

PLANNING COMMISSION
September 27, 2023

Meeting Minutes

The Planning Commission of Monroe County conducted a hybrid virtual and in-person meeting on **Wednesday, September 27, 2023**, beginning at 10:00 a.m.

CALL TO ORDER by Chair Scarpelli

PLEDGE OF ALLEGIANCE

Motion: Commissioner Neugent made a motion to allow Ex-Officio Member to attend via Zoom. Commissioner Ritz seconded the motion. There was no opposition. The motion passed unanimously. However, Commissioner Demes stated that he would not disapprove this time but when fifty percent of the agenda deals with the Navy, he would appreciate an in-person attendance in the future because he thinks it's important.

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)	Present via Zoom

STAFF

Emily Schemper, Senior Director of Planning and Environmental Resources
Mike Roberts, Assistant Director of Environmental Resources
Brad Stein, Development Review Manager
Liz Lustberg, Senior Planner
Peter Morris, 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

Items 2 and 3 were requested to be read together.

DISCLOSURE OF EX PARTE COMMUNICATIONS

None.

APPROVAL OF MINUTES

Motion: Commissioner Neugent made a motion to approve the August 23, 2023 meeting minutes. Commissioner Demes seconded the motion. There was no opposition. The motion passed unanimously.

MEETING

AGENDA ITEMS

1. MOBILE HOMES HOLDINGS COCO, LLC, 21585 OLD STATE ROAD 4A, CUDJOE KEY, MILE MARKER 21.6: A PUBLIC HEARING CONCERNING A REQUEST FOR AN AMENDMENT TO A MAJOR CONDITIONAL USE PERMIT. THE REQUESTED APPROVAL IS REQUIRED FOR THE REDEVELOPMENT OF A TOTAL OF FORTY-SIX (46) AFFORDABLE DWELLING UNITS. THE SUBJECT PROPERTY IS LEGALLY DESCRIBED AS LOT 30 SACARMA, A SUBDIVISION OF GOVERNMENT LOTS 3 AND 4 IN SECTION 29, TOWNSHIP 66 SOUTH, RANGE 28 EAST, CUDJOE KEY, MONROE COUNTY, FLORIDA, RECORDED IN PLAT BOOK 2, PAGE 48 OF THE PUBLIC RECORDS OF MONROE COUNTY, FLORIDA, HAVING PARCEL ID NUMBER 00174960-000000. (FILE 2023-033)

(10:03 a.m.) Mr. Bradley Stein, Development Review Manager, presented the staff report. This is an amendment to the major conditional use permit to develop 24 additional multi-family affordable dwelling units on an existing affordable housing site with 46 units in total. The applicant is Mobile Homes Holding Coco, LLC. The agent is Bart Smith and Jess Goodall with Smith Hawks. This project has had several other items before the Commission in the past. There have been FLUM and zoning amendments, and a subarea policy approving this type of development on this site. The site is on Cudjoe Key at mile marker 21.6. It is now zoned Urban Residential with a portion to the north as Native Area. The corresponding FLUM designation is Residential High and to the north is Residential Conservation, Tier III. The property is predominantly developed with mangroves and wetland areas to the north. The site of the upland being requested to be developed is 2.3 acres, with the total size of the site being 3.85 acres. Mr. Stein presented the site plan reflecting the layout of the previous approval. The four-plexes are to the front of the property, with some mobile homes going through the property, and additional dwelling units being added, reconfigured and redeveloped are in the center and middle of the property. Parking is throughout the site and under the redeveloped buildings. Pursuant to the subarea policy this project is being reviewed through Section 110-67 for conditional uses. This project is compliant with all of the criteria for conditional uses and staff is recommending approval with four added conditions.

Chair Scarpelli first asked if there were any questions or comments from the other Commissioners. Chair Scarpelli then asked if this was compliant with density. Mr. Stein responded that this would be maxed out, and that 13 of the affordable units are required to be allocated and are already reserved. Chair Scarpelli aside if the applicant wished to speak.

Mr. Jess Goodall of Smith Hawks thanked staff who had been working on this, adding that he has a presentation which is basically the same as Mr. Stein's re-summarizing the project. Many of the mobile homes are rundown from flood damage which is why eleven are being removed and replaced. This is subject to 107.1.7. The major conditional use will allow six elevated four-unit two-story modular residential buildings, all deed restricted for affordable housing, and eleven of the mobile homes will be demolished in the same type of elevated buildings. The six remaining mobile homes were built in 2014 and are elevated above flood elevation. Mr. Goodall presented photographs of the site and agrees with staff's recommendations and conditions.

Commissioner Thomas asked if the current mobile homes being replaced had people living in them now and whether they would get first choice on the new units. Mr. Bart Smith, the owner of the property, responded that he has about 160 units of housing in the lower keys so the goal is to move the tenants somewhere else. Yes, they would get first dibs at the units but when he moves people from one place to another they generally want to stay where they are because moving is a big hassle. It will take eight months from start to complete the units so that would be another move, whereas there are units available now. However, the tenants would have that option.

Commissioner Demes asked if all of the true mobile homes would be demolished with only modular units remaining, noting some of them looked like pre-manufactured small houses. Mr. Smith responded that the small houses are the ones that are elevated. There are some on base flood and the original Coco Palms had gone through Wilma and had significant flood damage. A lot of those units were taken out after Wilma. The property was then purchased by Pritim Singh who had put in the smaller units. Some were elevated because that was the second time they were flood damaged. The others were put below base flood and the ones below base flood are all being removed. Those 2014 units are in fantastic shape and he would love to relocate them, but he doesn't think it's feasible from a building code perspective to do so. Commissioner Demes was surprised that they weren't being made consistent with the four-plexes. Mr. Smith stated that he was working within the constraints of what makes fiscal sense. The costs of units have gone through the roof, up to almost 350,000 per unit, and may be up to 400,000 by the time they start on this project. Commissioner Demes asked what the issue was with having to cut down the palm trees. Mr. Mike Roberts, Assistant Director, Environmental Resources, responded that the palm trees in question are coconut palms and are listed as a category two invasive exotic species because they are not native to the Keys or even Florida. The Land Development Code requires the removal of category one and two exotic species in development or redevelopment of a site. Therefore, the existing coconut palms on the property have to be removed. Commissioner Ritz added that he would support that, although the entirety of his comments could not be discerned as the microphone did not pick up.

There were no further comments or questions by Commissioners. There was no public comment. Public comment was closed.

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

Items 2 & 3 were read together. Item 3 was read first, then Item 2.

2. AN ORDINANCE BY THE MONROE COUNTY BOARD OF COUNTY COMMISSIONERS AMENDING THE MONROE COUNTY FUTURE LAND USE MAP DESIGNATION FROM RESIDENTIAL HIGH (RH) TO MIXED USE/COMMERCIAL (MC), FOR TWO (2) PARCELS OF LAND, LEGALLY DESCRIBED AS LOTS 3 AND 4, WATERS EDGE, ACCORDING TO THE MAP OR PLAT THEREOF, AS RECORDED IN PLAT

BOOK 1, PAGE 184, OF THE RECORDS OF MONROE COUNTY, FLORIDA, APPROXIMATE MILE MARKER 5, HAVING PARCEL IDENTIFICATION NUMBERS 00132370-000000 AND 00132380-000000, AS PROPOSED BY MONROE COUNTY; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL OF CONFLICTING PROVISIONS; PROVIDING FOR TRANSMITTAL TO THE STATE LAND PLANNING AGENCY AND THE SECRETARY OF STATE; PROVIDING FOR INCLUSION IN THE MONROE COUNTY COMPREHENSIVE PLAN AND FOR AMENDMENT TO THE FUTURE LAND USE MAP; PROVIDING FOR AN EFFECTIVE DATE. (FILE 2023-124)

3. AN ORDINANCE BY THE MONROE COUNTY BOARD OF COUNTY COMMISSIONERS AMENDING THE MONROE COUNTY LAND USE DISTRICT (ZONING) MAP FROM URBAN RESIDENTIAL MOBILE HOME (URM) TO SUBURBAN COMMERCIAL (SC) FOR TWO (2) PARCELS OF LAND, LEGALLY DESCRIBED AS LOTS 3 AND 4, WATERS EDGE, ACCORDING TO THE MAP OR PLAT THEREOF, AS RECORDED IN PLAT BOOK 1, PAGE 184, OF THE RECORDS OF MONROE COUNTY, FLORIDA, APPROXIMATE MILE MARKER 5, HAVING PARCEL IDENTIFICATION NUMBERS 00132370-000000 AND 00132380-000000, AS PROPOSED BY MONROE COUNTY; 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 2023-136)

(10:18 a.m.) Ms. Liz Lustberg, Senior Planner presented the staff report, explaining that one item was for a Future Land Use Map change and the other was for a proposed zoning change. Both are proposed for the County to develop a shoreside facility for a public managed mooring field. The State of Florida allows for managed mooring fields requiring a permit by the state and in order to receive that permit approval to have a managed mooring field, a shoreside facility is required. These changes would allow for the shoreside facility, but the managed mooring field itself is not being discussed. The BOCC approved hiring a company to design the mooring field and handle the permitting for same. Ms. Lustberg is not involved in that and there is public noticing as part of that process. Today's items are for the shoreside facility, not the proposed mooring field itself. The Planning Commission is to decide what to recommend to the BOCC, and no actual decision is made today.

Ms. Lustberg presented an aerial of the property which is within the Stock Island Livable Communikeys area which has several action items that are directly relevant. This would change the land use designation from Residential High to Mixed Use Commercial, and change the zoning from Residential Mobile Home to Suburban Commercial. Ms. Lustberg presented the existing zoning paired up with the existing FLUM in terms of what, in theory, could be developed on the property, with the maximum development potential being in the last column including two permanent dwelling units but no non-residential floor area. The proposed designations allow for slightly fewer permanent dwelling units but have the ability to have the non-residential floor area. The difference is a reduction in permanent dwelling units and an increase in potential max-net density, transient density, and non-residential floor area. Seven criteria are used to decide whether to amend the zoning or FLUM designation. Ms. Lustberg will discuss one change projection and six data updates as those appear to be most relevant, but wanted to point out that both proposed changes are consistent with the principles for guiding development, with Florida Chapter 163, and with the Comp Plan, including the Livable Communikeys Plan. It took five pages of the staff report to list the portions of the Comp Plan that would be furthered by the amendment allowing for the shoreside

facility and the managed mooring field. Staff believes this would have a positive rather than negative impact on community character.

Relevant to compliance with the Comp Plan is that the property is within the sound area for the Navy. Ms. Lustberg presented a slide showing that the 65 DNL line runs straight through the property. The notice was sent to the Navy and the response was, in part, "While the land use compatibility guidelines provided in Table 7-1 indicate that mixed use commercial development is compatible, we recommend sound attenuation, contract notification requirements, and development limits be implemented."

Commissioner Demes asked if the blue line was the 65 DNL line. Ms. Lustberg said that was correct. Commissioner Demes added that 65 DNL is classically considered the high noise area with a plan for the future to possibly go to 60. The property is also in the MIAI and the principles for guiding development, understanding that the mooring field was not included, but with this project he doesn't think the two can be separated to the point of the justification to build this. Being against the mooring field, how could this ever be approved? Commissioner Demes' concern is always incompatible development within the AICUZ for noise, but more importantly for accident potential and clear zones. He will ask Ms. Christina Gardner the technical questions on impact. Talking about the principles for guiding development and the directive by statute to protect the public interest, including the NAS-Key West, to have a mooring field that would not be consistent with that and then approve this to support it and make it possible, he believes would be the wrong thing to do, understanding that he doesn't really have a problem with this particular facility as long as the mooring fields aren't going to exist contrary to what the provisions of high noise and accident potential zones are. Commissioner Demes knows that the County does mooring fields, but something that people do not track is the FWC's effort to create anchor zones, and asked if this would support anchorage as well as the mooring fields. Ms. Lustberg did not know. Ms. Schemper responded that this mooring field would not have an anchorage zone with it, that it will only be a mooring field in this location. Commissioner Demes added that FWC has added anchor zones adjacent to mooring fields which adds loading to the facility. Chair Scarpelli asked how that would be regulated. Ms. Schemper responded that she does not believe there's one of those proposed. FWC had just gone through a process looking for places for designated anchoring areas. Commissioner Demes added that in the Dredger's Key area there were anchorage areas adjacent to the mooring field, the best he could recall, so that was his concern.

Commissioner Neugent added that this has been an ongoing issue for decades. One of the things to get the people who are opposed to it, and for Boat U.S. and others who have lobbied and fought any kind of mooring and/or anchorages, this is to appease them where everybody in this area is going to be on mooring, and the ones who are fighting any kind of getting rid of liveaboards, et cetera, to get to anchor. The City of Marathon has an anchorage area outside of the mooring area and that's what this is all about. The BOCC, back when he was on it and after, has strongly recommended a mooring field because of all of the benthic damage that these anchored boats do in these particular areas. They will try to give some of the whiners a place to go drop anchor if they want to outside of the mooring field. Commissioner Demes added that that defeats the purpose of the mooring field. This is very near and dear to him because he believes when Robert Spottswood was a Commissioner they had the issue of military impact, especially between the County's mooring field issue and anchor zones between Dredger's Key and Fleming Key to the very importance drop zone for the training area that the Army Dive School, and that is key to their dive school training. The Water Defense Support Task Force was pursuing some state protection when they came down here and the Military Affairs Committee hosted them having a meeting here and they were taken out to the dive school. So they put forth some legislation last year for Fort Canaveral and for Key West and there was an issue up north to protect the military interests in that particular area near Dredger's Key, and he is concerned about anchorage areas. Commissioner Demes asked who would police this because the City of Key West has their mooring field beyond 600 feet from

the land and the answer is nobody. Who is going to police this out at Boca Chica, especially the anchorage areas, in the area that could be in the AICUZ, the accident potential zones and the noise zones? The accident potential zones bother him even more than the noise. This may be a question for Christina. Chair Scarpelli asked if he couldn't just anchor his boat out there anyway. Commissioner Neugent responded that he could not in a designated mooring field. Chair Scarpelli asked who would stop him. Commissioner Neugent responded it would be the FWC. The County and City could because the County goes out 1,500 feet. Commissioner Demes thought that these spots were part of a pilot study in the state where they actually had to be on the moorings in these areas. He does not know if that's the case now but that's one of the things that he wants to ensure, that it's a managed mooring field with pump-out facilities.

Ms. Christina Gardner, Ex-Officio Member, NAS-Key West, agreed with Commissioner Demes. The Navy is looking for the safety and mission statement to coexist and so far, she is tracking these items. She believes this could impact improvement to the mooring field as long as it is appropriately designed to take people who are currently anchoring outside of the accident potential zone and the higher DNL levels. Commissioner Demes stated that he is for this a hundred percent if it is not going to allow, directly or indirectly, liveaboard vessels or others in the accident potential zones as well as the high noise area. Ms. Schemper interjected that Brittany from Marin Resources had stated that there is a big misunderstanding that boaters are required to anchor in the designated anchorage areas. Boaters can anchor anywhere, whether or not there is a designated anchorage area, and confirmed there is no anchorage area proposed with this mooring field. It is a mooring field only. The anchorage areas, in general, add additional draft limits. The Boca Chica mooring field is well outside the APZ. Ms. Schemper added that the Commission needs to be careful because this is about the zoning amendment. The BOCC has already given very clear direction that a mooring field is being pursued in this location, and the consultant is preparing the permit applications right now. During the permitting process, there will be an opportunity to weigh in, so the Navy will have the chance to comment through the permitting of the mooring field itself. Ms. Schemper understands this is linked to the zoning amendment because the stated purpose of this amendment would be to allow a public use, that being the shoreside facility for the mooring field. If the mooring field does not happen, the shoreside facility would not happen at this property and the BOCC would have to decide what to do after that. It becomes a chicken and egg situation where a shoreside facility is required to apply for the permit for the mooring field. If something falls apart in the end, it wouldn't be the first time, but presently the BOCC has already given clear direction that they are pursuing the mooring field in this location. Commissioner Demes stated that he appreciates that, but wanted to bring these things to the surface. This is at the County level, but he also deals with issues at the State level to look out for the military in the State of Florida. He wanted to make sure that was covered.

Commissioner Neugent responded that it is kind of hypocritical when the Navy has a marina and mooring field right next to it and inside of these particular delineated areas. Commissioner Demes responded that to some degree, he agrees, but his primary concern is APZs. His understanding is that liveaboard residents have to sign disclosure statements for those in the high noise area. Chair Scarpelli interjected that the Commission was getting in the weeds, and asked Ms. Gardener if she had anything further to add regarding any shoreside facility issues for the Navy. Ms. Gardener stated that everything had been covered in their response. There were no further Commission comments.

Ms. Lustberg interjected that she had not yet finished with her presentation. Going to the criteria upon which the BOCC can decide whether to change the zoning or the FLUM, staff had looked at two items, the data updates and the change projections. Years of data collection and analysis had been done by the County and consultants documenting the problems caused by unmanaged mooring in Boca Chica Harbor and it was determined that these problems could be mitigated through managed mooring, that managed mooring is a viable option for this location, and that managed mooring in Boca Chica Harbor could meet state permitting requirements. This property would provide a shoreside facility to this managed public

mooring field provided all of the applications go through. Chair Scarpelli asked if the County was saying that having a managed mooring field would help alleviate illegal anchoring. Ms. Lustberg confirmed there is and has been mooring in Boca Chica Harbor which has caused all sorts of problems, and doing the managed mooring field is a way to address and mitigate these existing problems. It's not a question of creating a mooring field on an open piece of water where there's nothing there. Chair Scarpelli asked if the shoreside facility would be open to the public or just for the people at this particular mooring field. Ms. Schemper interjected that they did not have those details at this point, and does not believe that the argument for a mooring field was necessary because staff is operating on direction from BOCC. The shoreside facility is needed and this is the appropriate location for that. As Ms. Lustberg has explained, this is due to change projections and data updates, is consistent with the Comp Plan and principles for guiding development, and meets all standards required for a zoning and FLUM amendment. Chair Scarpelli understood, but noted that these questions were asked of other applicants all the time as far as the intent for the property when the Commission is asked to change the zoning, and he believes these are fair questions to know what is going to be happening. Ms. Schemper did not disagree, but noted that even with private applicants, if they don't yet know the answer yet then the answer is we don't have it.

Ms. Lustberg continued with the other relevant criteria of the change projections, and this goes back to BOCC Resolution 078-2008 which basically said they wanted to have managed mooring in Boca Chica Harbor back in 2008. At that time, the BOCC acknowledged the impact associated with anchorage in Boca Chica Harbor and directed staff to evaluate the potential of establishing a managed mooring field and shoreside facilities. The property being discussed is adjacent to Boca Chica Harbor. These change projections regarding public service needs for a public managed mooring field in Boca Chica Harbor came in part from the data collection and analysis done regarding the existing unmanaged mooring in Boca Chica Harbor. Over all of these years, the Florida State regulatory framework has changed in ways that would allow for the County to address this need in ways that would not have been possible when the zoning and FLUM were initially placed on this property. Staff is recommending that the Commission recommend approval for both the zoning and the FLUM amendments.

Chair Scarpelli then asked for public comment.

Mr. Bart Smith, representing Cayo Hueso Investments and Mr. Donald Jonas the immediately adjacent neighbour who lives on the site, pointed out on the site map where his property is located, adding that he is probably the person most affected by this. One of the concerns and issues that Mr. Jonas has associated with the establishment of a mooring field with shoreside facilities is dockage. This is a 60-foot-wide canal that needs to have sufficient space to allow for permitted dockage. This is a navigable channel that is the access way out from his property is down at this end. Mr. Smith presented the aerial with the airfield showing the actual lines for ingress and egress for all vessels to show a significant impediment to ingress and egress. There is no information which normally occurs when these things are requested such as the evidence of what is going to be placed there. Going to the MIAI concern, it is not consistent for MIAI because it is increasing the allocated density for transient uses which is inconsistent with that principle. It's going to be a mooring field allowing for liveaboards in the 65 DNL. This is actually another navigable channel which is not a reasonable place to provide for a mooring field. Understanding the anchoring that occurs in that area, and it's not the anchoring, it's the derelict vessels that keep sinking. The idea is to eliminate derelict vessels throughout the Florida Keys by requiring them to relocate every three months so they can prove that they can actually move under their own power. They have to now come up with 100 mooring balls. This is not an appropriate site. This entire Boca Chica area with canals has some very, very low flats with seagrass. There are other ways to address derelict vessels, such as the 16 mobile homes there used for quasi-affordable housing. Those people would be more than happy if those were rebuilt by the County as new affordable housing that would fit in with the area. He objects to

this rezoning. It is not necessary to do an affordable housing on the project and there are too many details as to a mooring field that need to be brought forward at the same time as the zoning.

Mr. Donald Jonas who has lived on this property for 42 years sees no supervision or policing of all of the derelict boats. They come and go all night long in and out of his property. The property next door with the County is kind of sketchy and it's not right what's going on. He has to call the cops almost every day now because people are going through the land and they break the fence. He calls the police who don't do anything. He has pictures and videos. Every day he deals with this. Now the County wants to make this a mooring field which they don't want to talk about until they get the zoning. The whole area shouldn't change because they want a mooring field. Now, the two mangrove trees in the middle are another away out, and the people come in and out through that every day and night, all the time. There are boats out there with generators running, with dogs out there barking all day long, playing music, and when he calls he gets told to call the County or Code Enforcement. It's the lowest rent out there on Stock Island and the County wants to put it in between a residential area. Having gone around to all of the neighbors there are a lot of people against this. It's hard to reach everyone as most people who own the properties don't live here. Mr. Jonas asked that the little guys who pay the taxes be given a break. It's not right to put 40 mooring balls out there in the channel, a couple of hundred feet from his place. They're going to come right through the property. Most of those boats have two people living on them so that's 80-something people coming through this property next door to his house day and night. This shouldn't go on. This is changing the zoning to have something that is not going to benefit the neighbourhood that's there right now. He would like to send all of the Commissioners pictures and videos of the garbage, and the turds, and all the stuff that floats up every day. For 40 years he had crawfish, but for the last five years there haven't been any crawfish on his seawall. There used to be tropical fish, but now there is green slime. It's not right, and he hopes the Commission will help the property owners and not do this.

Commissioner Neugent stated that he did not disagree with anything Mr. Jonas had said, but he is convinced that what the County is trying to do is to resolve those issues. Without a managed mooring field, what he's having a problem with can't be controlled. The previous owner of the trailer park that used to be there said the same thing and the whole time the mooring field had been talked about, but there were challenges to address. Commissioner Neugent believes the mooring field will go a long way towards addressing these issues that he knows exist, along with the environmental damage that these boats are causing. Mr. Jonas stated that he does not believe it's going to help the community that's there now. Chair Scarpelli stated that he also understood, but if the mooring field was out there then the derelict boats won't be there anymore. The people that have the loud noise won't be able to be there anymore, is the thought, because it's regulated. Mr. Jonas replied that all he heard was they want the change of 30 days or 60 days to move out there. These people already have a plan to move their boat on someone else's anchor and they go right around what is wanted. Oh, it's time for us to move, here's this guy over here, I'm going to go on his buoy, and that's it. The only way to stop them is with no anchoring out in that area. It's protected with all the seagrass. Looking at the pictures there are big circles around every boat that's there. It eats up all the seagrass. Ms. Schemper responded that that is the point of a mooring field because they will be on a mooring ball instead so the seagrass won't be damaged. Mr. Jonas stated that there is not enough water there for that and how would you feel if you lived there. Ms. Schemper responded that he should not direct his comments to staff as it is not staff's proposal. Staff is only processing an application. Mr. Morris interjected that the rules of procedure flatly prohibit a member of the public examining department staff who have furnished the staff report as a courtesy. Ms. Schemper added that she is sympathetic to the issues raised and, as Commissioner Neugent had said, the point of the mooring field is to try to address these issues. This is why the County is pursuing mooring fields. This proposal has been in the works for many years and the BOCC has determined this to be an appropriate site for a mooring field, and a location that needs one for these very reasons.

Chair Scarpelli added that the County will do all things necessary to make sure the depths will be correct for the boats, the seagrass won't be harmed, and they will be anchored properly without damaging the environment. With the pump-out facility they will be required to pump out. As far as navigable waters go, that will be gone through with the whole permitting process. Chair Scarpelli asked if there were any additional public meetings after this zoning change. Ms. Schemper explained that if the zoning change goes through, it could be permitted as a public use as of right, but it's a small facility that would be allowed based on floor area ratio. Commissioner Neugent pointed out that from the boater improvement fund over \$200,000 a year is spent removing derelict vessels. Ms. Schemper relayed that almost \$1.5 million will be spent this year on derelict vessel removal.

Ms. Fiona Leopard, manager of the RV park across the street from the proposed facility, stated that Stock Island does not need a mooring field. The County will be spending \$1.5 million removing derelict vessels and how much money will be poured into removing vessels after every storm when somebody's unfit vessel sinks to the bottom causing more pollution and damage environmentally. What is needed in Stock Island is police presence. There are vagrants, homeless, squatters, prostitutes and a worsening drug problem on the streets of Stock Island. The last thing needed is a mooring field which will exacerbate and contribute to that problem. If not for the Sheriff's Office she might as well close her business doors. This street floods and Uber drivers living in Roy's Trailer Pak move their vehicles ten times every rainstorm because the drains fail. There are no streetlights at her end of Maloney Avenue but there are two multi-million dollar resorts at the end with tourists who are too frightened to walk there after dark. Please prioritize what Maloney Island and Stock Island need because the last thing needed is a mooring field.

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

Commissioner Demes stated that it's obvious there is no ideal solution to make everyone happy, but there is a problem out there. The hope is to manage it as a mooring field from a water quality and other standpoints. His concern is that the entire facility tied to the mooring field is managed, and hopes it's managed better than the lot owned by the County right now which looks in disrepair. The fence is falling apart, there's lumber all over the yard and it looks like it's never been mowed, as a good neighbour should, since the property was purchased. His concerns are management in the future, the parking, and the waterway transit to the property owners be taken into account to not destruct that channel. With the MIAI concerns there's a lot to consider in mitigating all of the concerns as best as possible. Commissioner Thomas had no additional comment. Commissioner Neugent added that this property was a junk pile before the County had acquired it, and there had been a code enforcement lien on the property. Commissioner Demes added that it's a formidable task. Commissioner Neugent thought these concerns needed to be forwarded to Commissioner Cates immediately. Commissioner Ritz had no further comment. Chair Scarpelli agreed that parking needed to be addressed and Stock Island should have a parking garage of some sort which would also help with flooding issues for peoples' vehicles. Some type of security force or police presence would also be helpful. He understands what is being done and thinks it is helping, but we still have to go the next step. Commissioner Neugent added that the BOCC Commissioners need to be made aware of these problems needing to be addressed by each of the Planning Commissioners. Chair Scarpelli asked for a motion on Item 2.

Motion: Commissioner Demes made a motion to approve Item 2. Commissioner Neugent seconded the motion. There was no opposition. The motion passed unanimously.

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

4. TPG PARMERS FL, LLC, 565 BARRY AVENUE, LITTLE TORCH KEY, MILE MARKER 28.5, BAYSIDE: 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 DEVELOPMENT RIGHTS DETERMINATION (LDRD) ISSUED BY THE SENIOR DIRECTOR OF PLANNING & ENVIRONMENTAL RESOURCES, DATED MARCH 8, 2023. THE PROPERTY IS LEGALLY DESCRIBED AS PARCEL 1: LOTS 5, 6, 7, 8, 9, 10, AND 11, MATE'S BEACH, ACCORDING TO THE PLAT THEREOF, RECORDED IN PLAT BOOK 2, PAGE 131; PARCEL 2: LOT 13, LESS THE WEST 5 FEET THEREOF; AND LOT 14 LESS THE WEST 5 FEET THEREOF, MATE'S BEACH PLAT NO. 2, ACCORDING TO THE PLAT THEREOF, RECORDED IN PLAT BOOK 3, PAGE 80; PARCEL 3: A PORTION OF UPLAND (PARCEL 5807) MORE PARTICULARLY DESCRIBED IN THE DEED RECORDED IN BOOK 3036, PAGE 125 OF THE PUBLIC RECORDS OF MONROE COUNTY, FLORIDA, HAVING PARCEL IDENTIFICATION NUMBERS 00218810-000000 AND 00219090-000000. (FILE 2023-083)

(11:08 a.m.) Mr. Peter Morris, Assistant County Attorney, first asked to get a ruling recognizing Ms. Liz Lustberg and Ms. Emily Schemper as experts in the fields of Planning and Flood Plane Management. Mr. Bart Smith agreed to stipulate. Ms. Liz Lustberg, Senior Planner presented the staff report. This is an appeal of an LDRD regarding both permanent and transient units established on the property. The appeal is specifically regarding the number of transient units on the property. Ms. Lustberg presented a site plan of the units in question. The appellant asserts that Parcel A should be recognized as containing two transient ROGO exemptions rather than one permanent ROGO exemption, and that Parcel B should be recognized as containing 45 rather than 40 transient ROGO exemptions. The number of permanent ROGO exemptions recognized on Parcel B is not in dispute.

Ms. Lustberg presented a summary of what had been requested in the LDRD, what it determined, and what is asserted in the appeal. There is one building on Parcel A. Parcel B is comprised of a bunch of buildings, three of which are part of the appeal being Buildings A, K and I. All of this goes back to Code Section 138-22, which was read by Ms. Lustberg. The Planning Director shall review available documents to determine if a body of evidence exists to support the lawful of existence of units on or about July 13, 1992, the effective date of the original ROGO. The key here is any issued building permits for the original construction of the structure confirming the existence of the dwelling unit and its uses on or about July 13, 1992, can stand as the only piece of evidence for ROGO exemption. This underlying portion of the code is relevant to the appeal for Parcel A since the building existing today had an original building permit and CO for a house and no permit approval to alter that since. That same code section continues. If there are no building permits for the original construction of the structure which confirm the lawful existence of the dwelling units, at minimum, two of the following documents can be used. Ms. Lustberg listed the eight types of documentation which could be used. This is relevant to Building I since Building I on Parcel B did not have any original building permits so this section of the code is relevant to that building, and the criteria under which staff found the appropriate documentation was criteria one and eight. Those other six criteria do not contradict the evidence found under criteria one and eight. Any dwelling unit established after the effective date of the original ROGO should be documented through the ROGO permit allocation system and dwelling units that received such allocations that were constructed and received COs may be established as exempt from ROGO through verification of the CO alone. This is relevant to the determinations for Buildings A and K on Parcel B, because both of those received building permit approval post establishment of ROGO and both have COs that specifically state the number of transient units approved.

Determining the ROGO exemptions for the buildings appealed here is really very simple. Three of those buildings have original building permits documenting what was lawfully established. Two of those have COs that clearly state the number of units approved, and the one building that does not have an original building permit for its approval has clear indication from other permit history as to the number of units which matches with what the BOCC determined in the vested rights determination final order for that property.

The basis for appeal argues that the Planning Director committed reversible error because Parcel A was not awarded two transient ROGO exemptions based on the 1992 property record card, building permits and a code case. All of these documents were reviewed as part of the LDRD. No new documents were presented for review by the appellant. The 1992 property record card states this house was a single-family residence now part of the motel complex units. The Property Appraiser's Office is a separate and distinct independent office and this information is not sufficient to outweigh the overwhelming other evidence that the property is established with one permanent ROGO exemption. The appeal points to floor plans in a 1991 permit application to add a den, bathroom and stairs to a two bed, two bath single-family residence. The appeal points to evidence of two hotel units, but the floor plans depict a house and this property had a homestead exemption in 1991. The appeal argues that an after-the-fact permit to install a dumbwaiter is suggestive that the property was a lawfully established hotel/motel in 1994 since the general remarks line on the permit application states hotel/motel built 1986. However, this very same permit's approval condition plainly states after-the-fact and to complete a dumbwaiter to an existing single-family residence. The same permit, in the survey and on approved site plan, depicts the building as a house. In 1994 there was a code case for assorted work without permits including unlawfully turning a house into a four-unit hotel. The appellant implies that this code case should be used as evidence that a hotel/motel was lawfully established and should be recognized as ROGO exempt transient. However, the order from the Code Enforcement Board to the property owner was to either get a permit for the work done to change the use or remove that which was done without permit. The order also says that a hotel/motel use in this zoning district cannot be approved as of right or through a conditional use permit. The code case was later dismissed after the Code Enforcement Board held that the violation was rectified. There is no permit to change the use on the property to establish hotel/motel, therefore any lawful changes to the property was recognized by the County as having been undone consistent with the law's prohibition on hotel/motel use in IS zoning.

Relevant to this claim, in 1996 both Parcel A and Parcel B were owned by the same person and they applied to the County BOCC for a vested rights determination regarding the number of transient ROGO exemptions established on their property. Parcel A was not included in this application. The chronological background included in the application explains why it was not included. In May 1991, the Parmers purchased Lot 13 from Mr. and Mrs. Jerry Fine. The Parmers later learned they could not use it as part of motel so began renting it as vacation rental on longer terms. So this was not included in the application asking for ROGO exemption for transient. This 2023 Planning Commission appeal now claims that the Planning Director committed reversible error by not awarding transient ROGO exemptions to this property whose owners in 1996 recognized that they were not there. Commissioner Ritz noted that the vested rights was for the other side of the street and asked how many were on the other side of the street. Ms. Lustberg responded there were 40.

Ms. Lustberg noted that none of the items discussed in the prior slide are relevant to determining the ROGO exemptions on Parcel A, but they needed to be addressed because they were raised in the basis of appeal. Ms. Schemper interrupted, stating that the applicant was now requesting to withdraw their appeal of the number on Parcel A, so Ms. Lustberg could skip to Parcel B now.

Ms. Lustberg then continued with Parcel B's history. In 1996 there was a vested rights determination application requesting 40 transient units be recognized on Lots 5 through 10 on Parcel B. In 1998, the BOCC recognized those 40 transient vested rights. In the year 2000 there were two permit applications for Buildings A and K in which the permit review clearly focused on making sure that existing and proposed did not exceed those 40 units approved. Later on, Building 11 was added to Parcel B and was recognized as having one permanent dwelling unit. That is not at issue in this appeal. The basis for appeal for Parcel B provided no new information from what was considered when asking for the LDRD. The basis for appeal references a property layout and an original floor plan to lay claim to the number of units that were in each of the buildings, but provides no documentation backing up where these original floor plans came from. Instead, the appeal states these come from Exhibit H in the LDRD application. Exhibit H provides an aerial photograph of the property, numbers all of the buildings, and provides floor plans for each of the buildings depicting the combinations but does not document an original source from where those floor plans came. Then, the basis of appeal compares these provisional floor plans to the 2022 property record card. The basis for appeal also claims that the definition of room hotel/motel should be used by the Planning Commission today to increase the number of transient ROGO exemptions. The same assertion was made in the LDRD application where the applicant stated, "Based on the original development and the layout of the resort which was developed prior to the code being adopted," the County should recognize more transient units on the property than was previously approved because there are more bed/bath combinations approved than transient units. The vested rights determination came out in 1998. In 2000, there were the permit applications to do work on the property and where the 40 transient units were reviewed for. As part of that review, staff made sure that the total number of transient units on the property did not exceed the 40 approved in the BOCC vested rights determination final order. Correspondence from the Planning Department, the property owner, the property owner's agents, and the Planning Department's conditions placed on the COs for the buildings confirmed that the total number of transient units did not and would not exceed 40 transient units. A definition of room hotel/motel was included in the permit file and is copied here. The portion the appellant seeks to use for an award of more transient unit ROGO exemptions is the part dealing with bedroom/bathroom combinations.

The code at the time of the prior permit states suites containing more than one bedroom one and-a-half baths may be constructed; however, each bed/bath combination shall be considered a hotel/motel unit. Clearly, the bed/bath specified here implies that it's a bedroom and full bath combination. The only difference in the current definition is suites containing more than one bedroom and one and-a-half bath may be constructed; however, each bedroom/full bath combination shall be considered a hotel/motel unit, the difference being "full." This is a use-clarifying word that was added and this was a use that was implied in the older definition. The definition of a bathroom is a room containing a toilet, sink and typically also a bathtub or shower. So a bathroom without stating full is implied to be full. So there is no functional change in the definition of room hotel/motel since the property was approved for 40 transient units. Therefore, there are no transient ROGO exemptions on the property beyond those recognized in the vested rights determination final order and reaffirmed in the only permit application since the vested rights determination order that reviewed for the number of transient units.

Ms. Lustberg then discussed the three individual buildings on Parcel B. The relevant code section here is any dwelling unit established after the effective date of the original ROGO should be documented through the ROGO permit allocation system and dwelling units that receive such allocations that were constructed and receive COs may be established as exempt from ROGO through verification of the CO alone.

Building K, there was a permit approval way back for a single-family residence, and then more recently in 2000 there was an application, and in 2001 it received a CO to change it from a single-family residence to a hotel/motel. There are no ROGO allocations documented with this permit because the vested rights

determination recognized the property as ROGO exempt for these transients already. Ms. Lustberg presented the CO for this building which the condition placed on the CO states and is the one form of documentation that can stand on its own is that there will be no more than three hotel/motel units in this building. Building A has the same exact scenario which was recognized with four transient ROGO exemptions. This CO specifically conditions that there will be no more than four hotel/motel units in this building.

Building I is the one building that does not have an original building permit, so two of the eight criteria are needed to establish what is on the property. Staff reviewed all of them, and the relevant ones are one and eight. Under number eight, similar supporting documentation not listed above as determined suitable by the Planning Director. Going back to the vested rights determination that there were 40 transient units established on the property, that matches with the most relevant permit history staff could find which is the permit history for both Buildings A and K during the remodel where staff reviewed for making sure that the redevelopment would not exceed the 40 units recognized. Ms. Lustberg presented a letter in response to an inquiry from the Planning Department on whether the permit for Building A was proposing to add more units to the property than the 40 approved. The property owner wrote that the existing number of units was 40 and, after renovating Building A, the proposed number would still be 40. Here you see the response from the property owner's agent which states the same but also specifically calls out that six units were located in Building I, so it states the 40 units and shows Building I with six units. The 2000 remodel permits included the site plan to clarify the existing and proposed number of transient units on the property, again specifying 40 units total with six in Building I. Ms. Lustberg presented a close-up of the Building I site plan with a bump-out for soda machines, pay phone and a modem terminal. In the LDRD application in Exhibit A in the section titled Roadmap to 44 Keys there is a description of Building I showing the units basically in the same location as on the prior plan, with the difference being that the purple Minnow Dave appears to have replaced the soda machines, pay phones and modem terminal room. The layout mostly matches the original layout. Determining the ROGO exemptions for the buildings that are being appealed is quite simple since it's only dealing with Parcel B, and two of those permits have permits for exactly what was established with COs that specifically state the number of units. And, Building I, based on the permit history and the vested rights, clearly had six transient units established rather than seven. For these reasons staff is recommends the Planning Commission affirm and uphold the determination enumerated in the LDRD issued by the Senior Director of Planning and Environmental Resources Department on March 8, 2023.

Mr. Peter Morris, Assistant County Attorney, then confirmed that Ms. Schemper had reviewed and agreed with staff report prepared by Ms. Lustberg, and had agreed with all of the analysis and determinations in the presentation.

Mr. Bart Smith, Agent for the Applicant, reiterated that Parcel A had been withdrawn, rightfully justified. His clients bought this property four years ago and it had been represented that there were no changes to any of the bedrooms. The prior owner had owned it for 40-plus years and it has been there for 50 years. When the owners looked at this it says 40 transient units, not 40 hotel rooms, being one bedroom and up to one and-a-half baths. Mr. Smith presented a floor plan with Parcel B that was looked at and there are three buildings that have an extra bedroom and bathroom that have existed in every document they have. The same buildings that were applied for, there's a three unit, four unit and six unit, and he is requesting four, seven and seven, which is one more, three more and one more (total five). These floor plans have existed since the beginning of the property. Building 9 (A) which the LDRD says has four, the configuration shows seven. The applicant provided aerials going back to 1992, and it's the existing building with no significant change. These old floor plans show seven units. The applicant is requesting the Commission find the seven that exist.

Commissioner Ritz noted that the County says that suites count as a hotel room, and asked if these are suites. Mr. Smith stated that was correct, that they could be rented out in one or two bedrooms, but the fact of the matter is that they are two bath and two bedroom units. For transient ROGOs, each full bedroom and at least one full bath is counted as one. That's the differential that he is identifying. Commissioner Ritz asked then why had Mr. Donald Craig and the vested rights determination said that these were four. Mr. Smith stated that he could not speculate as to that, but the only word that was used was transient unit. So, yes, they are being rented as 40 transient units, but the fact is that there are two bedrooms and two baths in three of them. Commissioner Ritz noted that when ROGO was started in 1992, that was how they counted the number of existing transient units, and that was the baseline. Mr. Smith agreed but added that now, to build a hotel room you need a transient ROGO, and one transient ROGO is one bedroom and up to one and-a-half baths. If you want to build a two-bedroom transient ROGO you need two transient ROGOs. What he has identified is that this building has seven bedrooms and seven and-a-half baths. They do not have documentation of a floor plan that's part of a CO from that time frame, but everything they see is that this has been the layout that has existed in this building.

Chair Scarpelli asked how they knew that the first floor had been lawfully established, because that's the only way you would count it and from every document, that first floor doesn't lawfully exist. Mr. Smith responded that the building as shown today has certainly existed. Chair Scarpelli stated that it looks like a garage was there. Mr. Smith stated that he understands but logically, this building has been there and it's concrete block and it has seven bedrooms that the aerials have shown it has been there for 40 to 50 years. Chair Scarpelli asked how, using the eight criteria, the Commission could prove that those three units on the first floor were there. Mr. Smith responded that two pieces of evidence would be the aerial to show the buildings existed, and these are the floor plans that they have, though they could not document when the floor plan was from. Ms. Schemper clarified that an aerial can show that the building was there but not how many units are in it. Chair Scarpelli thought the two front bays looked like garage doors on the first floor to him, and that a garage door was in-filled for a window, but they don't know and that's the problem.

Commissioner Thomas stated that it appears the appellant is asking for approval of additional allocations for a space that may not have been legally configured in the first place since no one can prove what that space was. So the appellant is asking the Commission to approve something that might have been illegal and the law doesn't allow it. Commissioner Neugent asked what the plans were for Parmer's now, if it was to be demoed and rebuilt. Mr. Smith stated that a few options were being looked at. There was a building that's been demoed that the applicant agreed to the documentation on those buildings. Those numbers are not in question and will likely be built back at some point in the future. As to the statement that they were illegally built, if it was developed prior to 1992 and existed, whether the building permit was pulled or not, he is not sure if it creates a certainty of whether you can get the ROGO exemption. Chair Scarpelli added that if they existed prior to 2000 when the vested rights determination was there, they would have included the names Poinsettia and Amberjack in their listing of hotel rooms because that's what the two units that are being used as two units downstairs are right now, and they're not called out anywhere in the 2000 documents when the original vested rights was done. They went through the painstaking process of naming units one through five, but then they didn't name the others.

Ms. Lustberg further clarified that there was a permit for the year 2000 for redeveloping Building A from a single-family residence into a hotel/motel, where the County recognized four units and the appellant is requesting seven. Those floor plans provided no detailed callout for the first floor for any hotel/motel units, and Building K has the exact same history. Both were approved as single-family residences and in the year 2000 had permit approvals to change into hotel/motel use. Chair Scarpelli asked where the single-family residence ROGOs went to. Ms. Lustberg stated that the history on this is that they were always supposed to be hotel/motel and the property owner applied for the wrong type of permit, so in

doing the remodel, they moved it back to the correct type of permit and everything that was theoretically supposed to have been there was recognized as those permits.

Mr. Smith then stated that he believes this item should be withdrawn so they can try to get the evidence as there is more to this. Chair Scarpelli agreed that it does seem like there's something there. Mr. Smith thought that, at this juncture, these are better to be withdrawn, and if they get more evidence, they will come back to the County with it. He appreciates everyone's time. Mr. John Wolfe confirmed no motion was necessary since action was being taken and the item was just being withdrawn.

Commissioner Demes commented that this was some unbelievable staff work accomplished on the part of Ms. Lustberg.

BOARD DISCUSSION

Commissioner Ritz asked for the Board's indulgence for the October meeting. He has a conflict and will be in Key West in the morning. He is aware there are some applicants that want a full board, and he believes those items are the last two on the agenda. He could not get to the meeting until 1:00 o'clock-ish. So if the Board could take a lunch recess, he could come at that time, or let the applicants know that there's not a full board. Ms. Schemper stated that tentatively, there are five other items before the two wanting the full board. Commissioner Thomas asked about moving the meeting to Key West. Ms. Schemper stated that the code specifies that Planning Commission meetings need to be held in Marathon except under specific special meeting conditions. For those five other items, if applicants are told there will not be a full board, any or all could request to be moved to a different meeting and there then wouldn't be anything before those other two items.

Ms. Schemper asked Mr. Morris if the Planning Commission had to approve a change to time or schedule during a meeting. If not, this could possibly be figured out over the next couple of weeks. Mr. Morris confirmed a vote would not be required. Commissioner Demes asked about starting the meeting at 1:00 p.m. Ms. Schemper stated that with seven items, starting at 1:00 o'clock would be too late for the entire meeting. If it is found that other items want to be continued to a different meeting anyway, maybe then it could be rescheduled to 1:00 o'clock. Mr. Wolfe added that if it is found out that the other five items are going forward, then a break could be taken until 1:00 p.m. Chair Scarpelli thought the best thing would be to start at 10:00 and take a lunch break as necessary. Ms. Schemper confirmed that the meeting would be noticed appropriately.

GROWTH MANAGEMENT COMMENTS

None.

RESOLUTIONS FOR SIGNATURE

None.

ADJOURNMENT

The Monroe County Planning Commission meeting was adjourned at 11:57 a.m.