ritz's and everyone's opinions. This is a complex issue with different experiences. Compliance is a huge driver for him. He takes exception to the idea of it being a guillotine over someone. If somebody enters into this agreement, if the intent is to do what is put in place and it's an honest person, there is nothing to worry about; but, if the intent is to do what's happening right now, at least there's a hammer to address it, and he doesn't think it would draw that many people with good intent away. Chair Scarpelli agreed with Commissioner Demes. Right now there are regulations in place that if you want to build an accessory structure on your property you have to sign a restrictive covenant. Commissioner Ritz stated that he is happy with the restrictive covenant, but is saying that Code Enforcement is the hammer. Chair Scarpelli asked if the Commission was happy with the 700 square feet and the three-mile distance. Commissioner Neugent stated that he was not.

Commissioner Demes attempted a motion for approval to include the covenant discussed by Mr. Morris, for reducing the distance to less than a mile, and including the recommendation of non-habitable enclosed space up to 700 square feet providing it must meet floodplain requirements. Commissioner Neugent stated that Commissioner Demes was being contradictive by including the non-habitable square footage. Mr. Morris read some items that he had pencil whipped together for restrictions. It is not wise for the County to give out privileged uses of land without ensuring it has a cost-effective and efficient way of enforcing its rights if someone decides they're not going to paint by the numbers. Commissioner Neugent asked if this would go before the BOCC for approval, and the answer was yes. Commissioner Neugent asked if this had really been discussed enough to identify all of the pros and cons. Chair Scarpelli wanted to add that trash service be secured prior to any dock being constructed, and there should be a bunch of things with water and energy. Commissioner Demes asked if a lot automatically includes the element for

trash pickup. Ms. Schemper believed it was a separate fee. Mr. Wolfe stated that it is not assessed on vacant lots. Mr. Morris then read some sample language into the record.

Commissioner Demes revised his motion for approval to include limiting the distance to a mile or less, that the enclosure be open and not closed, that solid waste be addressed to cover uses on the lots that generate waste, and to include the language by Mr. Peter Morris. Commissioner Thomas seconded the motion. Ms. Schemper asked if limiting the enclosures to open, not enclosed, if he means that an open roofed structure on the property would be limited to 700 square feet, or simply no enclosed structures. If the line item for enclosed structures is deleted, open structures would still be permitted. Commissioner Demes stated that he did not want to be conflicting within that. Ms. Cioffari added that an open tiki would not necessarily be limited to 700 square feet. Commissioner Demes asked for staff suggestions. Commissioner Neugent stated that he could not support this motion because it's rife with unintended consequences. Ms. Cioffari noted that a 10 by 12 tiki hut would be 120 square feet. Ms. Schemper stated there is a regulation within the shoreline setback which states the tiki can be no larger than 200 square feet. Chair Scarpelli thought 200 square feet would be fine if it's for a shoreline use. Commissioner Ritz added that there are many vacant lots that are not on a canal. Ms. Schemper then reviewed current regulations to get everyone back on track. If it's a lot on a canal, you could put a dock there. If you have a dock there, you would be allowed to park the boat trailer there if the boat is being stored at the dock. For a canal lot or dry lot, an associated lot can have things such as a tiki or shade structure or screen enclosure. You can park there while you're there, but it does not allow outright parking of vehicles and trailers for storage purposes when not there using the parcel. You may or may not be able to do an enclosed shed or garage depending on the Commission's recommendation. Water and electricity is only allowed if there is a dock for a boat lift and a hose bib. A lot bought by the subdivision for a homeowners' park can have a pool, otherwise no pools are allowed on any of these associated lot properties.

Commissioner Demes wanted to limit the size of the open structure to something unobtrusive. Ms. Schemper recommended doing away with garages and sheds, as staff had recommended, but allow open structures, shade structures, possibly screen enclosures, somewhere between 200 and 300 square feet. Commissioner Demes made another attempt at a motion to approve to include one-mile or less distance, no enclosed structures, open structure to 300 square feet cumulative including screen enclosures, to include Mr. Morris's language for non-compliance, and that the solid waste service is addressed to deal with potential uses that generate waste beyond a vacant lot. Commissioner Thomas seconded the motion.

Motion: Commissioner Demes made a motion to approve Item 5 with the above-listed conditions. Commissioner Thomas seconded the motion.

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

Commissioner Ritz asked if this item would still go to the BOCC without a recommendation. Commissioner Neugent suggested having a workshop meeting. Chair Scarpelli stated the community meetings had already been held. Ms. Schemper noted that there had been three opportunities previously for public input and was not sure what would be gained by having more workshops. Chair Scarpelli stated that prior to the meeting, he had thought this looked like a really great idea, but sitting here now the potential pitfalls have been uncovered. What has been discussed should be enough for the BOCC to take the information and do with what they will with it. Ms. Schemper noted that this would all be included in the backup for the BOCC. Mr. Wolfe stated a similar motion would be needed for Item 6. Commissioner Demes made a similar

motion for Item 6, applying it to the Land Development Code. Commissioner Thomas seconded the motion.

Mr. Morris interjected that there are some components of Item 5 that are separate and apart from the accessory conversation, so if the accessory component is destined for the same result just witnessed, if possible, he would prefer to not jam up the other aspects of Item 5 by keeping it together with the accessory component as there was no heartburn with respect to the amendments to the glossary of the Comp Plan other than accessory use. He does not want to see the Comp Plan amendments to the glossary sink with the accessory use. Chair Scarpelli stated that vote had already gone through with the last motion. Mr. Wolfe stated that the Commission could always reconsider.

Mr. Morris then asked for a motion to reconsider the prior motion.

Motion: Commissioner Demes made a motion to reconsider the prior motion for Item 5. Commissioner Thomas seconded the motion.

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

Mr. Morris asked for a motion to approve the amendments to the Comp Plan glossary which are not tethered to the accessory discussion for Item 5.

Motion: Commissioner Demes made a motion to reconsider the prior motion for Item 5 as concerns the Comp Plan Glossary. Commissioner Thomas seconded the motion.

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

Motion: Commissioner Demes then made a motion to approve Item 5 as made previously as to the Accessory Uses which had failed. Commissioner Thomas seconded the motion.

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

It was clarified that Item 6 has nothing to do with the Comp Plan. All of Item 6 is regarding the accessory structures on vacant lots.

Motion: Commissioner Demes made a motion to approve Item 6 with all provisions of Item 5 applied to Item 6. Commissioner Thomas seconded the motion.

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

7. AN ORDINANCE BY THE MONROE COUNTY BOARD OF COUNTY COMMISSIONERS AMENDING MONROE COUNTY LAND DEVELOPMENT CODE SECTION 101-1 DEFINITIONS AND CHAPTER 122, FLOODPLAIN MANAGEMENT;

ARTICLE I. – IN GENERAL, SECTION 122-3 – DEFINITIONS, TO UPDATE THE DEFINITION OF MARKET VALUE TO BE CONSISTENT WITH THE FLORIDA DIVISION OF EMERGENCY MANAGEMENT - BUREAU OF MITIGATION - STATE OFFICE OF FLOODPLAIN MANAGEMENT’S DECEMBER 2022 GUIDANCE ON MARKET VALUE AND MODEL FLOODPLAIN MANAGEMENT ORDINANCE WHICH IS WRITTEN TO EXPLICITLY RELY ON AND BE COORDINATED WITH THE FLOOD PROVISIONS IN THE FLORIDA BUILDING CODE, MEETING THE NATIONAL FLOOD INSURANCE PROGRAM REQUIREMENTS AND APPROVED BY THE FEDERAL EMERGENCY MANAGEMENT AGENCY IN 2013; PROVIDING FOR SEVERABILITY; PROVIDING FOR APPLICABILITY; PROVIDING FOR REPEAL OF CONFLICTING PROVISIONS; PROVIDING FOR TRANSMITTAL TO THE STATE LAND PLANNING AGENCY AND THE SECRETARY OF STATE; PROVIDING FOR AMENDMENT TO AND INCORPORATION IN THE MONROE COUNTY LAND DEVELOPMENT CODE; PROVIDING FOR AN EFFECTIVE DATE. (FILE 2023-024)

(11:55 a.m.) Mr. Karl Bursa, Senior Administrator, Floodplain Program, presented the staff report. This is a required amendment that is being forwarded by the Florida Department of Emergency Management State Floodplain Office and FEMA. On November 15, 2022, the BOCC adopted the new Floodplain Management Ordinance Number 026-2022. Upon adoption, staff received a communiqué from the State Floodplain Management Office that it was a conditional approval, and that the County needed to amend a section of our code that delineates an addendum to the market improvement value permitted in a substantial improvement or substantial damage situation to assign to structures. The Monroe County Code has a 20-percent addendum that you’re allowed for your market improvement value that is allowed when there is a substantial improvement or substantial damage situation. You get to take the MIB from the property appraiser’s database and add 20 percent to it before that number is cut in half for the 50 percent improvement value. FEMA and FDEM stated that is not something they were willing to accept. They granted conditional approval of the ordinance provided that we went back and amended the ordinance. That is Chapter 101, Section 101; and, Chapter 122, Section 122-3. In both situations the same nine words are stricken in both of the sections of definitions, which is “adjusted by 20 percent to approximate market value.” Staff is recommending approval.

Commissioner Demes asked about the new way that the floodplain improvements are assessed where you can elevate your house which may increase your value by 200,000 because you can now utilize the space underneath for parking or whatever. Somehow, the improvements for that and possibly the hurricane windows will not be put against the assessed value. He does not know how this will be tracked over time, where you’re not taxed on those improvements that potentially add a hundred-thousand or so value. Would it be best to take out the tax assessment value from this as well or will it have any impact on what’s going on for the particular intent of this amendment. Mr. Bursa stated that the reason this came back is because there were 100 different communities in Florida that use an addendum to their assessed property value with the market improvement value and there was no standard. It ranged from five percent to 150 percent. Because there was no consistency, FEMA and FDEM stated this would need to be removed entirely from the calculus. Market value will be the set metric. There will be no addendums or additions thereto. Commissioner Demes asked what value does the assessed value have in this because higher is better. Assessed value is going to be low-balling, understanding the confusion on this new calculation of the value of a house where you’re not taxed on the improvements made for improving the floodplain. Commissioner Neugent asked if a raised house increases a value, if the tax assessor would establish a comparable to say that’s what the house is worth. Commissioner Demes stated that he’s not supposed to, you can’t value a tax increase on that because that is exempt from your value calculation. Chair Scarpelli stated that this is why the addendums were there originally to handle that exact issue and

give you that additional value to your home so you could further improve it. Now, without this, you're better off going to get a private appraisal of that home. Commissioner Demes asked how the assessed value has anything to do with the intent of this 50 percent.

Ms. Schemper interjected that this comes down to almost semantics in the wording. It says tax assessment value. But the value that's used from the property appraiser is the market improvement value. The assessed value with the property appraiser upon which the taxes are calculated also includes the land, but is also subject to limits on how much it can increase every year and whether it's homesteaded. Now there are these new issues about improvements related to flood or storm protection. Ms. Schemper would have to check with the property appraiser to be certain but believes the market improvement value number currently provided by the property appraiser, that value may continue to reflect the actual value of the home, and then any adjustment made to that for tax assessment purposes are made after that. Currently, only the market improvement value is used because that only includes the house structure itself. Commissioner Demes stated that that adds a whole additional dimension of confusion to the equation.

Mr. Wolfe clarified that it's the market improvement value which is looked at for this particular calculation. Ms. Schemper confirmed that to be correct, noting that staff would check in with the State Division of Emergency Management and the property appraiser to ask some of these detailed questions. This may seem very minor but the fact that this definition says tax assessment value, then that may be distinct from assessed value. Commissioner Demes added that when dealing with losing a margin of 20 percent that is huge. That is why he would like everyone to really understand this. Chair Scarpelli stated that in dealing with this all the time for his clientele, he will now advise clients to get private appraisals which will get you back the higher value to do more of what you want to do to your home if it is below flood. Mr. Morris added that since this was directed from the central body the County doesn't really have discretion. Chair Scarpelli then asked for public comment.

Mr. Tim Urbanski stated he has some experience on this issue. The 50 percent rebuild rule for substantial repair or improvement is based upon the actual reconstruction value of the house or structure. The insurance company uses the term Building A. The tax appraiser does not appraise the structure at full value. There are formulas such as common level ratios or multiplication factors applied to the appraised values to come up with the true current market value. These formulas are moving targets that can adjust for market conditions. Mr. Urbanski suggests if going forward using the market improvement value that one of the things recommended be to ask the tax appraiser to come up with a methodology to value the structures at their real construction cost per square foot. Mr. Urbanski used his house as an example where it's stated that his house can be rebuilt for \$285 to \$290 per square foot, when it's really more like \$500 to \$600 per square foot. Regarding outside appraisals, that is a great idea, but if a homeowner can go get a private appraisal on a house, can you also get an after-the-fact appraisal on the opinion of what the house was worth before hurricane damaged, even though damage has now occurred and can that be used. Things like this are ideas that should be considered. It's an important issue and a dangerous issue. The precedents set have everybody's Building A structure valued significantly lower than current market cost, and 50 percent of that is even lower yet. A new house is not going to cost what an appraiser thinks it is worth, it's going to cost twice that.

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

Commissioner Ritz stated that the 20 percent less was intended to true it up to what it really should be. It was prefaced as a required amendment. So he agrees with all of these great comments but it doesn't matter because this is a required amendment. Mr. Wolfe stated that it was confusing before and it's going

to be confusing after. Mr. Morris added that he can envisage that assessments are probably low-balled so as to not have an atom bomb of VAB appeals.

Motion: Commissioner Ritz made a motion to approve. 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.

BOARD DISCUSSION

Chair Scarpelli noted there were no printed minutes.

GROWTH MANAGEMENT COMMENTS

None.

RESOLUTIONS FOR SIGNATURE

None.

ADJOURNMENT

The Monroe County Planning Commission meeting was adjourned at 12:15 p.m.