PLANNING COMMISSION
October 25, 2023

Meeting Minutes

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

CALL TO ORDER by Chair Scarpelli

PLEDGE OF ALLEGIANCE

ROLL CALL by Ilze Aguila

PLANNING COMMISSION MEMBERS

Joe Scarpelli, Chair	Present
Ron Demes, Vice Chair	Present
George Neugent, Commissioner	Present
David Ritz, Comissioner	Absent A.M. / Present P.M.
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	
Mike Roberts, Assistant Director of Environmental Resources	
Brad Stein, Development Review Manager	
Liz Lustberg, Senior Planner	Present A.M.
Stephanie Reed, Planner	Present A.M.
Devin Rains, Planning and Development Permit Services Manager	Present P.M.
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
Meeting to be held in two sessions, A.M. & P.M.

DISCLOSURE OF EX PARTE COMMUNICATIONS
None.

APPROVAL OF MINUTES

Motion: Commissioner Demes made a motion to approve the September 27, 2023 meeting minutes. Commissioner Neugent seconded the motion. There was no opposition. The motion passed unanimously.

MEETING

AGENDA ITEMS

1. PUBLIX SUPER MARKETS, INC., ON BEHALF OF KIR KEY LARGO 022, LLC, 101499 OVERSEAS HIGHWAY, KEY LARGO, MILE MARKER 101, OCEAN SIDE: A PUBLIC HEARING CONCERNING A REQUEST FOR A 2APS ALCOHOLIC BEVERAGE USE PERMIT, WHICH WOULD ALLOW FOR BEER AND WINE PACKAGE SALE FOR OFF PREMISES CONSUMPTION. THE SUBJECT PROPERTY IS DESCRIBED AS A PARCEL OF LAND BEING A PORTION OF TRACT "A" OF THE PLAT "TRADEWINDS" AS RECORDED IN PLAT BOOK 7, AT PAGE 42 OF THE PUBLIC RECORDS OF MONROE COUNTY, FLORIDA, HAVING PARCEL IDENTIFICATION NUMBER 00454611-000100.

(10:02 a.m.) Ms. Stephanie Reed, Planner, presented the staff report. The applicant is requesting approval of the 2APS alcoholic beverage use permit at the site of the former KMart within the Tradewinds Shopping Center. Ms. Reed presented the site map. There is currently a Publix Supermarket within this shopping center which has a 2APS alcoholic beverage use permit which was memorialized through Planning Commission Resolution P5291. On November 10, 2022, Building Permit 22301075 was issued for construction of a new Publix Supermarket on this site. Currently, the site has a land use district of Urban Commercial. The existing use is Mixed Commercial Use Shopping Center. The community character in the immediate vicinity includes commercial retail, restaurant, multi-family residential, institutional, vacant, and conservation uses. Pursuant to Section 3-7E of the Monroe County Code of Ordinances, staff finds the application compliant with all requirements and recommends approval with conditions. Conditions 2, 3 and 4 are standard. Condition 1 states this alcoholic beverage use permit shall not be effective and approval and DBPR Form 6001 shall not be authorized by the Planning Department until the copy of the annual food permit issued by the Florida Department of Agriculture and Consumer Services is submitted to the Planning and Environmental Resources Department. This annual food permit is required as part of the application; however, the applicant has not provided it as it will not be available until a few weeks after store opening.

There were no further comments or questions by Commissioners. There was no public comment. Public comment was closed. Michael Pago on behalf of the applicant thanked staff and the Commission, and requested that Condition 1 be removed as the food permit will be obtained but will not be available until at or shortly after opening. Ms. Emily Schemper, Senior Director of Planning and Environmental Resources added that Condition 1 could not be required by the County prior to approval so it should be removed.

Motion: Commissioner Neugent made a motion to approve with removal of Condition 1. Commissioner Thomas seconded the motion. There was no opposition. The motion passed unanimously.

2. TINDAHAN THE LITTLE ASIAN STORE, SHIPS WAY INC., 29 AND 33 SHIPS WAY, BIG PINE KEY, MILE MARKER 29.6: A PUBLIC HEARING CONCERNING A REQUEST FOR A 2APS ALCOHOLIC BEVERAGE SPECIAL USE PERMIT, WHICH WOULD ALLOW BEER AND WINE FOR SALE IN SEALED CONTAINERS FOR PACKAGE SALES. THE SUBJECT PROPERTY IS DESCRIBED AS A PARCEL OF LAND IN SECTION 27, TOWNSHIP 66 SOUTH, RANGE 29 EAST, BIG PINE KEY, MONROE COUNTY, FLORIDA, HAVING PARCEL IDENTIFICATION NUMBER 00111880-000400. (FILE 2023-228)

(10:07 a.m.) Ms. Liz Lustberg, Senior Planner, presented the staff report and a site map for the property at 5 through 37 Ships Way, but noted that this application is specifically for Units 29 and 33, which are contiguous units occupied by the applicant. Ms. Lustberg stated that all criteria for approval had been met. The existing building received conditional use approval in 1989, and permit approval in 1990 for office and retail use. This space is a retail use. There were permit reviews in 2001 and 2017 for parking and access as it currently exists so there are no issues. Staff recommends approval with Conditions 2, 3 and 4 being standard conditions, and with Condition 1 clarifying that the alcoholic beverage use permit is not for the building as a whole but specifically only for Units 29 and 23. The permit stays with the property in perpetuity so long as the state license is maintained.

There were no further comments or questions by Commissioners. There was no public comment. Public comment was closed. The applicant did not wish to speak. Commissioner Demes complimented staff on the public notice for this item being extremely easy to find.

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

3. AN ORDINANCE BY THE MONROE COUNTY BOARD OF COUNTY COMMISSIONERS AMENDING THE MONROE COUNTY TIER OVERLAY DISTRICT MAP FROM TIER I TO TIER III, FOR A PORTION OF THE PROPERTY LOCATED AT 18 KAY DRIVE, KEY LARGO, MILE MARKER 101, DESCRIBED AS A STRIP OF LAND 125 FEET WIDE LYING IN SECTION 21, TOWNSHIP 61, RANGE 39 EAST, KEY LARGO, MONROE COUNTY, FLORIDA, BEING PART OF TRACT 7, AND PART OF TRACT 8, LARGO SOUND-TARPON BASIN PROPERTIES, PLAT BOOK 4, PAGE 130, HAVING PARCEL ID 00086580-000000, AS PROPOSED BY RAFAEL BEZANILLA; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL OF CONFLICTING PROVISIONS; PROVIDING FOR TRANSMITTAL TO THE STATE LAND PLANNING AGENCY AND THE SECRETARY OF STATE; PROVIDING FOR AMENDMENT TO THE TIER OVERLAY DISTRICT MAP; PROVIDING FOR AN EFFECTIVE DATE. (FILE 2023-135)

(10:11 a.m.) Mr. Mike Roberts, Assistant Director, Environmental Resources, presented the staff report. This is a tier map amendment request for a portion of the parcel in question which is currently used as a supplemental entrance to the north portion of Caloosa Campground and is for the western portion of the property in between what is Key Largo Trailer Village and Caloosa Campground South. Currently the site has been cleared of any vegetation. In the 2009 habitat map up until recently, the vegetation within

the western portion of the property, the portion proposed for tier map amendment, consisted of Australian pines and exotics. The eastern half has hammock coverage and connects to hammock. The western connection is to mangroves and water. In summary, the tier criteria states if it doesn't qualify for Tier I, it would be Tier III. Tier I criteria includes vacant lands which can be restored to connect upland native habitat patches. There is no native upland habitat to the western side of this parcel. Mr. Roberts summarized the other criteria which did not apply to this parcel. Staff recommends approval of the proposed amendment for the designated portion of the parcel as it does not meet the criteria for Tier I, and is more appropriately designated as Tier III.

Commissioner Demes stated that he had driven through the area and it was apparent that it was definitely cleared and noted there had also been compliance issues. Apparently the lot had been cleared without a permit and the mitigation requirements have been satisfied. Mr. Roberts explained that as of the date of the staff report the code violations had been satisfied. Commissioner Demes asked if the violations would be satisfied even if this applicant does not get the Tier III designation. Mr. Roberts responded that that was correct. Commissioner Thomas asked about the comments from the community meeting reflecting that the community was opposed because no one knows what the future use is going to be, and asked why the applicant was requesting this and not stating what the future plans are. Ms. Schemper responded that that would be a question for the applicant as staff has not received that information. Mr. Roberts also added that no site improvements had been proposed beyond the tier designation. Mr. John Wolf added that changing the tier designation is independent to what the applicant may do in the future, and they do not have to tell the County. Chair Scarpelli asked about the public comments and the concern with the black and white mangroves. Mr. Roberts responded that it does not impact the tier overlay district. If there are protected habitats on site, they are still protected by the land development code and would still require the appropriate permits for impact. As to the other aspects of the community comments regarding the connection of habitats, there is not an upland habitat connection. There were other concerns regarding an existing access easement on the subject property to Caloosa as the grantee of that easement. Other than having a copy of the easement, staff has no information on the validity of it or whether it could be vacated, and it has no real bearing on the tier designation. Chair Scarpelli thought getting rid of the exotics was a good thing.

Commissioner Neugent asked if the County had supervised the exotics that were removed, and why the hammock area would not have the same makeup of vegetation identified as was in the area of the exotics. There is a square in the area identified as hammock area and then another area identified with exotics. Mr. Roberts explained that the area within the hammock portion is on the south side of the designated parcel and he is not sure if that was on the 1985 existing conditions map designated as exotics, but he does know that the portion within the proposed tier map amendment was designated as disturbed land in the 1985 existing conditions map. Commissioner Neugent added that having gone through the tier designation process it was obviously identified as Tier I. Mr. Roberts stated that the original identification of the tier maps was by parcel ID and, as pointed out, the eastern half of this parcel was hammock and it was determined to be consistent with the Tier I designation at the time. When the tier designations were adopted, they were adopted by RE number so encompassed the entire parcel. Mr. Roberts also pointed out that the majority of tier designations in 2006 were done by aerials and there was not a lot of ground truthing. Ms. Schemper added that this area labeled as exotic embedded within the hammock was considered part of the hammock in the eighties, but everything that is within the portion proposed to become Tier III was all considered either developed land or disturbed with exotics. Commissioner Neugent then asked if the exotics were removed, if eventually over the years this area would replenish itself with hardwood hammock. Mr. Roberts responded that that is generally not the way it works. Rather, it would have been Australian pine, Brazilian pepper or some other exotic. If an area is cleared and scarified, hammock is not going to recover. Ms. Schemper added that for this particular site, that has not been the case historically. Commissioner Neugent then asked if this would be a good place for someone to provide mitigation for some other development. Mr. Roberts responded that that process

is not in the code or Comp Plan. Chair Scarpelli noted that it was somebody else's property. Ms. Schemper stated that this piece of property could be planted and become native, but that is true for almost any property in the Keys. Staff does not believe this property meets the criteria for Tier I from going back to the 1985 maps. Chair Scarpelli then asked for public comment.

Mr. Juan Hernandez stated that the reason people are concerned about what will be developed at this location is because three years ago an 84-attached-unit development was applied for and denied because of the zoning change. There are only tiers, and that is the indication of what will go up here since three years ago Mr. Benzanilla applied for and was denied the 84 units for workforce or affordable housing.

Ms. Sury Veliz, who has lived in this area for 23 years stated that this entrance is the main entrance for Caloosa Campground. There was a beautiful entrance there until Mr. Benzanilla was made to cut down the Australian pines. She understood that he was supposed to replant that section again with native plants. He bought the plants and planted them, but put them all at the entrance by the road all the way to the east side, under the canopies that were already there. He was supposed to replant the area by the entrance for the campground. The residents of Caloosa Campground do not want this developed and want it back in its state of beauty that it had. The neighbors at the Village want the same thing. This has been expressed at the previous meeting and their voices do not seem to have been heard.

Ms. Lisa Reves, attorney with Becker & Poliakoff representing Caloosa Campground Association, stated that the Code Section 130-130C Tier Boundary Criteria indicates that if this property meets any one of the criteria it is to remain Tier I, and those criteria include that the Tier I boundary shall be delineated to include one or more of the following criteria: Vacant lands which can be restored to connect upland native habitat patches and reduce further fragmentation. The parcel subject to this application is vacant land which can be restored to connect the tropical hardwood hammock and reduce the further fragmentation of the upland native habitat. Additionally, criteria D, known locations of threatened and endangered species as defined in Section 101. The information provided by the applicant includes Ms. Sutherland's environmental consultant report which indicates the subject parcel includes black and white mangrove, two species of special concern. Species of special concern warrant consideration and Tier III designation would allow 40 percent of these species to be removed. Section 130-130E, tier overlay district map amendments allow for amendments to reflect existing conditions in an area warranted because of drafting or data errors for re-growth of hammock. However, the clearing of tropical hardwood hammock or pinelands that result in the reduction of the area of an upland native habitat patch to less than one acre minimum shall not constitute sufficient grounds for amending to a designation of a Tier III. The applicant is subject to a code compliance case because of the owner's unpermitted clearing of the native vegetation in many areas. Since it's been determined that the vegetation must be restored, changing to Tier III designation, which would allow the removal of 40 percent of the habitat, contravenes the intention of the restoration permit. Caloosa Campground Association has a permanent express easement for access to the campground consisting of 350 to 400 units. In answer to Mr. Mike Roberts' uncertainty on the legal standing of this easement, back in 2021, Case 19-CA-411-P, Caloosa v. Benzanilla, the parties agreed that the order and easement are valid, legal and enforceable, will abide by all orders and easement terms and conditions. This property is a permanent easement for the access to the campground as shown on the drawing and exhibit to the easement. Changing this to Tier III would allow the applicants to revise the easement, would endanger the species and remove the possibility of restoring the vegetation in the hammock.

Chair Scarpelli then closed public comment and asked if the applicant wished to speak.

Ms. Mercedez Lozada, agent for the applicant, stated that Mr. Benzanilla owns the property at 18 Kay Drive and until now, it has only been used to serve as entrance for the roadway to Caloosa Campground,

and he must provide entrance to Caloosa Campground and maintain the road with obligations including expenses to maintain it. Because Caloosa Campground was cutting trees and some plants without control, even though Mr. Benzanilla wasn't living there and many times he went to the office and asked them not to do it, as well as having garbage along the road, Mr. Benzanilla got a code compliance case and had to get a permit for the removal of 120 exotic pine trees, not native, and a lot of Brazilian peppers. In addition, he had to do restoration in the area where there were missing trees. In this area, he had to plant and maintain the trees along with the existing vegetation for a period of three years, 120 canopies, 132 understory, and 157 shrubs. Everything is at his expense with no help. After all this work, he wants to change from Tier I to Tier III so he can use the lot doing whatever he is allowed by the building department by taking care of the code restrictions in the area. Before he had a project in there that was run by someone not living in the area and there was something wrong, but he's not asking for anything at this moment. He only wants to have the change from Tier I to Tier III.

Public comment was reopened for Mr. Jose Gallardo who stated he has been in Caloosa for 31 years since Hurricane Andrew. When this parcel was sold by Eager to Martha Movalle (phonetic), she tried to change the easement agreement and took it to court and she lost. The judge upheld it. She took it to the appellate court and the easement agreement was upheld again. She let that property go because the easement very clearly states the road can't be moved, a tree couldn't be cut down without replacing it and it must be maintained and stay as it is. When Mr. Benzanilla and Oscar Perez, now deceased, bought this property, Mr. Gallardo was asked about this property and he explained to them that this had already gone to court and the easement agreement is valid, and he had told them it wouldn't be a good idea to buy this property. Mr. Benzanilla bought the property anyway. A couple of years ago when Mr. Benzanilla's newest agreement was signed he was present for that mediation and it went nowhere. Mr. Benzanilla went into this knowing the property had an easement agreement that had been upheld by the court and appellate court that is as clear as day and states exactly what can and can't be done there.

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

Chair Scarpelli confirmed with Mr. John Wolfe that this easement agreement has no bearing on what the Commission is voting on today. Further, Mr. Wolfe explained that to the extent that there is an easement agreement, the people benefitted by that have the ability to pursue the action if Mr. Benzanilla does something contrary to the easement agreement. If the tier designation is granted, that does not affect the rights or obligations of the easement.

Commissioner Demes noted that when he had gone to this property it looked like it had been an upland site for quite a long time and based on the size of the exotics they looked like they had been around a long time before they were cut down. Commissioner Demes then asked if the baseline used are the aerials that were used to designate the tiers. Mr. Roberts responded that as far as the land development code is concerned, the baseline for designation of native habitat is based on 1985, and the adoption of the land development code in 1986 which established the baseline as 1985 as that was the most recent data available then. Chair Scarpelli asked whether the code case has any bearing on the tier designation. Mr. Roberts responded that there were two code cases for unpermitted land clearing, one at the entrance on U.S. 1 and one at the entrance right at Kay Drive because there was some unpermitted land clearing of native vegetation within the median of the easement. That was the specific grounds for the code case. The removal of the Australian pines was also unpermitted. The resolution was to require the property owner to obtain an after-the-fact permit for that removal, that being exotic vegetation not requiring restoration. Restoration was required for removal of native habitat, being understory and shrubs, which is what was restored. There was testimony that the plants that were restored were all under the trees and grouped together, and that is correct. Those plants were intentionally planted there as that was the location of the clearing and that was what was removed. Ms. Schemper added that the restoration area is

within the area proposed to remain Tier I, which is located closer to the entrance of the driveway. That is the area that was considered hammock and the area that needed to be restored. Commissioner Neugent asked if based on the easement that exists and the possible motive for the individual to get the tier change, they still could not build those 84 units if the earlier information presented was accurate. Mr. Wolfe responded that if there is a valid easement agreement in place, which apparently the court ruled there is, it would be subject to all limitations. If it's an easement for ingress and egress, it would be hard to conceive of anybody being able to build anything on it. However, that would be between the holders of the easement and the person subject to it to duke out.

Motion: Commissioner Demes made a motion to approve. Commissioner Neugent seconded the motion.

Roll Call: Commissioner Demes, Yes; Commissioner Thomas, No; Commissioner Neugent, Yes; Chair Scarpelli, Yes. The motion passed 3 to 1.

RECESS FROM 10:47 A.M. TO 1:00 P.M.

ROLL CALL by Ilze Aguila
Reflected on page one of minutes.

COUNTY RESOLUTION 131-92 APPELLANT TO PROVIDE RECORD FOR APPEAL
County Resolution 131-92 was again read into the record by Mr. John Wolfe.

SWEARING OF COUNTY STAFF & PARTICIPANTS
County staff had been previously sworn in. Participants planning to speak were sworn in as a group by Mr. John Wolfe.

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)

DISCLOSURE OF EX PARTE COMMUNICATIONS
All Commissioners indicated they had received informational emails but Mr. Wolfe confirmed with them that these would not affect their decisions. For clarity of the record, Mr. Morris stated that staff had also furnished a baseline overview in individual briefings with the Commissioners, but he would not consider that to be ex parte communication.

(1:03 p.m.) Mr. Bradley Stein, Development Review Manager, presented the staff report. This is a request for a major conditional use permit for Little Palm and Dolphin Resort. The agents are Donald Craig and Erica Sterling. Mr. Stein presented an aerial with the property location

outlined in blue. The land use district is Suburban Commercial and allows for hotels providing 25 or more rooms as a major conditional use. The FLUM designation is Mixed Use Commercial and is Tier III. The property is currently used as a reception and shore station for Little Palm Island Resort which had been permitted as a standalone commercial permit. The existing vegetation and habitat is partially undeveloped, scarified, and has mangroves along the northern west fringe to the east. The total project site is 6.63 acres with 4.5 acres of upland. Mr. Stein presented a slide of the overall site plan showing 38 hotel suites arranged in six buildings, a reception building, a back-of-house operation building for both facilities, and eight affordable dwelling units for staff. The hotel suites are located on the east side of the property. The pool area and small restaurant required under the LDC Section 130-93(c)(4) is located somewhat in the center of the buildings. The back-of-house building is located to the west side of the property and the reception is to the north. Three loading zone areas and the trash and recycling areas are located on the back-of-house building. Bike racks are located throughout the site. The plan shows a total of 108 parking spaces, most being in the open lots with some under the buildings. Staff finds the proposed conditional use is consistent with the purposes, goals, objectives and policies of the Comprehensive Plan, Livable CommuniKeys Plan and the Land Development Code. Section 110-67 of the Monroe County Land Development Code provides the standards which apply to all conditional uses and have been reviewed for this project. The Livable CommuniKeys Plan has also been reviewed for consistency. Of note, Policy 1.2.1 directs the County to recognize the FLUM categories and land use districts as the primary regulatory tools for evaluating development proposals. This proposal is within the MC FLUM and SC zoning which permits the development of hotels as a major conditional use. Prior to the signing of the development order the administrative variances must be approved for the reduction of the amount of the off-street parking spaces required for boat trailer parking. These are the recommendations by staff to be approved through the Planning Commission Development Order.

There were no immediate questions from the Commission. Chair Scarpelli wanted to be clear that with the Livable CommuniKeys Plan, Objective 1.2.1 was the tool to be used primarily. Mr. Stein clarified that it is Objective 1.2 and Policy 1.2.1 which specifically states the current zoning and land use districts must be followed. Chair Scarpelli then asked if the applicant wished to speak.

Donald Craig, agent for applicant, stated that he was present with Erica Sterling, Robert Spottswood Junior, Richard McChesney, and Sophia Niang (phonetic) of the ownership, the Little Palm Island general manager, Everett Atwell, project manager, and either in person or by Zoom, Carl Peterson the traffic engineer, Ladd Roberts the landscape architect, and Alan Perez the civil engineer. This project application has gone through at least three public meetings and has a history even before that of holding several meetings when other proposals were being considered. As a result of those meetings, changes have been made to the site plan in several cases to respond to public input. Those changes were numerous but focused on the entrance to the site and the height of the buildings in response to comments from both staff and the public. There have been a number of concessions reflected in those changes such as expanding the Pirates Road entrance so that it can serve any truck coming to the site, construction of a dedicated right-turn lane off of Pirates Road to U.S. 1 to ease queuing problems, closing of the marina and boat ramp to the public, height reduction on all buildings, relocating the welcome center away from the interior canal that serves the neighbors to the south, and on-site employee

housing is being provided to reduce automobile trips for employees. Mr. Craig asked that he be recognized as an expert with regard to the County Code and Comp Plan. Mr. Peter Morris stipulated to the expertise of Mr. Donald Craig in the field of planning, and Chair Scarpelli acknowledged the same for the Commission.

Mr. Carl Peterson, traffic engineer for the project, stated that he is a registered professional engineer in the State of Florida specializing in traffic engineering and transportation planning and has 34 years of experience working in Monroe County. Mr. Morris stipulated to Mr. Peterson's expertise in transportation planning and engineering. Chair Scarpelli acknowledged the same. Mr. Alan Perez, civil engineer for the project, stated that he is a registered professional engineer in the State of Florida, practicing civil engineering throughout Florida for 32 years, and has practiced and had an office in Key West for 25 years. Mr. Morris recognized his expertise in civil engineering, as did the Commission. Mr. Ladd Roberts, the landscape engineer for the project, stated that he has over 25 years of experience working on resort developments, commercial projects, parks and recreation and municipal projects throughout Monroe County and the State of Florida up to Charleston. Mr. Morris stipulated to Mr. Roberts' expertise in the field of architecture, as did the Commission. Mr. Craig concluded his introductory statements, indicating he was available for any questions. Chair Scarpelli then asked for public comment.

Mr. Eric Mathewson, age 25, stated that he was speaking for the youth in general. He has lived on Little Torch for 25 years. He started up a boatyard nearby and is going to the local college. Little Torch is perfect the way it is and he does not see any improvement or positive change that this would bring to the community. He has seen firsthand throughout his life in the Keys that traffic and congestion is a major problem. Bringing in people who don't know how to merge correctly or come in on holidays and care only about spending money and not having a correct impact to the community hurts the residents. Jolly Rogers Drive is busy and has no bike path for pedestrians to get off to the side. By adding an influx of new people who don't know how to drive correctly in this neighborhood he foresees plenty of things that will affect the community. This is an island with only one way in and one way out. Little Palm has their own natural big loop cut but they don't want to use it, which is mind boggling in a place where every square foot is probably like, a thousand dollars. Speaking for all the kids he's talked to throughout the Keys, this isn't just a Little Torch problem it's a Lower Keys development problem. The residents don't want to live in the Villages of Islamorada or Key Largo. They came to the Lower Keys because this is the way we like it. It's away from all the bourgeoisie of the cities. Speaking for the entire youth in the entire Lower Keys, all are affected and agree that if it happens in Little Torch, what's to stop it in Cudjo or Saddlebunch or Stock Island or who knows where. Where does it stop? This organization has only taken things away from the community. There used to be a great sandbar off of Little Palm that they shut down and put signs up because they didn't like locals having fun. There used to be fuel and bait at Dolphin Marina and a public boat ramp. They have only taken away from the community and never put the community first, so why should we do it for them.

Chair Scarpelli asked the audience not to applaud after every speaker.

Mr. Tony Sabbag has lived in Little Torch for the past three years, and has been in the transportation business for the past 33 years for a major firm not only in the Keys but all over the world. His wife is a third-generation Conch from Key West. They lived in Key West for three years and decided they wanted some peace and quiet and have lived in Little Torch Key for the past two years. They deal with what's happening on the other side of Little Torch Key near Kiki's. What is being proposed is in direct conflict with the Livable CommuniKeys Plan. There is no consistency with what the citizens put together in that plan with a lot of workshops and public input. He does not see this development protecting, preserving and allowing the ability to enjoy the natural environment, or maintaining the low-density culture of Little Torch, and most importantly the quality of life. The traffic impacts and congestion on U.S. 1 and what it will create for this entrance and exit is a disaster. Raising the elevation to the crown of the road is being proposed, another disaster. He is doing an addition on his house now and the hoops he's had to go through to add 200 square feet onto his house is incredible. He begs the Commission to revisit and reconsider this.

Ms. Beatriz Duke has been a resident of Little Torch Key since 1982, raised two daughters there, and loves being surrounded by the Nature Conservancy. She does not see what this development will do for the community. She attended the Livable CommuniKeys meetings and workshops which resulted in a low-density residential character feel for this community. She does not know what happened to all of that. She's in shock that this has gone so far. She attended and participated in all meetings and this does not help the community. It will be a detriment. There's Key deer and beautiful nature and this will destroy the character of the neighborhood.

Mr. John Duke lives on Jolly Roger Drive off Pirates Road which goes onto U.S. 1, a two-lane highway, one part coming 150 yards from the east off of a main bridge causeway onto this Key. The professional traffic gentleman has not really lived here, and he asked the committee with Mr. Craig if they lived in the area or on the island. The first big accidents will be on them if this happens. This is not a hope on his part, it is a fact. There are enough problems pulling out onto the highway right now. There is waiting for minutes at a time making a left turn towards Key West. How will traffic be managed and will be a traffic scheme or someone directing traffic with trucks turning into there from the causeway and making a left turn into Pirates Road, and several trucks showing up at a time. It's a sharp left turn into the development. There will be construction traffic such as cement trucks, semis delivering food, and the tourists coming down with two and three cars per unit. With four two-bedrooms and maybe a fold-out bed that's six people with potentially three cars requiring extra parking. Mr. Craig said the building height had been lowered from up to 50 feet and he doesn't know what they are now. There's sewage treatment and what happens when the wind blows from the northeast with the smell from the treated water toward the neighbors. Mr. Duke helped build Little Palm Island and drove every launch out there with construction materials. Basically, this brings Little Palm Island to shore. The purpose is to bring in more people and make more money. These apartments could be made into two or three units as other developments have done. How will the restaurant be controlled and will there be a bar. Will the public be coming to the restaurant and bar, and where is that parking. Where is the guarantee that what is being proposed is not going to change in two years after the development is completed and then more is requested?

Ms. Hareen Gershman of Big Pine Key is requesting that this MCU be denied for Little Palm Resort for the following reasons: It is not consistent with the purpose of SC zoning. It does not meet the requirement of the MCU permit. It violates the Florida Keys Area of Critical State Concern legislation, the Monroe County Comp Plan, the Lower Keys Livable CommuniKeys Plan and the Monroe County Land Development Code. The Lower Keys will remain a low-density, primarily residential community with a strong social fabric. We protect, preserve and enjoy our natural environment, low-density, wildlife and open space, and you need recreational opportunities. Our community cherishes conservation and recreation lands and the strict growth management regulations. For the above reasons alone, the Commission must deny this. The proposed project is almost a fourfold increase in density for the property and is out of scale, style and character for this location. The project would be rising 48 feet above sea level where the County Code states 35. Why would 48 be allowed? The traffic study dated 9/21/21, not even in the realm of the season, is far from accurate for this project. Pirates Road and Barry Avenue are quite treacherous in the off season so in season with this resort they will be totally insane. If delivery trucks make the turn onto Pirates Road and miss the entrance of the resort there is no possible reasonable turnaround on Pirates Road. The recent traffic report conducted every two years for U.S. 1 showed that the traffic flow levels have fallen to a D. From the '95 settlement agreement it was stated that Little Palm Island received building permits to construct a land-based station, among other facilities, for accessory use. How can this be an accessory use when Little Palm Island was sold in December of '22, and the principal and accessory are now under two different names? There is also a lease agreement showing that the lessee has the option to purchase within two years from 2022. The landlord obtains or is granted all requisite development entitlements to the shore station premises. This leads Ms. Gershman to believe that the accessory and principle uses are deliberately put under different ownership so that Little Torch Key is no longer considered an accessory. It also appears that this whole sale is contingent upon them receiving the approval of the MCU. Ms. Gershman asked the Commission to do the right thing and deny this project.

Ms. Martha Parker, a resident of Little Torch Key, first lived in Marathon and then on Big Pine. She was shocked and appalled to find out about this plan. Her main concern, as she is all the way down Pirates and then Jolly Roger, is safety. Trying to make a left-hand turn onto U.S. 1 to go to Key West, you say a little prayer every time you pull out of there. She saw her real estate agent almost get hit pulling out. This is not a safe intersection at all. The fact that people will be coming in there en mass is unbelievable. There is nowhere to do a safe turn. When they come in they will miss that turn and she does not know where they will turn around. If they make it down to her street they will find there is another car on the road that they will have difficulty even passing. Ms. Parker is also concerned that emergency vehicles will no longer be able to use the docking facilities. Being a boater, she would like to think she is as safe as possible out there. She does not believe this is consistent with the neighborhood or the Lower Keys plan.

Mr. Alan Parker of Little Torch Key has been coming to the Keys since 1965 and has seen a lot of changes for the worse. He originally came down to Fiesta Key Resort at mile marker 70, which has been bought up by large corporations but kept the way it was. He can still walk the place blindfolded. Mr. Parker asked if anyone knew about this book written by Betty Brothers and who she is. Betty Brothers originally lived where this planned resort is. She raised dolphins and did tons of research in this area. It was always meant to be a rural area, never meant to be

this. Mr. Parker is a retired engineer with Thyssenkrupp Elevator and looking at the traffic reports, he sees the road will be widened and the right lane will be fixed, but nothing has been done for the left-hand lane and that's where the problem will be. Most of the visitors will be going to Key West. This is a small area and what is proposed for this corner is not consistent with any of the things that he's read about the Lower Keys and what is supposed to be happening there. Even little things like putting in bicycle racks, he does not know where these people will ride. They will be all over the neighborhoods riding. Traffic is bad enough without bikes. Adding bicycles adds a whole lot of problems. Closing the marina and docks down from the public is more taking, and he does not see any giving to the people that live there.

Mr. Todd Kornely, resident of Little Torch since 2001, stated that he thinks this neighborhood is a great low-density neighborhood and right now, coming across the bridge from Big Pine, you don't even notice Little Palm. It can't be seen from the road and it's always been like that. It used to have a marina and gas station and that was great for the community. It's still a neighborhood and building a huge hotel complex in this small, tiny place is just ridiculous. The traffic engineers are insane. It's obviously a problem now and it's going to get worse. The fact that the hotel is being made bigger, and removing the U.S. 1 entrance, is insanity. The place was nice, it was small, his parents stayed there when he got married in 2009 and there was maybe eight buildings that you couldn't see from the road. Today, what he can see now is these huge power poles and he would like to know how tall those poles are and how tall the hotel will be, because 50 feet is probably what those poles are high and that's just crazy.

Mr. Banks Prevatt stated that for the past 26 years, he and his wife have shared a canal with Dolphin Marina and they have generally been pretty good neighbors and he's had no real complaints over that time. Things are changing rapidly. The magnitude of this development exceeds any envelope imaginable, and pushes the parameters of any envelope you can take a look at. There's a taking, the marina is gone, the gas is gone, and the boat ramp is gone. This is in direct contradiction to the LCP. The project provides absolutely no service to the community or the Lower Keys. It is strictly self absorbed.

Ms. Celia Armstrong has lived on both sides of Little Torch Key since 1992. She understands that Little Palm Island owns the property and should be able to do something there, but to this extent is not necessary. They don't let families or kids under 16 out to the island. If they want to have families come to Little Palm Island, offer that ambiance on the shore and make it smaller and quaint like what is out on the island. We don't need high rises that are everywhere else in the Keys that nobody likes. They are an eyesore. Yes, there's beautiful landscaping but the tall buildings don't do anything for the Lower Keys. Going both ways across U.S. 1, there is no left-hand safety on either side of the street. Ms. Armstrong asked if the eight units of employee housing is for single people or couples or would families be allowed to live there. Between the island and shore station there's probably more than eight people that work out there that need employee housing rather than just eight. Is that supposed to make us go whoopee?

Mr. Eddie Dillard has lived in the neighborhood by Little Palm and has been coming to the Keys and deriving a living here for 40 years, and moved here in 2020. He comes from Winter Park, Florida where he saw something very similar happen. They wanted a Duncan Donuts, then a McDonald's, and then a Wendy's, and the next thing you know is the diner is closed down.

Everything the community loved is gone and that's what is happening here. Big business is destroying, and this isn't even a little mom-and-pop operation. Does anyone know where this group is based out of? They're not a Keys-based corporation, rather a big hotel chain, and this is being allowed with no thought of the community. He understands that the lawyers are going to argue that this is in the plan, and the residents will argue it's not in the plan, but he wants to know if the Commission would want them as their neighbors in their neighborhood. Talking about the traffic study, right now his kids aren't allowed on Pirates Road because a number of people that turn to go into Little Palm miss that entrance and end up in the neighborhood, lost and not knowing where to go. There's no sidewalk along Pirates Road. Nothing has been said as to how people will be directed on where to go. Just based on the size of this, before voting, the Commission needs t ask themselves if they would want them as their neighbors. If not, he asks the Commission to vote no. He doesn't want them as his neighbors.

Mr. James Blanton moved to Little Torch five years ago and he asked the Commission to drive up past Key Largo and drive back. In five years he's seen so much change and deterioration of the highway system and everything else. One reason he moved here was the moratorium on building. He does not think this is a good idea. He is all for progress, but there are some issues.

Mr. Tad Humphreys lives on Blackbeard Road on Little Torch. He is not opposed to something being built here but nothing on this scale. If approved, the traffic situation at Pirates Road and U.S. 1 will be dangerous and significant. Little Palm has enjoyed immediate access to U.S. 1 with their own entrance for at least the last 35 years. The developer has made no known effort that he is aware of to incorporate that access road that they own into their plan. Our water supply system is stressed in high season. The sheriff has said that U.S. 1 is at capacity. The coral reef system is in real trouble. Overuse is one of the causes. It's about time we own up to our physical limitations and stop large development projects for the safety and well being of the local residents. He has been puzzled since the beginning of this application process on how this proposed development got any traction at all as it simply doesn't fit the character on Little Torch in any way. Going back to 2016, a far less ambitious project was thrown down by the Commission. How and why is the County staff viewing this so differently now? It seems that during review of any potential problems for the developer where subjectivity is permitted, the pendulum is always swung in the developer's favor. His question is what has changed since 2016. One thing that has always appealed to him is the quiet and peaceful nature of Little Torch right in the middle between Key West and Marathon. It's convenient, yet immune from the traffic and busy-ness. He moved here in 2009 to enjoy the peace and quiet and asks the Commission not to take this away from him. He would not mind seeing something being built here but not what is proposed. The only cure is application denial. Allow the applicant to come back with something that fits the current character of Little Torch, which includes a much smaller footprint, fewer units, and continued use of the historic U.S. 1 access and not Pirates Road which is the only means for residents to get in and out of Jolly Rogers for over 300 homes.

Ms. Lisa Schultz stated that she is speaking for Richard Sarver who lives on La Fitte and his son who lives across the street. Everybody commutes to Key West every day for work and the traffic is bad now. It will be impossible to get out from Pirates Road and also very hard for people to leave Barry Avenue to get onto U.S. 1 going south. She agrees with everything that everybody

else has said here. This is not in keeping with what people move to the Lower Keys for, which is to get away from Key Largo which has become like Miami.

Mr. Ron Roberts of La Fitte on Little Torch has spent his entire life in emergency services in another state and has seen death and traffic accidents with unimaginable things. He and his wife have lived here for 25 years and when everyone is in the development it is very difficult to get on the highway. He does not make a whole lot of right turns as he has to go left to go to Key West where all the action is. In a lot of other states and counties when you recognize a dangerous intersection, a traffic light goes there to alleviate that. You know that is not going to happen here. Putting up fifty-some extra cars, and it could be double that, right at the beginning of the intersection is going to be horrible and consequences are going to happen. All we all have to do is wait and see, because it's going to happen. It's a terrible intersection and a whole bunch of cars are being loaded at the intersection, and that's not right.

Mr. Larry Dolson and his wife Pat have been landowners in the Lower Keys since 1989, on Little Torch since 1994, and were certainly part of the Livable CommuniKeys strategy and planning back in the late nineties. In no way does he see that this proposal is in keeping with the low-density residential kind of community that was envisioned and would take advantage of the natural landscape and amenities that were presented at that time. They enjoyed the Dolphin Marina Resort with about eight fishing cabins with a gasoline facility and boat ramp, which was an asset to the neighborhood. That has since been removed with the change of ownership. The height of the buildings were said to have been adjusted, but he is not aware of what that adjustment is. Taking a look at current County Code requirements being 40 feet from the nearest roadway, Blackbeard Road being the most adjacent street is approximately five feet off the water. It's been suggested that the property height is somewhere in the 48 to 50 foot range and he does not know how that is consistent with the current requirements. There is a road cut onto U.S. 1 but Mr. Craig states the entrance is being adjusted onto Pirates Road to make it broader and bigger. He would like to have answers on how that road cut that currently exists on the drawings presented melds with widening the roadway onto Pirates Road and whether there will be some limitation onto Pirates Road.

Mr. Marc Herbener of Le Grand Road in Jolly Rogers stated that one of the things that attracted him to this subdivision was the facility there and the nature of how it was developed. Dolphin Marina Resort was not developed for boats and the resort was not developed originally for people. It was a bay area that had an enclosure for dolphins and a boat ramp that all the neighbors were told they could use as long as they pulled their trailer back. They could put in at the start of the season and take out at the end of the season. That's what it was developed for and it worked very well. Now, the people getting billable-time pay listening to this project are very much in favor of it, and all of the homeowners that have invested their life savings into their property in Jolly Rogers will be impacted by it and have concerns, and are asking the Commission to reconsider this. He could be in favor of this if there were binding elements that would allow the residents of Jolly Roger to use the boat ramp and that way they could keep their trailers off of U.S. 1. The second binding element would be to limit the height of any new development to 40 feet. The third binding element would be to put a traffic signal at Pirates Road and U.S. 1, because in season the additional traffic would not allow easy ingress and egress from the subdivision.

Ms. Paola Hernandez of La Fitte Road had an accident approximately nine months ago around the area of Little Palm Island. She was run over by a wave runner. The Coast Guard was not available. She was floating in the water. She was lucky enough to have FWC who was parked at the Dolphin Marina available to rescue her and her husband. She was air lifted from the marina. She had broken ribs, had a broken foot and a collapsed lung. She was lucky to have the marina available for FWC to be there and rescue them. The issue is a safety issue. There will be 32 more units there with wave runners and boats in the water and what will happen to the residents then. How is the Commission addressing the safety issue? This is very important and the residents need the Commission to look over them. Next election, the Commissioners' decisions will be looked up to see if they are supporting this community with what they should be supporting.

Ms. Nicole Cline stated that she is in agreement with a lot of the comments made by the Jolly Roger community of which she has been a resident since 2016. Ms. Cline does not believe this plan is compliant with the Livable CommuniKeys Plan. One item that has changed since Irma is there is no fuel dock at Dolphin Marina, and Captain Hook's permit was recently denied, so there is not going to be another fuel dock in place. The second issue is if the traffic volume increases, which we know it will, the developer should bear the cost of reconfiguring the entryway into Jolly Roger Estates and potentially establish a traffic light to prevent issues. Ms. Cline's husband was a first responder to an accident recently in this area which could have resulted in loss of life and should be taken into consideration. As a five-year member of the Jolly Roger POA holding various offices from secretary to treasurer, et cetera, they have had to reach out to Jim Crane and the traffic signage association in the Florida Keys to get signs to direct people to the exits to U.S. 1, because they pull down into the neighborhood, miss the turn at Dolphin Marina, and there are a lot of dead ends causing a lot of unnecessary traffic because people don't understand which way they need to go. Additionally, whatever marina is established there it should be open to the Coast Guard and a trauma response area for the Lower Keys as it has been in the past because that is something that will be critical not only for guests but residents in the surrounding area.

Ms. Ann Olsen of Summerland Key speaking on behalf of Last Stand stated that Last Stand believes this high-density redevelopment is not consistent with the goals, objectives and policies of both the Comprehensive Plan and Livable CommuniKeys Plan regardless of how many, quote/unquote, in-compliance statements are listed in the staff report. While all of the hard work and detail included in the staff report is appreciated, Last Stand disagrees with the conclusions. The staff report appeared to focus on the minutia while overlooking the overarching principles and intent of the law of the plan. Consider a couple of items marked compliant from the staff report. It states that the proposed project is compliant with the comp plan and is consistent with the community character, yet as many people have said the proposed project is a fourfold increase in density. It's out of scale, style and character with its location. It would create a series of large connected hotel room blocks four stories high rising at least 48 feet above sea level and that doesn't consider the issue of where the height of the buildings is measured from. There is no similar development in the Lower Keys or even what the staff report called the medium-density residential neighborhood immediately south of the project, so how can it be stated that this is consistent with community character or doesn't adversely impact the residents' quality of life. There's a traffic study supplied that shows an addition of 215 daily trips to the

intersection of Pirate Road and U.S. 1, another fourfold increase or impact to the area. How does this not exacerbate traffic and public safety issues? This is the same U.S. 1 that currently has a failing grade under the 2023 travel time and delay study. The areas of the Lower Keys are not as bad as the F-rated sections of Islamorada, but are we trying to repeat that horrific scenario all the way through the Keys? Residents constantly complain about the general traffic on U.S. 1, much less, as already repeated, trying to cross both lanes of traffic and head southbound from the ocean side. The Livable CommuniKeys Plan, preserving the rural, low-density community character, specifies that the scale of business that, quote/unquote, "serve the local community." There are two fundamental elements listed here, the physical character and sheer size of this proposed expanded business being out of scale to the Lower Keys, and comparing this proposal to one other overly-dense vacation rental complex north of U.S. 1 is disingenuous. More importantly, how does a hotel catering to wealthy out-of-towners serve the local population? This proposed project would provide no benefit to the adjacent neighbors or the local community of the Lower Keys. The surveys of residents reflect over 95 percent are opposed to this and there is the same majority response throughout the Lower Keys. Finally, it was stated there was a letter of coordination with the FKAA received with the application. Applying common sense, we all know the FKAA issued a water conservation notice for the entire Lower Keys and reduced our potable water pressure. It is doubtful that the aged and already stressed potable water system can handle the additional load from 38 hotel units, eight employee housing units, and an extensive landscape irrigation system. Adequate public facilities simply don't exist to accommodate this proposed high-density structure. Ms. Cline does not want to repeat details already gone through, but wants to draw attention to the overarching theme of the plan that the protection and enhancement of existing residential areas and the preservation of community character are paramount to be preserved. When is enough, enough? Ms. Cline has never spoken to anyone who moved to the Keys in order to live in a high-density, traffic-filled metropolis. When do the residents' concerns get to take precedent over the developer's concerns? Last Stand strongly urges the Commission to deny this CUP.

Mr. Ryan Freeman asked if the Commissioner who stated he was tired of hearing the traffic comments could state his name. Chair Scarpelli stated that he was the Chairman of the Planning Commission and he was trying to keep things moving along. He understands traffic is of concern. At every Planning Commission meeting he hears about the traffic concerns so the Commission is well aware of it. He does not know what the fix is or how to control that. Mr. Freeman stated that he is a resident on Blackbeard, and was then interrupted by Chair Scarpelli telling the audience that if they could not keep order they would be removed from the room for speaking over others speaking, and especially if speaking while he was talking. Mr. Peter Morris interjected that the Chair's point is well taken and that that is sanctioned by law. There is a procedure for this body to prohibit any unduly or repetitive conduct and this type of cross-talk and they could be removed. Mr. Freeman continued that he had been coming to the Keys for about 20 years and then purchased a home around Irma. He runs construction projects for the largest transporter of energy in North American and every day in these meetings, safety is the first and foremost. It has been beat to a pulp and he doesn't want to beat a dead horse, but this is probably the biggest consideration. No one wants some big obscene building there, but the theme being repeated is public health and safety. A lot of times you have to take a right to take a left, and the additional flow of traffic is not good. If there is not a good resolution, that should be a stopping point because in everyday life, safety should be first. The Commission has a

responsibility there and he wouldn't want them to not sleep well knowing they made a poor decision. Secondly, there are no benefits to the neighborhood. This property has remained an eyesore since Irma. There are campers and construction debris, and they haven't taken heed to the residents there or their opinions or anything else of the sort indicating what things may be in the future. This is simply a depot for them. There is no benefit to the residents here. He is not opposed to progress and what is proposed to enhance the property is a good thing, just not the way it's been proposed. This opens the door to future unwanted development in the area. Mr. Freeman loves Little Torch and the environment and would like to see that be consistent with whatever decision is made here.

Ms. Elisabeth Fennell stated she has over 30 years of experience with transportation planning with a large metropolitan MPO and related development planning. She has also been a full or part-time resident of the Keys for 47 years, much of that time involved with the community and planning. Respectively, Ms. Fennell submits to the Commissioners that this project is flawed and should not be approved for many, many valid reasons. The foremost being the lack of agreement and direct conflict with the goals, policies and objectives of both the 2030 Comp Plan and the Lower Keys Livable CommuniKeys document. No matter how many time staff says it's compliant, it is not compliant. Ms. Fennell applauds the comments of Ann Olson of Last Stand. Please do not be fooled. The Livable CommuniKeys goals, objectives and policies carry the same legal weight as the goals, objectives and policies of the 2030 Comp Plan. In fact, the Comp Plan supersedes the Monroe County Land Code. The Livable CommuniKeys plan also cannot be legally ignored. Hundreds of Lower Keys residents spent thousands of hours putting it together. The very first page of this plan, in envision statement number one, it is clearly stated, "The Lower Keys will remain a low-density, primarily residential community with a strong social fabric. We protect, preserve and enjoy our natural environment low density. Our community cherishes the conservation and recreation lands and the strict growth management regulations." Maintaining low density is mentioned twice in the very first page of the envision statement of the LCP. The proposed redevelopment of Dolphin Marina is not low density. This project increases density on the site roughly four times over. Furthermore, in the Monroe County 2030 Comp Plan which codifies the Livable CommuniKeys Master Plan, it is clearly stated more than once. Each community master plan will be closely coordinated with other community plans and other jurisdictions to ensure development or redevelopment activities will not adversely impact these areas. Ms. Fennell does not care how many times it is said in a report or stated today, this does not comply with any of these plans. Policy 101.19.1 reiterates through its twelve points that the protection and enhancement of existing residential areas and preservation of community character are tantamount and to be preserved. A fourfold increase in density at an already overburdened intersection is unsafe. It adversely impacts this area and radically changes the community and the residents' quiet enjoyment of their properties. Please do the right thing and deny this.

Ms. Julee Marzella stated that she had submitted a screen share to be placed on the board which was presented. Contrary to recent decision by Florida's Fourth District Court of Appeals, the Senior Director of Planning still feels that the Land Development Code gives her the sole authority to render official interpretations of the code. Her interpretations often conflict with the code to the benefit of the developer. The Planning Commission must deny this major conditional use permit application to rectify the Senior Director's code interpretations that are inconsistent

with the LDC, the Comp Plan, the LCP and the Florida Statutes. Looking at the plans on the screen, on each map, the boundary of the Little Palm/Dolphin Resort property is outlined in a teal blue color. The area highlighted in yellow is where the Dolphin Resort property abuts Pirates Road. Pirates Road is the only road that abuts the Dolphin Resort property and not U.S. 1. There are approximately three acres of land separating the Dolphin Resort property from U.S. 1. The code says that a road must be adjacent to the property in order to use the crown of that road to set the baseline for building height. Clearly, U.S. 1 is not adjacent to the Dolphin Resort property yet the Senior Director of Planning has determined that the developer may use the crown of U.S. 1 to establish building height. The two red diamonds on the map represent where the developer posted community meeting and hearing notices. Neither of these red diamonds are on the Dolphin Resort property. The LDC requires the applicant for a major conditional use permit to post the meeting notices, quote, "on the property that is the subject of the hearing or meeting." These posts were posted outside of the property on FDOT property. The code also requires the posted notice be easily visible from all public streets and roads abutting the property. Again, the yellow line is the only place where the property abuts a road. The developer was required to place meeting notices anywhere along this approximately 375 feet of abutting property where they would have been easily visible from Pirates Road but they did not. Even though the developer did not post the property that was the subject of this hearing, nor did they post the property where it abuts Pirates Road, the Senior Director determined that these notices were posted in compliance with code and allowed all of the community meetings to take place.

Ms. Stephanie Brown asked permission to be video connected, which was denied. Ms. Brown is a resident of Jolly Rogers Estates and thanked the Commission for their time in reviewing earlier emails captured in File 2021-248, in tandem with the Commission's service and trusted authority to review planning applications, compliance with regulations, and plans for our stewardship in treasured Florida Keys community lifestyle. As conveyed in good faith and good will, initial support was conditional upon Dolphin Resort being a good neighbor and mitigating the significant density and intensity impact to our community. Mr. Craig's August 2022 subsequent cavalier statement in writing stating, quote, "to the County support despite any possible neighbors' objections," end quote. For Chair Scarpelli, in reference to what can be done about traffic, it is important to recognize that the applicant unilaterally decided to divert all traffic from its primary U.S. 1 entrance onto Pirates Road serving its sole ingress and egress to an established community of well over 3,000 [sic] homes, necessitated the collective learning curve of the County's process and procedures, a significant curve, starting with the Monroe County Comp Plan ensuring maximum well being of the Florida Keys and its citizens through sound economic development while protecting the shoreline marine resources inhabitants, the Lower Keys Livable CommuniKeys Plan and future growth to protect the density, low density and community character, and ending with the Monroe County Comp Plan. In seeking LDC clarifications, emails were sent to the County including a May solicited request by Assistant County Attorney Peter Morris that an email be sent in complement with Ms. Emily Schemper, Senior Director. The County-solicited email was sent and over the next two months accompanied by three general follow ups including one from Commissioner Lincoln before Ms. Schemper's two-months-later sole response conveying, quote, "I believe many of these questions have been previously answered," yet did not clarify which ones she believed were answered, nor answered the ones that were not; thus, obtaining the process and obtaining clarification is intractable from the County. A paralleling point expressed by Planning Commissioner Demes

during the recent August 2023 Planning Commission meeting surrounding noncompliance when it comes to credibility and the attempt of the County's ability to manage code and regulations summarized with a fait accompli, so I guess this is Christmas for property developers. Further evidence in 2015 when the applicants sought a more favorable intensity and density land use zoning map amendment for suburban commercial to mixed use and again, the DRC recommended approval, yet the Planning Commission in January of 2016 issued Resolution P02-16 made the following conclusions of law denying the applicant's application. And, the DRC's respective recommendation of approval per Title 5 that this is not intended to relieve particular hardship nor confer special privileges or rights to the applicant nor permit adverse changes in the community character was inconsistent. To date, nothing has changed. Ms. Brown requested time to close because there was a pause in her presentation, and respectfully asked that the Planning Commission continue to protect the rights of the Lower Keys community through reaffirming the resolution with precedence in tandem to Land Development Code 110-65, deny the application as not appropriate for the particular area, 110 – at which time Chair Scarpelli indicated that the interruption of time was not that grievous and called for the next speaker.

Mr. John Simon attested to the earlier request that it present with truth and affirmation. Mr. Simon is a homeowner on Pirates Road. Looking at the land development, the Lower Keys and the Monroe County Comp Plan, all of those applications are supposed to be in favor of the residents and not to favor interpretation for that of the developer. Given that and looking at what he's been told, it's all disconcerting, by Mr. Brad Stein and they were told that this was going to go through no matter what took place. If you take a look at the density issue that everyone seems to want to avoid, once you take Little Palm Resort along with Dolphin, you are literally doubling, maybe even greater than that, the population that will be utilizing that island. That island was never developed nor was it ever foreseen to be developed with that kind of density. Then the resort indicated they were going to close down the U.S. 1 entryway and the odd part about that is they're taking a commercial entity that dumps out onto a commercial roadway and now converting everything to what would be a residential street. Looking at the residential street Pirates Road, then you have double population using it causing significant problems with the residents attempting to leave and enter. The odd part is they are going to keep the U.S. 1 entry when if you interpret the code in anyone's favor it should be that of the residents. Dolphin Resort should open up their U.S. 1 entryway for use by the residents of the island rather than vice versa. So they're swapping out not just density but the traffic congestion. They have that opportunity but instead, they want to dump out onto a residential road rather than onto a commercial road that was originally set up for this commercial enterprise. This is not favoring nor has any of the Planning Commission looked at this in favor of the residents, and that's the way this code is supposed to be interpreted.

Mr. Shannon Steele stated he has owned his house on Little Torch since 1987. He agrees with most of the comments but most exactly with Ms. Ann Olson from Last Stand and with Ms. Beth Fennell. The point the Commission needs to consider is that a lot of work went into the Lower Keys plan. Reading through it, everything talks about low density and projects having at least some benefit to the neighborhood, and maintaining the character of the neighborhood. The Commission has heard time and time again at all of these meetings this is just not characteristic. The staff report quoted some 1.01 and that's the Catch-22 that essentially says the FLUM has to be the overriding consideration so pretty much throw out everything else, and that's what he got

from hearing that. The Commission needs to look at the plan, understand what it's trying to do, and not allow this monstrous development which is uncharacteristic and doesn't fit. Regarding traffic, one thing that could be done is to redesign the plan to maintain the existing driveway. They don't want to do that because it would lower their density a little bit and would eat into profits; but, that is one thing that could be done to at least make it better. Mr. Steele asked the Commission to please consider the Lower Keys plan and not allow this massive high-density development with no benefit and much detriment to the neighborhood to go on. Make the applicant come back with something a little more reasonable. The Commission is the last hope for the residents who have participated in all of these planning meetings. The buck stops here. Please support the community and don't let this go through.

Ms. Diane Beruldsen is a member of the Stock Island Association. Though not speaking on their behalf, she has experience in her own area and it makes a huge difference with the traffic, and it is no longer just traffic it is accidents. This development group has put lots of money into this project, but all the money of the neighbors that has been put into their private homes far exceeds whatever investment was made into this development plan. They have put some ducks in a row and just because this is their third meeting doesn't mean that the Planning Commission should give them any favors. There is no benefit to the community, this is a private enterprise that's being considered, and money is their goal. They are not interested in being a good neighbor. The Florida Keys is supposed to be protected by the federal government. In this meeting there have been lots of great, informative speakers. Maybe some were repetitive but there was a lot of fresh, new information. Ms. Beruldsen asked when is it enough for the development in the Florida Keys because this definitely will impact all part of the Keys, and when will the community be considered? There are water shortages, problems with the sewer, and hurricane evacuation to be considered as well. It's supposed to be 24-hour evacuation. Recently, with affordable housing and new projects that have gone up, the residents who live in those affordable projects have to evacuate in 48 hours. This definitely is going to impact that. Ms. Beruldsen stated that it didn't matter how many speakers the community had, if there were 1,000 speakers, she can tell everyone right now that this planning board is going to approve this project regardless, and that's a shame. She really wishes the Commission would reconsider their thoughts. It's okay to reject this, and she wishes they would.

Ms. Jennifer Weeks is a resident of Little Torch and is in agreement with many of the concerns brought up today. Ms. Weeks asked the Commission to please not allow this project to proceed.

Ms. Alicia Putney representing the Key Deer Protection Alliance stated there are projects that go through this review process which are difficult to evaluate, but this is not one of them. This project is clearly inconsistent with the Comp Plan, the Land Development Code and the Florida Keys Area of Critical State Concern. The scale of this project is not suited for the project site by law. It is not legally permissible for various reasons, including but not limited to the community character of the surrounding area on Little Torch Key which was defined by the staff report as the properties located across the canal to the single-family residential dwellings to the south, a large channel to the east, U.S. 1 to the north, and Pirates Road wetlands beyond the west. Community character is not an elusive term. Often this fundamental land use factor is ignored. This is wrong and this is illegal. Community character is one of the three most essential elements in all land use decisions in the Florida Keys. In fact, community character is second

only in the list of most critical land use determinants in Florida legislation on the Florida Area of Critical State Concern and the Monroe County Comp Plan. Reading from State Statute 380.0552(2) lists the intent of the Florida Keys Area of Critical State Concern. Number two on that list is, quote, "Establish a land use management system that conserves and promotes the community character of the Keys." The subject property is further defined in the mission statement with the Livable ComuniKeys which has been gone over ad nauseam. The purpose of the Suburban Commercial land use district established areas for commercial uses designated and intended primarily to serve the needs of the immediate planning area in which they are located. This district should be established at locations convenient and accessible to residential areas to reduce traffic on U.S. 1. There are many legal reasons to deny this major conditional use. Among them are it's the wrong zoning district which this same developer tried to change in 2015 but whose request was denied by the Planning Commission. It does not meet the requirement of a major conditional use permit, violates the Florida Keys Area of Critical State Concern legislation, violates the 2030 Comp Plan, and violates the Livable CommuniKeys plan and the Land Development Code. Legally, this request must be denied. Ms. Putney asked the Commission to do the right thing in terms of the law and public policy and vote to deny this project. Ms. Putney also noted that after listening to 29 people speak, including herself, all have stated that this project should not be approved as it is. It's too big, it's got problems, and the traffic alone is a problem big enough. The fact that it doesn't fit the zoning district purpose is a big enough problem. Any one of these problems is enough to deny it. Ms. Putney has been involved with the land use decisions in Monroe County for over 30 years and she has heard today adjectives like, I'm shocked, appalled, it's insane, it's ridiculous, it's crazy, ingenuous, it's obscene. Yes, it is all of these things. Never has she seen the subjectivity of staff that she's witnessing today and it's sad. This Planning Commission needs to vote how they want to vote and remember, what staff is recommending is a recommendation. Listen to the facts presented today. There is only one choice if you want to follow the law and that is to deny this application.

Mr. Steve Miller representing the Lower Chamber of Commerce stated that he knows almost everyone present and empathizes with their situation, but he's speaking for the Chamber of Commerce which is not completely in favor of this project but they are in favor of this project. There are changes that need to be made to this. Mr. Miller has been here since 1984 and he has sat in on every single one of the CommuniKeys meetings. They were meant to control growth, not retard it completely. The last building that was built on Little Torch was Kiki's in the 1990s. Several audience members protested off microphone. Mr. Miller stated he cannot think of a newer commercial building that was built out there. But basically, this was meant to control growth, not retard it completely. He would like to see the project not be quite as big as it is and a control lane is definitely needed. Some of the arguments that have been brought up as far as the boat gas, that hasn't been open for a long, long time. As far as hurricane evacuation, this is a hotel and these people have to evacuate 48 or 72 hours in advance of a storm, so that's going to be nothing. There needs to be control at the intersection. Traffic is bad, yes. Mr. Miller can name fifteen spots between Big Pine and going down where it is a nightmare pulling out into traffic. This is a DOT problem that needs to be taken care of. Mr. Miller does believe this project needs to be scaled back to a degree, but he has a feeling that were it to be scaled back there would still be major opposition. We need to move forward at some points because otherwise, there will only be dilapidated buildings up and down the island. The best being done right now is rebuilding a lot of the older ones. We have to look to the future of these islands.

Mr. Morris interjected that there are rules of procedure that have been approved quasi-legislatively by this board and they must be observed. Every public speaker has a right to be heard whether in support of or in opposition to this application. This individual represents an organization and is entitled to five minutes. Chair Scarpelli then shamed whoever had made the outburst. Mr. Miller then stated that it was really hard for him to come up and do this because he knows everyone, but we need to look forward to what is being passed down to our youth. Is this the future that we're going to have to deal with on this island with every place falling apart? These people want to improve this piece of property. Instead of making it to where they can't do it at all, help them do it the right way. Mr. Miller has sat on committees like this and has heard people come in grumbling that no matter what we say they're going to do what they want. These people are giving up their time and are working hard and listening to a lot of hard stuff and should be given a break.

Ms. Krissy Wejebe lives in Summerland but was born and raised in the Florida Keys. She is the Executive Director of the Jose Wejebe Spanish Fly Memorial Foundation. Little Palm as an organization has donated to her organization before and have been a sponsor for a few years. Ms. Wejebe's biggest question to the planning board relates to the traffic concerns and asked if they were willing to revisit these concerns before making a decision for things like a traffic light, middle turning lane, or if today was the final vote. Chair Scarpelli stated that that is an FDOT ruling and compared it to the Big Pin Academy trying to do the same thing. Ms. Wejebe added that it's nice to see her age group being represented and she hopes to see more individuals in her age range as it's important to make our voices heard.

Joe McCaskey lives on La Fitte and stated the level of service for the Keys has recently been turned into a D. It was his understanding that no commercial buildings or permits were supposed to be submitted or approved if the level of service is a D. He does not know when the applicant's traffic surveys were done but this is a new survey for 2023, and he hopes that will be taken into consideration that there is a traffic problem and it needs to be addressed.

An unidentified and unrecognized speaker from the audience apologized for some of the outbreaks that occurred. Her remaining comments were not picked up by the microphones and were indiscernible.

Ms. Nicole Cline and Ms. Alicia Putney indicated they wished to speak again but since they had already spoken, that request was denied. There was no further public comment. Public comment was closed.

Mr. John Wolfe commented that since there had been some suggestions that the Planning Commission had already made up its mind, he wanted to remind everybody that the Commission is legally obligated to listen to everything said, both for and against, and they cannot talk among themselves to discuss this. To suggest that they've already made up their minds is not accurate. Chair Scarpelli asked if there was anything further the applicant wished to touch on.

Mr. Craig, stated that there were several things that he and Robert Spottswood would respond to, but due to the fact that Carl Peterson, the traffic engineer, had a time constraint, Mr. Craig

wanted Mr. Peterson to first respond to all of the comments regarding the dangerous intersection at Pirates Road and U.S. 1.

Mr. Carl Peterson, traffic engineer for the project, stated that he had heard a lot about the safety concerns regarding the intersection at Pirates and Overseas Highway and he understands that because he drives these roads, too, and left-hand turns are difficult throughout the Keys. He also heard a lot about the safety and crash history. He had done prior research and found no evidence that this was identified by the state as a high-crash location. This afternoon he logged into the state's crash database to get the latest information available for this intersection and between January 1, 2018 and August 24, 2023, over roughly a five and-a-half year period, there have been three crashes at the intersection and one crash a few hundred feet to the west of the intersection. Thankfully, none of those crashes involved injuries. He does not think that this is a location under its current conditions or even with that of the traffic associated with this project that would elevate it to a high-crash location. It is not bearing out in the data. This is the best data he has access to at this point and he wanted to share that with everyone. Mr. Craig asked, given the proposed right-hand-turn lane onto U.S. 1, if that would improve the functioning of the intersection for those using Pirates Road. Mr. Peterson responded that it absolutely would. One of the problems throughout the Keys with a lot of the un-signalized intersections along Overseas Highway is the single-lane approaches to Overseas Highway. With one vehicle at the front of the queue waiting to turn left, it then negates the ability for vehicles behind that vehicle to perhaps turn right, which drives up the vehicle delay and results in what most people would consider to be an undesirable condition. The addition of this right-turn lane will significantly reduce delay at this intersection. Mr. Peterson stated he would be available for another fifteen minutes for questions.

Chair Scarpelli asked Mr. Peterson about the approximate 200 additional trips on a daily basis and what that would be comparable to in real life to get a layman's association with what that would feel like. Mr. Peterson responded that from a traffic and trip generation standpoint it's 215 daily trips, but that is over a 24-hour period. What is more meaningful and important is looking at the AM and PM peak hours when you see the most traffic generated by the site. According to his analysis, which had been reviewed and approved by the County, in the AM peak hour there is expected to be about 15 trips generated by this development. In the PM peak hour there is expected to be about 20 trips generated by this development. The best way to look at this is in the AM peak hour, that 15 trips means on average throughout the hours of 7:00 and 9:00 you would see one vehicle every four minutes, on average. In the evening, applying the same approach, you would expect to see one vehicle every three minutes. Mr. Peterson believes this analysis probably overestimates the traffic by including the eight dwelling units as independent housing with no tieback to the actual hotel units for employee purposes. Chair Scarpelli asked when the traffic study was done, and Mr. Peterson stated it had been done over several years but was most recently looked at in March of this year, and was done with the latest ITE trip generation manual required by the County.

Mr. Robert Spottswood, Jr., added that they have heard a lot about the U.S. 1 entrance and the Commission stated this was not a Commission specific issue. The owner has for years desired to use that, but it's because of FDOT that it has been an issue. This has been raised as the owner not wanting to use it and that is factually inaccurate. The other thing is the traffic issue is

somewhat of a red herring because this property, even without this conditional use, could be developed into a commercial use, and a lot of those potential uses would exceed the traffic counts of what's going in there now. His kids are eighth generation, from Key West, and he generally shares the concerns about traffic as a whole in the Keys, but to put that whole burden on this specific project does not seem proper, and some of the statements made have not been accurate with what's happening on the site.

Commissioner Demes stated that he likens some of these traffic studies to voodoo. He lives in an area where it's another one of those places where it's supposed to be one thing theoretically and it's a total other thing at different times of the year. In some neighborhoods near him the population outside of the season is very negligible compared to in season when everybody comes here, as in this particular case where there is probably the highest occupancy of those particular units. He can see that traffic is a huge issue and sees where the right-turn lane could alleviate some of the traffic backup, but at the same time, at least in some intersections, depending on the geometry and how the line of sight is configured, it creates more of a hazard if there's a large vehicle taking to the right and you want to take a left, and then you can't see the oncoming traffic and tend to take chances you shouldn't take when you get inpatient. Commissioner Demes has seen left turn lanes like in Cudjoe where there's a left turn center merge lane to get to the right, and asked whether that had been considered in this area and if there was room for that, to give people the ability to get across the oncoming lane, and then have a merge capability in the center lane to go south. Mr. Peterson responded that it is something that is implemented in more congested locations where you might have a partial intersection or partial signalized intersection. In this particular case it would probably result in a significant increase in the footprint of the pavement in the intersection and is not something that's been evaluated as part of this application process, but that's not to say that it couldn't be done. Commissioner Demes noted that the last speaker had asked about the latest completed traffic study and what it means for non-residential development, and his understanding is that until the traffic situation is mitigated, projects potentially like this could not go forward. Traffic is an issue, it is a DOT challenge, and from his understanding it will be going to the Commission in the next month or so regarding how to mitigate it if you want to develop commercial property. He sees a lot of improvements going on up and down U.S. 1 to the mainland including road widening, and in this particular case it may be a consideration because it's happening elsewhere, has happened in recent years and looks like it's continuing, and he believes more mitigation will need to be done in the future to reduce the impacts of traffic and for traffic safety.

Commissioner Neugent added that having just read through the traffic study, he wanted to clarify some things. Chair Scarpelli stopped him and stated that the traffic study should not be discussed if it hasn't been accepted yet by the County. Commissioner Neugent responded that he just wanted to point out that there is a mischaracterization of what the people had been saying here. The Level D is for the whole county. There are only two segments in Islamorada that need to be addressed that are at Level E, and Islamorada has stated in its comprehensive plan that they don't care if it's a Level E. So are we going to punish and stop commercial development on two segments that lower it by .8 miles an hour from 44.3 to 45 miles an hour, and the BOCC is definitely going to be addressing this issue. Monroe County's Comp Plan is what forces this Level D for the whole County based on those two segments. The traffic study everywhere else is no lower than a C, and from Plantation Key to Florida City it's an A. Ms. Schemper clarified

that whether the Commission thinks the overall County traffic study is relevant to this item or not, she wants to clarify some things because there is now a lot of disinformation out there. The 2023 Arterial Travel Time and Delay Study, which is what it is called, every two years the County's traffic consultant conducts a study to measure the level of service on U.S. 1 up and down the Keys. The unincorporated county has a level of service standard for all of the segments individually and also for the overall highway. Unincorporated Monroe County requires that each segment and the overall highway operate at a level of service C. If either of those things are no longer operating at a level of service C, then mitigation for traffic impacts would be required for any development other than single-family development. The 2023 study shows that every individual segment in the unincorporated county is operating at a level of service C or better. However, the overall highway is shown to be operating at a level of service D. So the overall is failing the level of service standard. This is on the BOCC tentative agenda for November 8. The BOCC needs to approve that study, and then that study is utilized in the Public Facilities Capacity Report which is also updated every two years, along with level of service information about all other public facilities. Once the Public Facilities Capacity Report is adopted, that is when that traffic study would start being used for development review purposes. That final review is done at the time of building permit. Final review is not done at the time of conditional use permit. A preliminary review is done so for this application as of today it is under the 2021 traffic study. Preliminary concurrency review shows that it is compliant per that study. At the time of building permit review, if we are then under the 2023 study and it shows a problem on the overall highway, level of service D, then traffic impacts to U.S. 1 will need to be mitigated.

Commissioner Neugent confirmed with Ms. Schemper that the BOCC could accept or not accept this study and have another recommendation as some Commissioners believe that when they asked for the segments instead of overall speed limit, that this is what created this. There are two segments that are at a level E, and both of those are in Islamorada. Ms. Schemper confirmed this would all be part of the discussion on November 8, and the Commission would have to have a reason to either accept or reject.

Mr. Craig mentioned that after each of the public community meetings, they had tallied all of the comments and responded to each and gave that to the County, which is in the record. Many of the comments heard today have been responded to previously. One concern was safety in terms of the emergency responders being able to use the dockage at the site. That has never been denied by Little Palm Island or Dolphin ownership and will continue to be available. Another comment was what has Little Palm and Dolphin done for the community. Little Palm, for over three decades, and as part of Dolphin, have been a wonderful member of the community contributing time, money, provided a beautiful facility and paid a lot of taxes, and they will continue to do that. Mr. Spottswood had mentioned the U.S. 1 existing access that will remain for emergency purposes only because the fire department requires it. An application to use that for an access way was a part of the original plan and staff advised that it did not meet the separation requirements for Pirates Road or the bridge access way and would create a situation that would require variances from the County and FDOT, none of which can be guaranteed. As to the height determination, this had been submitted in April of this past year and they had followed the instructions of staff which was to use the crown of the road at the entrance to Pirates Road for buildings facing the community to the south and west. The reference point for

the other buildings was U.S. 1 which has previously been used and approved by staff and that was used to create the height for the Little Palm welcome center and other buildings that do not face the neighbors to the south. Widening of the entrance to the site from Pirate's Road has been expanded to include a 35-foot turning radius so that the biggest trucks can use it, and that is beyond the requirement of FDOT which is only a 25-foot radius. Mr. Craig believes staff should respond to the comments regarding the posting as this has been gone through once already. The applicant met the requirements of code for how many and where signs needed to be posted. If someone moved the sign, the applicant re-posted it. A lot of residents have said they should just do what's allowed by the current zoning, and this is what is being proposed. It is consistent with the code, the comp plan and the CommuniKeys plan. If anyone has suggestions to improve the site, the applicant will listen.

Mr. Robert Spottswood added that the comment about the team not being from the Keys or local is not correct. They are all a part of the Keys and have multi-generational families living here. Mr. Spottswood's family engages in development projects and he understands the process and need for public comment, but to some extent some of these processes become a little bit abusive. This project is consistent with the code, meets all requirements, and he is asking the Planning Commission to proceed with staff's approval and move forward. Having spoken to the owner during this meeting, the owner is willing to allow emergency first responders to use the site, and is also willing to allow members of the Little Torch community to use the fuel dock. Without condition to this, the owner would like to and is willing to explore the U.S. 1 entrance but understands this is an uphill battle with FDOT. Mr. Spottswood asks the Commission to recommend approval of the project.

Chair Scarpelli thought regulating who can use the fuel docks would be tough. Commissioner Demes commented first that there were five recommendations listed, but in the package there were thirteen. On page 26, item 13, adequate measures to contain fuel spills will be required at the time of mit application and five-year water study, and then it says it requires the water quality monitoring program of bi-annual sampling of oil, grease, total petroleum hydrocarbons in addition to physical parameters such as DO and turbidity. He asked what does that relate to in this project and is there going to be a fueling facility there? Ms. Schemper responded that she believes that's where the existing fuel tanks are, and if they are to be located within what is normally the shoreline setback, they can only be approved as part of a conditional use permit, so this is the right forum for that approval; and, second, it has to improve these water quality provisions listed in that condition. Commissioner Demes thought the conditions seemed a little bit hollow because if the samplings twice a year fail it could really have nothing to do with this project and the fueling here. In canal systems, any sheen is reportable under Coast Guard regulations. If this provision is in there, there should be a reasonable course of action for correction that would be expected wherever the fingers point, and in this case it could be this applicant. Commissioner Demes asked what would happen if the sampling failed.

Mr. Craig responded that because these are fuel tanks that serve a commercial use, they are permitted under state and federal law. The state issues the operating permit for these fuel tanks. The reports required go back to the state and if they fail that testing, then the state has the ability to shut them down and require them not to be reopened and used until such time as standards are met. Mr. Spottswood added that he had had a similar experience and they had to prove to the

state that the water quality issues were not a condition created as a result of their site, which would be the case here. There would be testing to confirm there were no leaks in the tank systems themselves. Commissioner Demes stated he is very familiar with this and he just wanted to know. Turbidity and dissolved oxygen in the canal could easily have nothing to do with this project. Commissioner Demes asked for the size of the fuel tanks. Mr. Craig stated that the current ones don't meet any of the codes, and he thinks it's going to be 1,000 gallons and 500 gallons of diesel.

Chair Scarpelli noted that regarding the height of the buildings, there might be some wiggle room with roof pitches to make a few people happy. Also, there's no real walking or bike path on the roadway and he wondered if the applicant had thought of doing anything along the property to help with that. Commissioner Neugent noted that on the other side of the road are wetlands. Mr. Spottswood responded that the applicant would take both comments under consideration. Chair Scarpelli asked staff about a comment regarding an accessory use on the property and different ownership. Ms. Schemper responded that in permitting a hotel, things that in other situations are thought of accessory such as a shed to a residence, everything associated with a hotel is part of the hotel use. That terminology isn't used with hotels. Chair Scarpelli asked if there was a density set for IS subdivision. Ms. Schemper responded that for IS it is one dwelling unit per lot. Staff did do a density report but if you look at the different sizes of typical lots in an IS subdivision, 60 by 100 lots which is typical of this neighborhood is approximately seven dwelling units per acre. Some are four units per acre if the lots are bigger. What some people think of as a pretty low-density development, if you do the calculations it's actually fairly high density. Chair Scarpelli stated that that was what he was alluding to. This project is 8.5 units per acre so it's not a far stretch as far as density.

Commissioner Demes asked about the access road and whose property the 35-foot lane would be on. Mr. Craig stated there are two ownerships, one being the county road and the other is FDOT. Any improvement to widen it and use it for the entrance must be approved by both the county engineer and FDOT. Design has been submitted to FDOT and it is winding its way through their process. FDOT does not provide letters of coordination. The permit must be applied for and FDOT will state whether it meets the requirements at the end of the analysis which takes months. Commissioner Demes stated that in the big scheme of things he thought the sidewalk should be considered at least for part of it, and the master idea between the county, this project and the left turn merge lane sometime in the future may have some major value. Chair Scarpelli thought a sidewalk would be very helpful to the community because the Overseas Trail is right there. Mr. Craig responded that the owner would commit to looking at the feasibility of the sidewalk to connect the trail, but would not want it to be contingent upon the approval of the development because they don't know whether there's enough road width for it and whether it would be approved by the County. As to the building height, the current design is preferred.

Mr. Wolfe reminded the Commission that because there were a sufficient number of petitions signed, a supermajority vote of the Commission would be required, meaning four must be in favor as opposed to the normal three if voting to approve. Mr. Morris asked if the applicant would stipulate to this panel recognizing Ms. Schemper and Mr. Stein as experts in their respective disciplines of planning. Mr. Craig and Chair Scarpelli agreed. Mr. Morris confirmed

with Ms. Schemper that she had reviewed Mr. Stein's report and agreed with his determinations and interpretations.

Chair Scarpelli asked with Suburban Commercial zoning, how that would be looked at with the community connection, and thought that opening the marina to fueling would be helpful to connect the community to the project. Ms. Schemper agreed, and added the inclusion of some employee housing helps reduce trips off U.S. 1. Chair Scarpelli asked if job generation would also be a connection. Ms. Schemper stated that people living in the neighborhood could end up working there. Mr. Spottswood added that improvement of the value of this real estate would improve the properties around it, and the owner of Little Palm has acquired an additional 21 rooms of housing in Big Pine on their own volition, so they do control sufficient housing in the area for the balance of the project.

Commissioner Ritz stated that clearly there are conflicting priorities with residents who have lived in the area for a very long time with very strong feelings about this, and there is a property owner who has a right to use the property. If the property owner follows the guidelines, he's not sure how the Commission would prevent the property owner from properly using the property. Commissioner Ritz would recommend approval contingent on staff's recommendations. Commissioner Neugent seconded the motion.

Motion: Commissioner Ritz made a motion to approve contingent on staff's recommendations. Commissioner Neugent seconded the motion.

Commissioner Demes added that he does not particularly like this project but, be that as it may. Commissioner Thomas stated that she does not feel the scale of this development fits into the neighborhood and will vote no. Commissioner Neugent added that the intersection needs enhancement to help ingress and egress and understands the residents, but this situation has existed, and with some of the strictest development rights to address a lot of the issues brought up by the residents, for those reasons he will support it. Chair Scarpelli added that U.S. 1 is a major arterial roadway and 4.5 acres on this roadway is pretty substantial. Something will be done with it and this property has historically been used as a hotel having 12 units prior to anything happening and he didn't hear of one policy that it doesn't comply with. Looking at the overall density of the entire neighborhood relative to the site being discussed, it's off by one unit per acre, so it's not a far stretch. The developer has done everything possible to minimize the impact along Pirates Road and the adjacent canal. They could build these buildings 25 feet from that setback and 25 feet off the front as well, and everything is shoved away from the main arterial road and from the canal side, and pushed up into the embankment of U.S. 1 which should theoretically, with landscaping, diminish the size of the structures. He may prefer reduced roof heights, but that has no bearing on the policy so his vote is yes.

Roll Call: Commissioner Demes, Yes; Commissioner Thomas, No; Commissioner Neugent, Yes; Commissioner Ritz, Yes; Chair Scarpelli, Yes. The motion passed 4 to 1.

RECESS FROM 3:46 P.M. TO 3:52 P.M.

5. A PUBLIC HEARING TO CONSIDER AN ADMINISTRATIVE APPEAL PURSUANT TO MONROE COUNTY LAND DEVELOPMENT CODE SECTION 102-185, FILED BY NEIL HEDRICK IN HIS OFFICIAL CAPACITY AS THE SOLE PRINCIPAL OF DALK LAND, LP, A PENNSYLVANIA LIMITED PARTNERSHIP, REQUESTING REVERSAL OF PERMIT NUMBER 09100217 REVISION F, HELD BY PETER F. GIAMPOLI, REGARDING A POOL DECK TO REAR PORCH, CHANGING COLUMNS UNDER POOL DECK TO ROUND COLUMNS, AND CHANGING BEAM SIZE UNDER POOL DECK TO MATCH ROUND COLUMNS. (FILE 2022-142)

(3:54 p.m.) Mr. Devin Rains, Planning and Development Permit Services Manager, stated he was available to present the staff report. Mr. Peter Morris interjected that there is at least one, if not multiple, motions on the table, one of which goes to jurisdiction. There are attorneys for two private parties. Mr. Morris asked if they wanted to have argument on the motion to dismiss for lack of jurisdiction first. Mr. Russell Yagel, attorney for Mr. Giampoli, stated it was not his appeal. He did not use the microphone so all of his comments could not be heard. Mr. Morris stated the attorneys could work that out. The staff report will give a pre-overview of the evidence and jurisdiction is a predicate to flushing out the substantive issues in the evidence provided by the two parties. It seems it would be most orderly to hear the legal arguments on jurisdiction first, but he does not know the desires of the two parties.

Mr. Yagel, not on microphone, stated there are two motions, a motion to dismiss based upon lack of jurisdiction, and another motion stating some of the evidence should not be considered, though all comments could not be heard. Those are preliminary matters.

Mr. Ira Gonzalez, attorney for Dalk Land, stated that this is not a court of law. This is a quasi-judicial proceeding. The appeal was taken by Dalk Land so unless there's a staff report, Dalk Land should present its appeal and of course the intervenors can then state their position on the record. In terms of the rules of evidence, they are relaxed in a quasi-judicial proceeding. Monroe County Code 102-85 provides that an appellate is provided an opportunity to create a record and present evidence, and that's what they are here to do today. He believes he should be able to present first, opposing counsel can present their motions, and the Commission can take it up. Chair Scarpelli and Mr. Wolfe agreed that was appropriate. As to the motion to dismiss, Mr. Wolfe stated that even if the Commission decided they don't have jurisdiction, he would still recommend a hearing on the merits in case it is reversed. There will still be a motion, a decision, and a hearing for efficiency. Mr. Morris shared that opinion. In the event there is a remand based on a disagreement by an appellant based on this panel's jurisdiction, at least the record will have been created and a decision can be reached by the appellate court, if necessary. Mr. Morris also stated there would be a staff presentation, not a report.

(4:00 p.m.) Mr. Devin Rains then made a brief presentation. The subject property is located in the URM land use district with a FLUM designation of Residential High which allows for detached dwelling units as a permitted use. The tier designation is Tier III Infill area, in a flood zone VE elevation 13. The subject property owner is Peter Giampoli. Dalk Land LP, appellant, is the adjacent property owner to the west. Dalk Land LP is appealing to the Planning Commission the approval of Revision F of building permit number 09100217. The revised building permit Revision F was approved on June 28, 2022, for the subject property.

Pursuant to LDC 102-185 appeals, (c) procedures, "A notice of appeal in the form prescribed by the Planning Director must be filed with the County Administrator and with the office or department rendering the decision, determination or interpretation within 30 calendar days of the decision. Failure to file such appeal shall constitute a waiver of any rights under the land development code to appeal any decision, interpretation or determination made by an administrative official." Revision F was issued for the subject permit on June 28, 2022. A timely notice of appeal was made regarding the issuance of Revision F and was received July 15, 2022, and assigned Planning Department File Number 2022-142. Following that, the Third District Court of Appeal issued opinion denying petition for writ of cert and that opinion was filed September 14, 2022.

Following that, a request for a waiver of stay which resulted from the July 15 filing of appeal was made by the intervenor, property owner Mr. Giampoli, through his attorneys on October 14, 2022. Certification to dissolve stay was written and issued December 13, 2022, by Mr. Rick Griffin in his capacity as Monroe County Building Official and Floodplain Administrator. A Planning Commission hearing was held January 25, 2023, related to the request for dissolution of the automatic stay, and that dissolution was approved. That brings us to today, the Planning Commission hearing to decide the administrative appeal of approval of Revision F.

The Commission was presented during the January 25, 2023 hearing, the copy of the certification to dissolve, deny stay. Mr. Rains provided an excerpt from that as a reminder and as Mr. Wolfe had read in the introduction to this subject matter at hand. In the excerpt from the certification to dissolve stay it reads, "The application for Revision F to the subject permit was received on or about November 30, 2020. It was approved on June 28, 2022. The scope of work of Revision F to the subject permit is limited. The scope of work of Revision F to the subject permit encompasses in pertinent part, the following: Per the sets of drawings and plans signed and sealed by Carl Schror, PE, October 28, 2020. Revise one-inch gap between detached pool deck and porch to render pool deck and porch attached. Revise 12-by-18 inch concrete beam to 18-by-18 inch concrete beam. Revise approximately 16-by-16 inch square concrete pool deck columns to 18 inch in diameter, circular concrete pool deck columns that widen as a transition as a past grade to a 20 inch in diameter concrete-filled auger shaft." In clarification with regards to the first of the bullet points, the revised one-inch gap does confirm an attachment between the pool deck and porch. There is a gap created by Revision F between the pool deck and the pool itself. Mr. Rains stated he is available for any questions related to Planning and Environmental Resources, and Mr. Rick Griffin in his capacity as Building Official is available to answer any questions for him and the Building Department.

Chair Scarpelli asked for clarification on the one-inch gap, that the pool was being detached from the porch and pool deck. Mr. Rains stated that was correct but would defer to Mr. Griffin to answer any detailed questions or add any comments. Mr. Rick Griffin, Building Official, stated that the one-inch gap is between the porch patio and the pool, essentially like an expansion joint. Commissioner Demes confirmed the means the pool is now separated from the house, but he thought the permit was to join them. Mr. Griffin stated that the porch or deck was basically attached to the house. The deck goes out to the pool, and then there's a one-inch gap for expansion.

Mr. Russell Yagel, attorney for Mr. Giampoli, asked the Commission to allow each of the parties to give an opening statement to summarize their positions before submitting evidence to have an understanding of the positions. Chair Scarpelli had no problem with that but thought the appellant should go first, which is how it's usually done.

Mr. Carlos Gimenez, representing the appellant, stated he would like to present the appeal and the opposition can have every opportunity to present their side of the case. Chair Scarpelli agreed, as did Mr. Wolfe and Mr. Morris. Chair Scarpelli asked that he stick to Revision F as closely as possible. Mr. Wolfe reminded the Commission of the prior DOAH and prior Third DCA decisions. Chair Scarpelli noted that, adding that it was not subject matter for today. Mr. Morirs clarified that it was a Sixteenth Judicial Circuit and a Third DCA decision for benefit of the court reporter.

Mr. Carlos Gimenez of McCarter and English, along with his partner Irain Gonzalez representing the appellant, Mr. Neil Hedrick, would be discussing the Revision F appeal. He has several issues to bring up, some legal and others technical. One thing brought up during the stay hearing of January 25, 2023, was that Mr. Hedrick was a disgruntled neighbor. He is not. He is a concerned neighbor and what is before the Commission is an example of Mr. Hedrick's concern. Mr. Gimenez presented photos of the exposed pylons for this structure and asked the Commission to notice the steel rebar. Any contractor knows this is not the way you should build a reinforced concrete structure. Nearly ten percent of this concrete pylon is reinforced by steel. This is the type of situation occurring next door to Mr. Hedrick's property which made him take interest as it would directly impact his property in the event of a storm or other wind event that could result in structural damage. There is a much higher degree of probability of structural damage with a column installed this way than with one built properly. Mr. Hedrick has spent years and a lot of money dealing with and trying to address this issue. The history around this permit is long and storied. The initial permit revised through Revision F was approved in 2010 under the building code of 2004. Thereafter, no construction happened until about 2015. Between 2010 and 2015 the property owner hired a new design consultant and the design and footprint of the house changed. In essence, it was a new house, but a new permit was not required by the County even after the statement issued by Ms. Mary Wingate. The history of Revision F needs to be walked through to understand the issue. When the revised permit came in for review, Ms. Wingate stated that the originally submitted plans could not be permitted today and she provided nine different instances where the proposed project bore no similarity to the original project.

Mr. Russell Yagel interrupted, stating these issues had been litigated and denied. Chair Scarpell responded that he's giving a little bit of leeway, but wanted the appellant to know that the Commission had already seen this, gets that there were initial issues with the original permit, that the building official had deemed that the building could be permitted under the 2010 building code as a revision, and that Mr. Hedrick disagrees with that.

Mr. Gimenez continued. Revision F actually takes this back to 2010 and utilizes the 2007 building code. That's a determination of vested rights that pursuant to 102-135 should have gone to a special master who could hear the evidence as there's a lot of technical evidence that needs to be presented. This was a determination of vested rights that was made inappropriately

administratively. Mr. Gimenez referenced an order by DOAH Special Magistrate VanLandingham. "The County makes available a full blown administrative remedy for protection of vested development rights. The codified procedure includes a de novo hearing before the impartial magistrate and the ultimate decision maker responsible for approving or rejecting such a claim is the BOCC." Obviously, the County does not want the building official or anyone else making a unilateral summary decision on the fact-intensive question of whether an owner has the vested right to continue building a project that no longer conforms to all applicable codes. That's where we are today. This was a vested rights determination. The previous revisions were approved pursuant to Florida building code 2014. The initial building permit was under 2004. But, for whatever reason, Revision F takes it back to the original 2010 permit, but then provides a 2007 Florida building code citation. This was a vested rights determination that should go before a special master. There are a lot of technical issues and other issues that should be discussed in a full evidentiary hearing with oral presentations and shouldn't be limited because there are serious concerns for life safety issues here and other issues with Revision F that Mr. Gimenez asked that his expert witness be able to speak to.

Mr. Stephen W. Boehning, PE, CFM, came to the podium serving as technical expert. Mr. Yagel interrupted stating that the materials included with the notice of appeal did not express any opinions or Mr. Boehning's CV if he was going to express opinions regarding Revision F. He has addressed prior revisions and Mr. Yagel has no idea what he will talk about, and has no idea how to respond, so he will listen, but this is a classic blindside. Chair Scarpelli stated that anybody can have an expert provided that the Commission's attorneys feel they are an expert in their field to come and speak on it. Mr. Yagel stated he is not complaining about him being an expert if he's truly qualified. However, the procedural elements of an appeal require an expert's CV be attached and that materials and evidence be submitted to give them notice of what he will testify about. Mr. Wolfe stated that this would be ruled on later. Mr. Yagel has pending motions that the appellant wanted to have heard later, so there will be an opportunity to have the Commission rule on this. Chair Scarpelli asked if appellants were required to have their list of experts provided prior to the appeal. Mr. Wolfe stated that that issue had never come up before. The notice of appeal appears to be a little ambiguous as to what has to be included so there are no actual procedural issues. Mr. Morris stated that the rules of procedure only provide that an expert, unless there's a stipulation to his or her expertise, has to furnish their credentials to be duly qualified. There may be an argument or separate question of whether or not constitutional due process has been met in terms of disclosing at least the substance of what they intend to present expert witness opinion testimony on. Mr. Morris does not take one view or another. There is a pending motion to exclude evidence which, as Mr. Wolfe stated, can be ruled on separately. Mr. Morris understands Mr. Yagel's need to preserve the record in the event they want to take an appeal of any distinct evidentiary rulings. Chair Scarpelli stated the Commission would hear this and hear later the motion to exclude the evidence, and then make a decision. Mr. Wolfe noted the objection has now been heard for the record.

Mr. Gimenez responded to the objection to say that Mr. Rains presented the LDC rule and procedurally what is required for a notice of appeal. The notice of appeal was timely made. It doesn't require a full expert opinion at that point in time. The evidence that will be moved into the record does provide Mr. Boehning's resume and background.

Mr. Stephen Boehning on behalf of Coastal Waterways Design and Engineering, LLC, stated he is the principal engineer with almost 35 years of engineering in coastal engineering and floodplain management. He is a licensed professional engineer in the State of Florida, and a nationally certified floodplain manager. He has a bachelor's degree in civil engineering, and a master's degree in ocean engineering and coastal engineering. He is the Coastal Committee Chair of the Florida Floodplain Manager's Association, and is appointed Commissioner on the Florida Inland Navigation District. Mr. Boehning presented a report that he submitted originally. Mr. Gimenez asked if sufficient evidence had been presented to confirm he is an expert in the disciplines referenced. Mr. Morris asked him to sum them up. Mr. Boehning responded the areas would be coastal engineering and floodplain management. Mr. Morris stipulated to his expertise, noting he may impeach his credibility. Chair Scarpelli confirmed that it also included structural engineering. Mr. Morris noted that Mr. Yagel had already voiced his objection. Chair Scarpelli also acknowledged his expertise.

Mr. Boehning then addressed the previous ten points. The first point indicated non-compliant delineation and Revision F has been completed with this letter of map revision that had occurred in the meantime. While that's changed the flood zone, the premise behind the house elevation, which is point number two, is that the house elevation is not compliant because of the requirements associated with a flood zone at elevation 13. With regard to the regulations, rules and standards, going back to the regulations in place at the time, which is Division 16, Monroe County Land Regulation Chapter 9, which they were in a different time zone previously, but even going back and using the regulations in effect at the time of the 2010 permit, those regulations required that the engineer certify the design and provide it to the standard of practice. That standard of practice for engineers is varied. It's structural with steel and concrete standards, and also standards related to flood. In a lot of ways, you can't fit that all into the code and you don't expect to. The code says that the designs have to meet the standard of practice. The standard of practice in this case is related to ASCE, American Society of Civil Engineers Standard 24, which requires that structures built within the VE zone must be built so that the bottom of the lowest horizontal structure, which is the beams, would have to be above BFE plus one. BFE is 13, so BFE plus one would be 14. The structure was built below elevation 14 so it doesn't comply with this standard required through the code by virtue of it asking for an engineer to certify it to the current standard of practice.

The second element in that report was that the structure is not compliance with VE zone certification and flood zone requirements. The code at that time actually did mention ASCE 7, which is for loads for wind, flood, live and dead loads. ASCE 7 points out the methodology for flood load. The VE zone certificate supplied by the applicant's engineer went through that list of calculations. Unfortunately, even though on that VE zone certification there was a mention by that engineer of erosion to be applied, and it ought to be applied, it was never applied. It was just mentioned and then it moved on and didn't apply that to the actual calculations. If you don't apply erosion into the calculations, you're not taking into account additional depth of water, and the additional depth allows for a larger wave to come in. That's a concern to not take into consideration applicable erosion as required in ASCE 7 and specifically by the Monroe County Land Regulation as well in Division 16, Section 9. That still remains noncompliant even with this Revision F. With regard to some other elements it looks like they may have been taken care of, though he hasn't seen anything related to stormwater. There was a stormwater pond between

the flood source and the building that lowered the elevation. Again, there's a possibility that with that lower elevation, there's a larger depth of water and larger wave. If that remains, that's not compliant as well, which is a requirement of CFR 44, which is a Code of Fed Regulations which is the FEMA requirements for flood that are adopted that a community and must follow or else FEMA gets mad and that's a problem for a community. So it must be adopted and enforced.

Regarding placement of non-structural fill in the VE zone, that element went away with the redesign of the pool but comes back up again with the next one, the pool structure itself existing in Revision 4. By detaching it from the porch by an inch there should be some sort of analysis that shows that the wave impacts against that concrete wall of pool doesn't transfer that load. He did not see that in the calculations, but that pool structure is noncompliant with the floodplain rules that Monroe County adopted.

Chair Scarpelli asked what the elevation of the lowest horizontal member of the house was. Mr. Boehning responded that the lowest horizontal structure was at 13.5 or .6 or .7, so it's below the 14, and doesn't meet floodplain regulations. With regard to the pool, it's even lower. The pool structure is below that BFE and above grade, because of FEMA. There's three ways you can put a pool in; below grade, which is what their VE certification said and was attested to by the engineer but it's not in the design, or above with the entire pool out of the BFE, which would be silly. If you want to put it in between, FEMA allows for that if it's breakaway, so you have to certify that you have a breakaway pool which this does not appear to be a breakaway pool. Chair Scarpelli interjected that in 2010, pools out of grade were allowed in Monroe County, or in VE zones out of the ground. Mr. Gimenez added that the issue is they went back to a permit that cited the 2004 building code when after-the-fact Revision C and D cited Florida building code of 2014. They're using Revision F to go back to the 2010 permit and utilize the 2007 Florida building code. That's one of the major issues. In 2010, they utilized 2004 Florida building code when the permit was originally granted. After that, a different designer came in with a different house, footprint, et cetera, who filed a permit under 2014. That first instance is the time where it should have been referred to a special master for a determination of vested rights. Moving forward to Revision 5, what happened was they found there were serious deficiencies with the structure as approved under Revision C and D, so they came up with Revision F. Revision F is a clear vested rights issue because now they're applying the 2007 Florida building code.

Mr. Boehning continued that it sounds like Monroe County had maybe done a variance with FEMA. Chair Scarpelli added that you can do a pre-construction calculation where the water, you can say that the water hitting the wall face of the pool does not negatively impact the neighboring areas. It's a hydraulic analysis. Mr. Boehning stated that it doesn't appear there was anything done to demonstrate that the pool does not deflect and that's also a concern with the pool. There is no evidence that would suggest the pool does not divert flow of currents or waves. With one set of waves at two feet and another set at three feet, they come together and it's five feet. That's the concern with the existing structure or neighboring structures. Chair Scarpelli asked if the engineer's documents show that the beam was below 14 feet, and Mr. Boehning confirmed that was correct. Chair Scarpelli noted that the engineering documents were ignoring the base flood plus one. Mr. Boehning continued regarding the surrounding enclosures of the walls which seems like a simple fix, but there is also a structural concrete slab on the ground below the house in Revision F, and that's not permitted to be there, either, because

that's an element that needs to also be breakaway. The tenth point is the noncompliance with shoreline setbacks which is again going back to the Chapter 9 code with regard to setbacks, and continued through the 122 that came later, but that element talks about a 50 foot setback from the mean high waterline and in this case, the home is placed 21 feet away from the mean high water line on the side.

Mr. Gimenez continued regarding the floodplain and presented an email from Mr. Giampoli to his design consultant Mr. Schror, reading, "Thanks, Carl, very helpful. Want to, number one, show house/pool in VE 13 per 2010 approval plans." That's going backwards. He wants to show VE 13, not because it's accurate but because that's what he wants to show. Another highlight, "Not concerned about County suggestion. They would like to see VE 15. They want to cover their," you know what, "at my expense. Be able to support 13." That's an issue. That's an issue of credibility. Mr. Gimenez continued in one of the plan sets that were provided, drawing attention to the comment, "House is a hundred percent in the VE 13 flood zone per Paul Lin." Paul Lin, in an email to Mary Wingate states, "Please be advised that the statement in the checkbox shown on FKLS as built foundation survey dated January 5, 2018, indicating house a hundred percent in VE 13 flood zone per Paul Lin was inaccurate. I never made such a statement to FKLS, Carl Schror or Pete in their preparation of the foundation plan or site plan." Again, this goes to the credibility of the applicant for the building permit. It also goes back to the fact that they're referencing previous building codes, previous approvals which require a vested rights determination. Chair Scarpelli asked if the house was indeed in VE 13. Mr. Bohning responded that they had received a LOMAR (phonetic), it was VE 13 and 15 previously. A portion of the main structure was in VE 15 along with about 80 percent of the pool. They submitted a LOMAR application which came back showing VE 3, but the standard is that you go one foot above VE. Neither the structure nor the pool meet that criteria.

Chair Scarpelli asked regarding the merit of the appeal for Revision F, if it is the fact that it does not meet code regulations. Mr. Gimenez responded there are two issues. Number one, it should have gone through the vested rights process where a special master can sit down and taken in all of the evidence and testimony on the issue, which is a better forum for this type of discussion. The second is on the structural deficiencies outlined by Mr. Boehning. At the end of the day, he would like the Planning Commission to approve a rejection of Revision F and allow the property owner to apply for a hearing before the special master. That is the proper way to move forward with this issue. There is eight years of history with warring sides having a different set of facts based on their position, and this should go before a tribunal. The best opportunity to do that here is through the special master process under 102-135. The ordinance is there to protect the building official. That serves as a shield to them and they should utilize it whenever there's a question. When you go for a revision and you revert back to a previous version of the Florida building code, it's clearly a vested rights determination that was made administratively without going through a special master.

Mr. Irain Gonzalez, also representing Dalk Land LP, explained that Mr. Giampoli had a project approved in 2010 that was a completely different house than what he actually built. Dalk Land never appealed what was approved back in 2010 and, in fact, Mr. Giampoli never built that and never laid a foundation on the property until 2017. 2017 was the first time there was any construction on the site, and that was pursuant to Revision C and D. The way it ties into

Revision F is they themselves, during the pendency of Revision C and D being appealed through the County's administrative process that it goes to a DOAH judge, stand up in the middle of that five-day hearing and say all has been resolved. We've submitted a Revision F and G, though Revision G has never been seen, at a time that the main structure has been built pursuant to Revision C and D. They come back after they built it and say they actually meant to say it was compliant with the 2007 Florida building code when the 2007 Florida building code was not the code effective at the time Mr. Giampoli applied for the initial permit, and that's what's relevant. Not the time it's approved, the time it's applied for. It was applied for in 2009. In essence, this whole history is relevant because the only reason they came back to the County to submit Revision F, which was not heard in the staff report, wasn't solely the reattachment or attachment which was also a major confusion. The County's own records say the purpose of Revision F is to reattach the pool deck and there's a one-inch separation. That's what was actually completed out there and inspections will turn that up. The reality is that Revision F, in the plans they have a little bubble round the building code they're claiming they're compliant with. That is important because Mr. Giampoli's design engineer, when they submitted Revision C and D, which is when they actually built what's there now, that it was compliant with the 2014 Florida building code. The building department stamped it with a red stamp, complaint with the 2014 building code. The Third DCA opinion was submitted with the motions filed by Mr. Giampoli's counsel that are part of the record. The engineer was originally D'Asign Source in 2010 and then Carl Schror with the rest of the revisions. That Third DCA opinion that denied the writ of certiorari filed by Dalk Land specifically references there is no dispute between the parties. The project didn't comply with the 2014 Florida building code, though that's what was on the plans and that's what the County approved. The only reason they came back with Revision F was to change that reference and say that was our mistake.

Chair Scarpelli stated that it complied with the 2014 building code, not the land development code, which is two different things. Mr. Gimenez stated that it's one and the same because those are the codes in place at the time. Chair Scarpelli disagreed, stating that it was not. Mr. Gimenez stated that the rules and regulations, the FBC and the LDC in place at the time of Revisions C and D were applied for and their plans were not compliant with them. They don't disagree with that. The structural component of this, and there was an affidavit submitted in conjunction with one of the motions filed by an engineer by the name of Pepper, which he objected under the Planning Commission's rules of submitting affidavits without the ability to cross-examine Mr. Pepper. In those same five-days of hearing, Mr. Pepper agreed with Dalk Lands' hired engineer that there were structural deficiencies with what was built under Revisions C and D. Why they are re-attaching or attempting to reattach even though there's a one-inch difference between the porch deck and actual structure, is because the main structure was deficient. Their own expert admitted that. That's the reason for trying to structurally gain structural integrity, make it stronger and better. That whole argument falls flat because what is being argued here is the building code of 2007 provides greater protection than the actual 2014 Florida building code that came after that was much more stringent. It has been Mr. Giampoli's goal to not build what the code requires. It was a cost saving measure throughout the process. That's effectively why he didn't build D'Asign Source's design and completely changed the design to something else.

All appeals were taken timely. The arguments were being made. The merit of the arguments are in the code and the code supports the arguments being made by Dalk Land. Mr. Gimenez moved the records provided to the County initially with the notice of appeal and in compliance with the rules, ten days prior to the hearing, into the record.

Mr. Yagel interjected that there was a pending motion to not accept into evidence certain things submitted, and he objects on two primary bases, one being the records were not submitted with the notice of appeal, and the great majority of these records are completely irrelevant as will be discussed.

Chair Scarpelli had a couple of questions for Mr. Griffin. Mr. Wolfe advised waiting until after Mr. Hedrick had spoken. Mr. Gimenez added, regarding Revision 5, the application date of 1/15, 2009 permit, issue date 2010, was designed with codes and regulations effective on 4/09, 2010. This is in relation to Revision F and Monroe County regulations. This is additional evidence that what they did here was essentially a determination of vested rights that did not go through the normal process. He will be asking that the Commission reject the permit for various reasons, including the failure to go through the vested rights process. Again, the vested rights process is there to protect the staff and building official. The ultimate decider isn't even the special master, it's the BOCC. That is the process which this should go before because there a lot of facts here in controversy. Mr. Gimenez thanked the Commission for their time and asked for time to rebut arguments made by opposing counsel.

Mr. Yagel asked if he would have the opportunity to cross-examine the expert witness, and that was to be allowed. Chair Scarpelli first asked Mr. Griffin and Mr. Morris about vested rights versus an open permit, as his recollection is that once there's an open permit, it keeps running. Mr. Morris added a recent example of a large development having run into NROGO issues in Tavernier for which a flurry of applications have recently been submitted. The County's traffic engineering site decision is pending. Unsurprisingly, those applications tend to come in before the studies are potentially approved or alternate action by the Board is made. There are parties who regularly avail themselves of that law. In Mr. Morris' view, Chair Scarpelli's assessment is correct. Chair Scarpelli asked if once 2014 had been put on the drawings, if that was a general specification that would not matter and that the 2007 building code would be used for review. Mr. Griffin responded that he has a box of all of the plans from back in 2009. He came onboard in 2015 and had inherited an approved set of plans which Mr. Giampoli tried to alter to a new design which Mr. Griffin failed. He could build what was permitted since the permit was still open, but he needed a better clarification of the structure, suggesting he get rid of the fill and whatever. But, as long as the permit was open, it was running. Chair Scarpelli asked if all inspections had been performed to present time. Mr. Griffin confirmed that to be correct. Commissioner Ritz asked for Mr. Griffin's comment about the VE zone being raised to 13 plus one. Mr. Griffin responded that design flood elevation came in later than 2007 and 2014. The one-foot freeboard came in later, so 13 was the bottom of the grade. Chair Scarpelli confirmed that prior to 2014 only base flood elevation was required to be met, not plus one. Commissioner Demes commented about the January issue to stay or not to stay, noting that he had voted to keep the stay in place as opposed to dissolution, but his question today is has the work since that January 2023 meeting progressed to completion because the building was supposedly in peril and the stay was lifted to move forward. So where are we today since that was such an important

thing of structural peril and construction proceeding. Mr. Griffin responded that the inspections are done by private provider and he hasn't been on site yet. He usually goes out there on the final elevation. Chair Scarpelli stated that usually the private provider submits them to the County's system. Mr. Griffin stated he would have to look at it. Commissioner Demes noted that the Commission does not know whether the work that was so critical to get done had been done. Ms. Schemper interjected that she could see inspections that were entered into the record in March, June and August of this year.

Mr. Russell Yagel, representing Mr. Giampoli, stated that he was at a loss for words which is tough to do, but wanted to address the motion to dismiss for lack of jurisdiction as it will inevitably tie into everything heard. Jurisdiction is the power to hear a dispute and the dispute the Commission just heard has already been heard. They took an appeal of Revision C and D and all of the other complaints were taken to DOAH. The DOAH magistrate agreed with some of their complaints but subsequent to that, an appeal was taken from the DOAH magistrate to the circuit court. The circuit court said DOAH had no jurisdiction to hear this. Under the Monroe County Code the only jurisdiction DOAH has initially is in a direct appeal from an act of the building department if it involves the floodplain regulations, and none of these involve that. So DOAH had no jurisdiction and the appeal needed to be taken to the Planning Commission, but that day had long since passed because jurisdiction requires you act within a certain period of time, 30 days. They chose the wrong forum which means they didn't take an appeal in the right place and it was too late to go back and take an appeal. In legal jargon this is called collateral estoppel, res judicata, in criminal it's double jeopardy. What it means is you get one bite at the apple. They took their bite and lost, and they can't come back now because everything that occurred in Revision F is now time barred. All of those complaints, issues and acts that the building official took have now been deemed to be legal. Any complaints about the flood plain are completely irrelevant. All of those matters have been resolved and resolved properly. What's ironic is the expert testified about the floodplain and if there's a floodplain violation, they picked the wrong forum again. That's the one that was supposed to go to DOAH as a direct appeal. To tie into the jurisdictional argument, the reason the Commission cannot hear this complaint is because the complaint is about the building code and Monroe County Code says the Commission takes appeals arising out of the land development code, excepting disputes over floodplain regulations. Those disputes go directly to DOAH. That's what they tried to do. But the circuit court said specifically this had nothing to do with floodplain and they had gone to the wrong place. In this case, they're saying there's been a violation of the Florida building code. By state law, violations of the Florida building code go to the Florida Building Commission unless there is a local process to address it. Monroe County has a local process which is the Monroe County Construction Board of Adjustment and Appeals. By state statute, if it involves an interpretation of the building code, anything structural, anything to do with an actual building element of it, it has to go to that board. And if it can't go to that board, then it goes to the Florida Building Commission.

This is an objection to a determination by the building official that has something to do with the actual building itself and has nothing to do with the land development code. This could have gone to the Monroe County Board of Adjustment but it can't because in the applicable Monroe County Code, at that point in time, the only person that could take an appeal to that body is the owner. So if the owner was displeased with the building official's determination, he could take

an appeal under the Monroe County Code. Nobody else could. Current code, they could. But the law applicable to when this appeal was taken, they had to go to the Florida Building Commission. They could not go to the local board because the code did not give them standing to do so. The state statute says if there isn't a local remedy, then you go to the Florida Building Commission and they will make the determination as to whether or not compliance has been adhered to of the requirements of the Florida building code.

Mr. Yagel's jurisdictional argument primarily is that the nature of the dispute before the Commission does not involve the land development code. It only involves an issue concerning the building code. They are saying the building official should not have approved this change. They should have taken it to the Florida Building Commission. For that reason, this dispute is not in the proper forum.

Mr. Yagel then addressed the lack of merits and the argument about vested rights, referencing Judge Koenig's ruling. DOAH ruled and they appealed to Judge Koenig who issued an opinion, "A central point of contention before DOAH was whether the revisions to the original building permit issued by the county in 2010 were governed by the law in effect at the time the original permit was issued or whether they were governed by the law in effect at the time the revisions were approved. The building official approved the revisions based on his interpretation that the date of application for a permit governs the permitted work for the life of the permit despite subsequent changes and orders." So he made that pretty clear, but then made it even more clear later on in the opinion. "Based on the express delegation of broad authority, the building official has the authority to evaluate the facts and circumstances surrounding the submittal of permit applications and has discretion whether to treat a permit application as a revision to an existing permit or a new application for a permit. In this case the building official determined the application was a revision to the original permit, not a new application, and thus the version of the FBC and the FMP in existence when the original permit issued applied." Judge Koenig said the building official has the authority to say this is the applicable code. It was the 2007 FBC that applied and the 2010 land development code and floodplain regulations that applied. He did not say we needed to go back and get the vested rights determination and let the County figure that out. He said this is evaluated based on those two codes that the building official has determined to be proper. All of this about all of the parade of horrible things and statements about Mr. Giampoli is just not appropriate. They are not before the Planning Commission. They had their day and they lost. They picked the wrong forum. They don't get to come back and try and do this a second time to try to make up a mistake made in the first round. It's a simple concept, just one bite of the apple. If you messed up and didn't take an appeal within 30 days, you lose the right to take that appeal. The only question today is whether or not Revision F should be approved. Did the County abuse or did the building official somehow violate the Florida building code by approving this minor revision to the pool. It did not involve the floodplain regulations. The property had been determined to be compliant with the applicable floodplain regulations. There are no issues with setbacks. This didn't change the location or size of the deck or the pool. We're talking about a setback which is the same setback discussed in the first of some 21 appeals related to this, for a person that just wants to protect and make sure it's done right, nothing personal. That seems to be at odds with the evidence.

Mr. Yagel asked for a ten or two minute break. Commissioner Ritz had a time conflict. Chair Scarpelli was concerned about the time line and whether all Commissioners could remain. Mr. Yagel stated he wanted a moment to make a decision on whether to call a witness or not. There was a brief pause. Ms. Schemper stated that in the future, if anyone has a time where they have to leave, to please let her know ahead of time so she can let the applicants know in advance.

Mr. Yagel then called Mr. John Pepper, structural engineer, as a witness. Mr. Pepper stated he had graduated from the University of Miami in 1970, is a PE in the State of Florida, is a special inspector for the State of Florida, and a certified general contractor with an inactive license. He has been president of the Florida Engineering Society in Broward County, has been a member and chairman of the Structural Committee of the Board of Rules and Appeals that cover and wrote the South Florida Building Code, and governed the building officials for several years. He has been appointed to a few state positions, one by Governor Bush as Chairman of the Smart Schools Clearinghouse which is gone now. He was also appointed by Governor Scott as the Structural Seat for the Florida Board of Professional Engineers that governs the engineering profession, particularly the structural engineers. He has published a few papers, none important to this, on explosives, the use of explosives, and the results of explosives. He was involved in the Dade College parking garage collapse for the forensic investigation regarding both the erector and the supplier, and in the FIU Bridge Collapse as a non-testifying witness for one of the insured. He was involved in a minor way with the Panorama Tower for some insurance companies. He was retained in this case long before Revision F, but Revision F was part of it. Mr. Pepper was stipulated as an expert by the County and the Commission.

Mr. Pepper had provided opinions regarding the structural integrity proposed by Revision F to this project, which are numerous, but the building is safe as designed in Revision F. The major analysis performed was using a program that is not normally used on houses because it's too expensive and normally not necessary called ETABS for a three-dimensional analysis of buildings where the building is modeled inside the computer so much that you actually see what the building looks like. There were a series of assumptions used using the Twenty-First Century report which he did not know whether it was right, wrong or indifferent, so he began modeling the building in accordance with the building itself and what could be determined from that report. Some results were obtained that were close enough to Twenty-First Century's that confirmed they had pretty much captured the results of their model. He then looked at the loading and found there was a great deal of difference in the assumptions of Mr. Schror and his loadings and the assumptions of Twenty-First Century. He is not an ocean or marine engineer, he is a structural engineer, but FEMA has things that can be used to find the various water levels and wave forces and how to combine the wind forces and that was done. Again, he came out close enough to Mr. Schror's answers to be confident that they had the right answers. Upon running those answers, he found some mistakes in the original building, a few things that needed repair. There was then a problem upon noticing Twenty-First Century's numbers were very different than his and he needed to know why. He agreed with Mr. Schror's based on his analysis, but he hired an ocean engineer to get some good numbers on the site. ATM, Applied Technological Management, a gentleman named Heath Hansell did some numbers and they were very close to his and Carl Schror's. There was a difference in that they had another foot of scour, scour being taking away of the sand by the waves as they come in, so it did make the forces a little higher, but not too much higher. They were all in the same range.

Chair Scarpelli asked if what he was saying was that the building meets the requirements. Mr. Yagel asked if with Revision F, Mr. Pepper had determined that Revision F, with the proposed changes, that the building is structurally sound. Mr. Schror had stated that he originally had the deck attached to the house, not the pool, but he had to dis-attach it for some reason. When told Mr. Schror was allowed to reattach it, Mr. Pepper revised his designs to make bigger columns underneath that deck and attach it to the main building. He got it down to three columns that needed improvement. There was a semi-mistake in not looking at the water and waves that would have been blocked by the pool which is not attached. Had that been looked at, those three columns would have been okay, also. Mr. Yagel asked if at the end of the day, Mr. Pepper's opinion is that the proposed change results in a structurally sound pool, deck and residential structure. Mr. Pepper stated that that was correct, adding that the main difference was the amount of scour that was assumed by Twenty-First Century versus his analysis and that of the ocean engineers. The amount that Twenty-First Century assumed would be so much that the vast majority of buildings built on pile in the Keys would not work, so he hopes they're wrong and his guys are right.

Commissioner Demes asked about changing the columns from a square 16-inch to round 18-inch diameter, and is curious, looking at pure compression strength of concrete, going to an 18-inch column is .15 square inches less than the 16-by-16, one being 256 and the other being 254.5, and asked why he went to a circular column. Mr. Pepper responded that it was because of the positioning of the steel. They needed a stronger column and pile, and he believes they went to the 20-inch pile, and by attaching the deck they got a lot more columns and the forest of columns resisting the wind, the waves and the hydrostatic forces. Chair Scarpelli thought when doing VE zone calculations it is a different loading on the round columns as compared to square. Mr. Pepper stated that was correct.

Mr. Morris gave the County's position. Section 6-56(a)(1) provides, in air-clear terms, the Construction Board of Adjustment and Appeals jurisdiction, authority and duties. (1) To consider and render decisions on appeals of administrative decisions and interpretations of the building official or his or her authorized designee related to the Florida building code in this chapter. In addition, Section 122-19 of the code provides, appeals, (a) Authority, the Division of Administrative Hearings or DOAH shall have the authority to hear and decide appeals from final administrative actions regarding the floodplain management provisions of the land development code and the Florida building code. Section 102-195(a) Authority, the Planning Commission shall have authority to hear and decide appeals from any decision, determination or interpretation by any administrative official with respect to the provisions of the LDC. So inasmuch as there are Florida building code questions outside of the floodplain management provisions at issue as a jurisdictional matter, those must be appealed to the Monroe County Construction Board of Adjustment and Appeal. Inasmuch as there are floodplain management provisions of the Florida building code or the land development code at issue, those as a jurisdictional matter must be appealed to DOAH pursuant to Section 122-19. Inasmuch as there are regulations at issue not involving the Florida building code or the floodplain management provisions, those as a jurisdictional matter should come here. So, inasmuch as questions implicate the Florida building code, floodplain management issues within it, those should go to DOAH under 122-19. Inasmuch as there are Florida building code questions that don't involve floodplain management provisions, those should go to the CBAA. In the previous litigation, this appellant pushed on a

wall insisting that it's a door, and the circuit court of appellate division, and the Third District court of appeal, both opined that the appellant had filed an appeal under the incorrect provision as a jurisdictional matter and that those appeals of non-floodplain management provision regulations should have come to this body. Mr. Morris is hearing a raft of Florida building code regulations and floodplain management provisions which should go either to the CBAA or DOAH. Chair Scarpelli asked about building permit applications. Mr. Morris stated that that depended on what laws are in question. If it's building code with floodplain, to DOAH; and building code, no floodplain, to CBAA. Chair Scarpelli asked if there were any land development code violations before them today, and Ms. Schemper responded not to her knowledge. Commissioner Ritz stated that it shouldn't come to this board.

Chair Scarpelli stated that everything would be heard today and there are still two more things, the evidence and merit of the argument. Mr. Wolfe stated that a vote should be held on the motion to dismiss, and then a vote on the merits in case the Board is incorrect on the jurisdiction.

Motion: Commissioner Ritz made a motion to dismiss as this should not be before this Commission. 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.

Chair Scarpelli asked if merit or evidence should be next. Commissioner Ritz suggested doing the cross-examination, and Mr. Wolfe agreed.

Mr. Gimenez stated that insofar as the County had stated its position on the record, he wanted to state the appellant's position on the record. The Commission was told that what is before them today does not involve the land development code, but the appeal itself lists a number of applicable provisions that the appellant is saying had been violated by Mr. Giampoli with his project, particularly with Revision F, so that is a misstatement on the record. Chair Scarpelli asked which land development codes were violated by Revision F. Mr. Gimenez responded that the Revision was submitted as compliant with the 2007 Florida building code and the land development code in place at the time the permit was approved. The appellant is taking issue with the fact that they needed to comply with the land development code, particularly Revisions C and D at the time, and the reason Revision F was submitted was to change the code and the plans. The appellant's position is, as the LDC provides, that it's the start of construction that dictates what codes apply in terms of the LDC. Chair Scarpelli disagreed and said it's the application. Mr. Gimenez disagreed and read the provisions into the record of Section 101-4 which provides, "Provisions of this land development code apply to the unincorporated areas of the county. All development of whatever type and character, whether permitted as of right or as a conditional use, shall comply with the development standards and the environmental design criteria set forth in the Comprehensive Plan and the LDC. No development shall be undertaken without prior approval and issuance of the development permit under the provisions of this land development code or other applicable laws and regulations." There's an exception to that rule and it says, "The provisions of this land development code and any amendments hereto shall not affect the validity of any previously and lawfully issued and effective building permit provided

that construction authorized by such permit has been commenced prior to the effective date of any amending ordinance." Evidence has been provided that the construction in this case didn't commence until 2017. So the land development code in place at that time is the applicable review code that would have been enforced by the County or was required to be enforced, which carries over to Revision F. In terms of the statement that floodplain issues should have been pitched to DOAH, Judge Koenig didn't separate floodplain issues from those that may have been associated with DOAH versus this Planning Commission. In fact, Revisions C and D, which were vacated by the DOAH judge, those decisions were overturned because the opinion of Judge Koenig was that those should be appealed to this Planning Commission. What we're being told is this is also the wrong venue for that. In terms of the Florida Building Commission, and Mr. Yagel went through that reference, Dalk Land doesn't have standing to go before the Florida Building Commission in that regard. Dalk Land is basically being foreclosed of analyzing these issues when he has standing before this Planning Commission. Mr. Gimenez stated he just wanted to put that on the record. Mr. Yagel responded that that statement was incorrect. The law says if you have a local remedy available, you go to the local place first, which in this case would be the County. And if you don't, you go to the Florida Building Commission. So he would have had a remedy.

Commissioner Ritz asked if Mr. Pepper would still be cross-examined. Mr. Wolfe added that the Commission is proceeding on a merits decision in the event the decision on jurisdiction is incorrect.

Mr. Gonzalez cross-examined Mr. Pepper, asking if he recalled testifying in a five-day DOAH hearing on Revisions C and D regarding Mr. Giampoli's permit. Mr. Pepper stated he had been involved in some of it and saying that the piles associated with the main structure of the home were over stressed. Mr. Pepper stated that some were in the original design that he saw when the pool deck was not attached. Mr. Gonzalez asked if over 20 percent were over stressed. Mr. Pepper did not remember the number but there were several. Mr. Gonzalez asked if 20 percent were over stressed, if that would be concerning. Mr. Pepper agreed, but did not acknowledge that the number was 20 percent. Mr. Gonzalez referenced the transcript from the DOAH hearing at pages 1354 and 1355, reading Mr. Pepper's response regarding the strength of the files: "It was over stressed, even according to our calculations and various piles." Mr. Pepper agreed with that statement. Mr. Gonzalez read the answer with regard to how many piles, which was, "A dozen or so." Mr. Pepper accepted that response. Mr. Gonzalez read the answer with regard to what it means that some of the piles were over stressed, which was, "20 percent, I worry about 20 percent, so we had a dozen or so columns at 20 percent overstressed. So I wanted to fix them and we considered various ways of fixing them." Mr. Pepper did not remember that, but said he would make that statement today. Mr. Gonzalez asked as it relates to FEMA regulations and how it would affect the reattaching to the pool, if he could testify to that, not being a coastal engineer. Mr. Pepper stated that he could testify from a structural point of view. Once he has the loads, he can do anything, and FEMA and where they come from doesn't matter. Mr. Gonzalez asked if Mr. Pepper had reviewed any FEMA regulations regarding Revisions C and D as to whether there was any compliance needed in that regard. Mr. Pepper stated they had gone deeply into the FEMA calculations and spreadsheets that they provide. Mr. Gonzalez asked if Mr. Pepper and Mr. Schror had disagreed on Mr. Schror's design. Mr. Pepper responded that on the very first day, yes, there were some piles over stressed. He remembers Mr. Schror being

quite cooperative. Mr. Gonzalez asked if these over stresses were reported to the County. Mr. Pepper said he had not, as they weren't over stressed to the point where he would anticipate failure. But Mr. Pepper agreed that reattaching the pool deck to the main structure of the house was that the main structure of the house was structurally deficient.

Mr. Yagel then redirect examined Mr. Pepper, asking him if the testimony he had just discussed had occurred before DOAH, and Mr. Pepper wasn't sure, but they had been going for a long time, since 2019. The benchmarks of DOAH and the trials, he knows nothing of. Mr. Yagel asked if Mr. Pepper recalled that what he was testifying about were proposals under Revisions C and D. Mr. Pepper stated he would need to refresh his recollection, but he was happy with Revision F, which was not originally part of this proceeding.

Chair Scarpelli stated that he understands there is history here but this matter is regarding Revision F. Now he's hearing about reattachment of the pool and pool deck to the house. Ms. Schemper interjected information from the building official that the pool is separated from the pool deck. The pool deck is attached to the house deck which is attached to the house. Everything is connected except a gap between the pool deck and the pool. Chair Scarpelli added so the pool is separated from the house. Mr. Morris added pre Revision F, the deck, the house and the pool were all attached. With Revision F, the deck and house are still attached, the pool and the deck have an inch. Chair Scarpelli summarized that the pool made house non-compliant, that's why it had to be detached.

Mr. Yagel stated that the basis of the motion is that the internal procedures salvaged by the Planning Director say that when you file your notice of appeal, you have to include any evidence including testimony, affidavits and their curriculum vitae of any expert witnesses that will be called. In this instance, Revision F was not even attached to the notice of appeal, and the evidence that was submitted really was nothing more than a brief property card and history from the website related to the permit. The basis of the motion is it's a procedural violation.

Chair Scarpelli understood point and said the Commission will vote on it, but they have had this information since the January regarding the stay so he does not know what they would be excluding considering they've already seen it. Mr. Wolfe responded that it would be a question of relevance, but he is very concerned about due process. While there are strong arguments that maybe it should be excluded, to err to the side of protecting due process and avoid the additional potential of reversal, he would recommend that it be let in, though there are serious questions of relevance. Mr. Morris added that Section 102-185 of the code does provide procedures on notice of appeal and the forum prescribed by the Planning Director must be filed with the County Administrator, ellipses, et cetera. This is for a pinpoint site as to the specific code provision that Mr. Yagel was referring to.

Motion: Commissioner Ritz made a motion to let the evidence in. 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.

Chair Scarpelli moved to the discussion on the merits. The Commission has heard the appellant's argument and expects them to rebut, so Mr. Yagel began. Mr. Yagel stated that first the appellant has stated this is about Revision F appeal issues. It is uncertain what action Monroe County staff actually took in reviewing and approving Revision F so he's not sure what that means. They have said it's easy to show the subject development project does not meet any relevant codes, and they make that argument with some sort of vested rights, that the building official is applying the incorrect law. Mr. Yagel has shown what Judge Koenig said about the building official's authority to determine what codes apply and there doesn't have to be a vested rights determination. So the only issue is whether or not the building is structurally sound by the proposed Revision F, and the answer is yes. That's the only expert testimony you have. There is no issue about floodplain. The reason for having the witness clarify that is he did make those statements regarding Revisions C and D, nothing to do with Revision F. His opinion is that Revision F as proposed was put there to rectify some concerns and does make this structurally sound. Another argument was Revision F was received and reviewed during a stay period, and this was addressed in brief and it wasn't. The stay issue was raised when the prior appeal was going on. In 2017, the County authorized work to go on. All of these stay issues that they are trying to raise again, that apple had its bite. They can't come today and make these same arguments today. They say it violates the setbacks, but Revision F didn't change the size of anything, move the deck or do anything, so we're back to the setback argument made years and years ago. That day is gone. They say the County failed to comply with a DOAH order and that is an incorrect statement. In the case they're referring to the judge specifically said, I don't think the building official got it right but it's in his discretion to disagree with me. In fact, we now had a floodplain determination after that case and that issue is a dead issue. Whether or not the structure was in VE 13 or VE 15 is a non issue. It's been determined by the building official. If he didn't like that determination, he should have timely taken an appeal to the right body. Lastly, all of these accusations about false record and parade of horrible things happening since Mr. Giampoli applied for a building permit back in 2009 are not relevant today and are not properly before the Commission. They are not part of the land development code that the Commission would have authority to adjudicate. The Commission does not have jurisdiction but even if it accepted jurisdiction, the appellant has not demonstrated the building official somehow abused his discretion or made an improper determination by approving Revision F.

Mr. Gonzalez stated that in terms of jurisdictional arguments, at the time that the prior revisions were appealed under Chapter 122 before DOAH and every appeal that Dalk Land took in this case of a decision made by Monroe County, Dalk Land prevailed. Yes, in prevailing in the overturning or the vacating of Revision C and D approvals, Judge Koenig vacated that ruling. In that ruling he specifically said the issues raised, not floodplain versus what issues raised before the Planning Commission. He said in his opinion that they should have been presented to the Planning Commission and that is what Dalk Land is doing here today. The references in the code were gone through, but there has been no explanation as to why Revision F was referenced as compliant with the 2007 Florida building code. The original permit was pulled under the 2004 building code. The later revisions were certified to the Florida building code of 2014, and the regulations in place at the time that included the land development code. There has been no testimony as to how the 2007 Florida building code became the applicable code here and the regulations in place at the time the 2007 land development code was in place. As to the structural component issues, there was no dispute between the parties' experts that there were

structural failures in the project that was approved by the County, again Revisions C and D. The structural integrity of this building is still an issue primarily because the law that was in place at the time Revisions C and D were approved are the land development code and the Florida building code that Mr. Giampoli himself and his experts admit his plans don't comply with. The Third DCA says it in their opinion.

There is no dispute between the parties that what was applied for and approved by the County in Revisions C and D wasn't compliant with the code at the time. That is the code including the land development code that carries over into any future revisions. The County's decision was to continue with the same revisions for a completely new house. With that said, the law is in place at the time Revisions C and D were approved and what was actually constructed out there are the ones that carry over to any future approvals from the County including Revision F. The evidence shows that this project is not compliant with those codes so there are still land development code issues associated with floodplain, and with non-floodplain issues that are privy for this Commission to decide. The appellant asks for the appeal to be granted to review the evidence that actually says they were timely submitted under the rules of the Planning Commission, that the appeal was timely taken, and asks for the appeal to be granted today.

Commissioner Demes stated that he may have an inappropriate question, but he is interested in what Mr. Hedrick's ultimate end of this journey is that he's going after. Mr. Hedrick stated that he is an adjacent landowner, a mechanical engineer, and has done a lot of construction over the years, so he understands what goes into good building. When this thing started he said there's something wrong here that doesn't fit right. He brought in 3,500 cubic yards of contaminated soil with carcinogen in it so he had to sue him to get rid of that. He wanted to change the flood zone. Mr. Gonzalez objected stating this is beyond the scope of allowable evidence for the nature of this proceeding. Chair Scarpelli stated the Commission had already heard it. Commissioner Ritz stated that then there would be rebuttals. Commissioner Demes withdrew his question.

Mr. Morris stated that in the Department's view, the decision of the pertinent county official has not been demonstrated up to the applicable standard of review that on the merits that Mr. Griffin's decision should be reversed. Beyond that, even if the evidence furnished met that bar, those could potentially be very persuasive arguments. Regarding the relevant edition of the Florida building code, there's an app for that and that's the CBAA. This is not that forum. Inasmuch as there are floodplain management questions within or outside of the Florida building code, there's an app for that, and that's called DOAH. This is the third movie in a series and we're in the wrong place again. But, inasmuch as any of this documentation is materially relevant to the decision of the building official that the standard for reversing the building official's decision on merits has not been met and the building official's decision should be affirmed.

Chair Scarpelli stated that if there's a building question, then that would go to the Construction Board of Adjustment, and asked Ms. Schemper and Mr. Griffin if Revision F went through every department for approval to be approved as a revision. Both Ms. Schemper and Mr. Griffin stated it had.

Motion: Commissioner Ritz made a motion to support the building official and deny request to reverse the building permit relevant to Revision F. 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.

BOARD DISCUSSION
None.

GROWTH MANAGEMENT COMMENTS
None.

RESOLUTIONS FOR SIGNATURE
None.

ADJOURNMENT
The Monroe County Planning Commission meeting was adjourned at 5:55 p.m.