

PLANNING COMMISSION  
September 25, 2024

Meeting Minutes

The Planning Commission of Monroe County conducted a hybrid virtual and in-person meeting on **Wednesday, September 25, 2024**, beginning at 10:00 a.m.

**CALL TO ORDER** by Chair Scarpelli

**PLEDGE OF ALLEGIANCE**

**ROLL CALL** by Jessica McKinney

**PLANNING COMMISSION MEMBERS**

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

**STAFF**

Emily Schemper, Senior Director of Planning and Environmental Resources  
Mike Roberts, Assistant Director of Environmental Resources  
Cheryl Cioffari, Assistant Director of Planning  
Devin Tolpin, Principal Planner  
Stephanie Reed, Planner  
Peter Morris, Assistant County Attorney  
John Herin, Planning Commission Counsel  
Ilze Aguila, Sr. Administrator, Operations, Planning and Environmental Resources  
Jessica McKinney, Senior Planning Commission Coordinator

**COUNTY RESOLUTION 131-92 APPELLANT TO PROVIDE RECORD FOR APPEAL**

County Resolution 131-92 was read into the record by Mr. John Herin.

**SUBMISSION OF PROPERTY POSTING AFFIDAVITS AND PHOTOGRAPHS**

Ms. Jessica McKinney confirmed receipt of all necessary paperwork,

**SWEARING OF COUNTY STAFF**

County staff was sworn in by Mr. John Herin.

**DISCLOSURE OF EX PARTE COMMUNICATIONS**

Commissioner Demes stated that he had had two conversations in reference to Item 2, one with Kate DeLoach and one with Nelson Diaz, and those conversations will not impact or sway his

decision. Commissioner Anderson stated that he had had a conference call with Nelson Diaz and Denise Hannah, and that it will not affect his decision. Commissioner George Neugent stated that he had had a conversation with property owners and Kate DeLoach regarding Item 2 attempting to get facts relating to this project, and it will not sway his position on this item, though when you get information, whether from staff or others, you obviously start thinking about decisions, and it sometimes does sway your decisions. Mr. Peter Morris, Assistant County Attorney, stated that as long as there is not a taint in prejudice to the interactions is really what the disclosure is geared toward. Additionally, in an abundance of caution, even though this does not qualify as an ex parte communication under the rules, staff did furnish briefings to the Commissioners to provide a baseline of information. Chair Scarpelli stated that that was going to be his question. Commissioner Demes asked Mr. Morris whether talking to County Commissioners about an item would be considered an ex parte communication. Mr. Morris responded that it depends on the item. There is not a categorical way to say, yes or no. Commissioner Neugent added that Planning Commissioners are appointed by County Commissioners and if they have a feeling that differs from their County Commissioner's position, that definitely could influence decision making. Mr. Morris stated that these questions can only be answered in a vacuum and there can always be strange-edged facts which happen, especially in the Keys; but, in a vacuum, that wouldn't create a Sunshine problem because these are two members of different panels and, presumptively, the County Commission member doesn't have an interest in something that would inure to their benefit or detriment by the decision of the Planning Commission so there is no conflict or other ethics issue with the County Commissioner. Commissioner Neugent reflected that in his years on the County Commission and he has heard stories over the years of veiled threats being made that you won't be on the Planning Commission anymore if you don't agree with my decision. Mr. Morris responded that in terms of the optimal institutional conditions for the Planning Commission to do its job, it should primarily be comprised of members exercising independent judgments, and those independent variables being referred to go more to the political than the legal as the Planning Commission is comprised of individuals appointed by elected officials. Chair Scarpelli thought this was going off the rails, and that the duty of the Planning Commission is obviously to be making independent decisions at the time of the meeting on each individual item. If that is not the case then that's a problem. Commissioner Neugent agreed. Chair Scarpelli did not want to get into hearsay arguments and wanted to maintain focus. Mr. Morris added that the judgments rendered by the Planning Commission should always be independent judgments, but there is no black-letter law against speaking to a Planning Commissioner member about an item.

### **CHANGES TO THE AGENDA**

Applicant for Item 1 requested to be continued to the October 23, 2024 meeting. A motion was required. Mr. Morris stated that public comment should be allowed. Chair Scarpelli then asked for public comment.

Mr. Donald Craig, agent for the applicant on Item 1, stated that they had made a proposal to staff that requires their analysis, so he would very much appreciate a continuance.

**Motion: Commissioner Thomas made a motion to continue Item 1 to the October 23, 2024 meeting. Commissioner Demes seconded the motion. There was no opposition. The motion passed unanimously.**

## **APPROVAL OF MINUTES**

Commissioner Demes noted that on Agenda Item 8 there were three votes that had taken place. The first vote was on an objection which was clearly stated in the minutes. However, he would appreciate clarification on the votes for the second and third motions. The second one was the vote ending up in denial based on the timeliness of the submission. The third vote was based on the merits of the argument. He does not believe that it is clear in the minutes. Mr. Morris stated that clarifying language could be added to clean up in the minutes to be approved. He suggested language along the lines of the first motion dealing with the case be a dismissal of the appeal based upon lack of jurisdiction due to being untimely. The second decision would be reflective of a decision to affirm the determination of the Planning Department on the substantive merits on the question presented.

**Motion: Commissioner Demes made a motion to approve the August 28, 2024 meeting minutes subject to changes discussed. Commissioner Thomas seconded the motion. There was no opposition. The motion passed unanimously.**

## **MEETING**

### **AGENDA ITEMS**

**1. A PUBLIC HEARING CONCERNING AN APPLICATION SUBMITTED BY 21660 OVERSEAS HIGHWAY, LLC, REQUESTING FOR THE MONROE COUNTY BOARD OF COUNTY COMMISSIONERS TO APPROVE AN ORDINANCE AMENDING THE MONROE COUNTY TIER OVERLAY DISTRICT MAP TO CHANGE THE TIER DESIGNATION OF PROPERTY LOCATED AT 21660 OVERSEAS HIGHWAY ON CUDJOE KEY FROM TIER III-A TO TIER III, SAID PROPERTY BEING MORE PARTICULARLY DESCRIBED AS LOTS 10 THROUGH 16 SACARMA PLAT BOOK 2 PAGE 48 CUDJOE KEY, SAID APPLICATION RECEIVED THROUGH THE APPLICANT’S AUTHORIZED AGENT SPOTTSWOOD, SPOTTSWOOD, SPOTTSWOOD AND STERLING PLLC,AND SAID PROPERTY HAVING PARCEL ID NUMBERS 00174740-000100; 00174770-000000;00174780-000000; 00174790-000000; 00174800-000000 AND 00174810-000000; APPROXIMATE MILE MARKER 21.75. (FILE NO. 2024-016)  
**REQUEST TO CONTINUE TO OCTOBER 23, 2024****

**(Item continued. See discussion and motion under “Changes to the Agenda.”)**

**2. OCEAN POINTE COMMONS ASSOCIATION, INC., 500 BURTON DRIVE, TAVERNIER, MILE MARKER 92.5, OCEAN SIDE: A PUBLIC HEARING CONCERNING A REQUEST FOR AN 11C ALCOHOLIC BEVERAGE USE PERMIT, WHICH WOULD ALLOW FOR THE SALE OF ALCOHOL BY THE DRINK OUTSIDE OF THE EXISTING PRIVATE COCKTAIL LOUNGE AND POOL AREA AS SHOWN ON THE APPLICATION SITE PLAN. THE PROPERTY IS DESCRIBED AS A PARCEL OF LAND SITUATED IN SECTION 26, TOWNSHIP 62 SOUTH, RANGE 38 EAST, MONROE COUNTY, FLORIDA, BEING THE PLAT OF “PLANTERS POINTE”, AS RECORDED IN PLAT BOOK 7, AT PAGE 45, OF THE PUBLIC RECORDS OF SAID MONROE COUNTY, LESS AND EXCEPT THE FOLLOWING OCEAN POINTE CONDOMINIUMS ONE, TWO,**

THREE, FOUR, AND FIVE, HAVING PARCEL IDENTIFICATION NUMBER 00479501-000100. (FILE NO. 2024-117)

(10:24 a.m.) Ms. Stephanie Reed, Planner, presented the staff report. The applicant and property owner is Ocean Pointe Commons Association, Inc., and the agent is Denise Cano who is president of the association. The applicant is requesting approval of an 11C alcoholic beverage use permit which would allow for the sale of alcohol by the drink outside of the existing private lounge in the beach and pool area at the property. Currently, alcohol sales are limited to within the private lounge area only. There are no changes proposed to the site layout as part of this request. Ms. Reed reviewed the relevant history on the property: On June 20, 1991, the Planning Commission denied alcohol beverage approval to the applicant, Resolution No. 17-91, Case No. 91-20387-CA-18. The court final order quashed Resolutions 17-91 and 510-1991, and ordered that Ocean Pointe Commons Association, Inc. may sell alcoholic beverages in the private cocktail lounge shown in the approved major development plan for Ocean Pointe without complying with the requirements of Section 19-218 of the Monroe County Code.

Staff reviewed the current application for compliance with Section 3-7 of the Monroe County Code of Ordinances. The Planning Commission shall give due consideration to the following factors as they may apply to the particular application prior to rendering its decision to grant or deny the requested permit: The effect of such use upon surrounding properties and the immediate neighborhood; the suitability of the premises in regards to its location, site characteristics and intended purpose; access traffic generation, road capacities and parking requirements; demands upon utilities, community facilities and community services; and compliance with the County's restrictions or requirements and any valid regulations. Ms. Reed referenced Section 3-7(g) of the code which states alcoholic beverage use permits may be granted in the following land use districts: Urban Commercial, Suburban Commercial, Commercial 1, Commercial 2, Suburban Residential where the site abuts U.S. 1, Destination Resort, Mixed Use Industrial and Maritime Industries. Notwithstanding the foregoing, alcoholic beverage sales may be permitted at restaurants, hotels, marinas and campgrounds regardless of the land use district in which they are located. Ms. Reed explained that the use of the property is permitted as permanent multi-family residential dwelling units with the associated accessory uses and structures. The areas in the application are within the Suburban Residential land use district and the property does not abut U.S. 1. The subject request for an 11C alcoholic beverage use permit which would serve areas beyond the private cocktail lounge does not include service to a permitted restaurant, hotel, marina nor campground. An expansion of the service area beyond the existing private cocktail lounge is not permitted on the property in accordance with Section 3-7(g) of the code. Therefore, staff recommends denial.

Commissioner Demes referenced the site plan presented noting that it doesn't look like the swimming pool is located in the area in blue. Ms. Reed pointed out the relevant areas on the site plan. Commissioner Neugent noted there were two depictions of the site plan, and had Ms. Reed point out the location of the pool and beach areas. There were no further questions from Commissioners. Chair Scarpelli then asked for public comment.

Ms. Denise Cano, applicant, homeowner and President of Ocean Pointe Commons Association, Inc., thanked staff for their help and presentation and described Ocean Pointe to the Commission. It is a 63-acre unique property located in Tavernier developed in the nineties. It's original intent, and is acting today as a condo hotel where about 90 percent of the owners utilize that property for their personal use as well as short-term rentals, allowed by the County. The property consists of 240 individual units, and is manned 24-7 with security assuring only owners and registered guests may come onto the property. The community amenities include a 26-foot waterfront marina, a private cocktail lounge with a food and beverage license, a beach, a tennis court, and an Olympic size swimming pool with a concession. Ms. Cano is requesting the issuance of an alcoholic beverage use permit to extend the service from the cocktail lounge to the surrounding beach area located adjacent to the lounge as well as a the pool concession. Guests and owners spend a large portion of their time at these locations. The ability to provide this service in these extended locations will allow them to remain on property to eat and drink, reducing the number of people leaving the property to seek these services elsewhere resulting in a reduction of traffic along Burton Drive and U.S. 1, lessening impact on the roads and number of drivers who have consumed alcoholic beverages. It will also allow an operator the right and responsibility to ensure guests are not over-serving themselves in both of these locations. Both areas are located deep within the property and do not pose a nuisance due to their distance from surrounding communities and/or residences. Existing noise from these areas are mitigated by surrounding foliage. There would be no increase on utilities, community facilities or public services by guests as they would remain on property with little or no need to go off site. The property is not open to the public and guests must have a reservation to be there. Ms. Cano respectfully requests support of the request and thanked the Commission for their consideration.

Commissioner Anderson asked for the current seating capacity of the cocktail lounge and the number of units on property. Ms. Cano responded that the current seating capacity was about 75, and there is a downstairs area connected to the café which is an outdoor patio with seating for about 100 people. There are 48 units in each building for a total of 240 units.

Commissioner Neugent asked how long Ms. Cano had owned and been involved in this project. Ms. Cano responded that she has been an owner for five years, serving on the board for the last three years as president, and prior to that had served on a condo board for two years. Commissioner Neugent stated he was amazed at the size of this property that he did not know even existed off of Burton Drive and the number of units there. He asked if they had had any formal complaints about noise or traffic. Ms. Cano stated she had not.

Ms. Emily Schemper, Senior Director of Planning and Environmental Resources, wanted to remind the Commission that this is a condo association for a residential property. Normally, a residential property would go to the store, buy package alcohol to consume on their property, and that is true with a condo property as well. The County does not have restrictions on where the owner of a property can consume their own purchased alcohol within the property boundaries. It is an option for residents of this community to do the same, whether consuming in the home or outside in the yard or common areas of the association. That is not what's up for discussion today. This is for an alcoholic beverage permit for the organized sales on the property. Ordinance Section 3-7(g) has a very specific list of where these permits are permitted. This property does not meet the criteria. Legally, staff sees no option to approve this. Mr. Peter

Morris, Assistant County Attorney, added that he shares that view as a matter of law. Ms. Schemper wanted the Commission to keep this in perspective as the comments come through, and clarify that the County is not proposing that people cannot consume alcohol on the property, it's just the sales.

Commissioner Neugent asked for clarification, that the request was to be able to serve liquor at the pool and on the beach, and asked why staff was denying that request. Ms. Schemper explained that the current approval is for on-site consumption at the cocktail lounge, which is fine to continue. What is currently approved does not include package sales. Consumption on the individual property is not restricted by the code, so alcohol purchased elsewhere can be consumed anywhere on this property. Alcohol purchased within the cocktail lounge is supposed to be consumed at the cocktail lounge. The request is to expand where the alcohol purchased on the property can be consumed, at pool and beach area. Staff is not recommending approval because the permit does not meet the requirements for that. The current approval required by the previous litigation result is alcohol may be sold for consumption on premises within the cocktail lounge. The selling and consuming needs to happen at the cocktail lounge, and does not include package sales. Commissioner Neugent asked from a business-friendly perspective what the applicant needed to do to get a license for the other areas. Ms. Schemper responded that they would either need to change the code, get a different zoning category, or get approval to be a restaurant, hotel, marina or campground. Commissioner Neugent asked if they chose to go through that process, if staff would not be in opposition to getting a license allowing them to serve alcohol poolside. Ms. Schemper reiterated that the only path forward for the applicant to get a license to sell and serve alcohol poolside would be to change the use of the property to a restaurant, hotel, marina or campground. Ms. Schemper does not know that that is even possible within this zoning category and the circumstances of the property. Commissioner Neugent asked if there was anything the Planning Commission could do to provide a pathway to get this done. Ms. Schemper responded that the other pathway would be to request a text amendment to Section 3-7 of the Monroe County Code which instructs where alcoholic beverage permits are permitted could be an option. Chair Scarpelli thought perhaps a special subarea group, but that is not what's being addressed today. Chair Scarpelli wanted to continue with public comment.

Commissioner Demes stated that he had discussed this with a Commissioner who was his driver to Miami and he tried to view this property, noting that the security works because he could not get in. Commissioner Jim Scholl showed his ID and they were able to get in.

Mr. Tom Rodriguez, owner at Ocean Pointe and resident of Key Largo, stated he is in favor of this request to expand alcohol sales outside of the existing cocktail lounge that has been there for 25-plus years. This would not only enhance the property but would help to regulate the alcohol use. There would be an eye on the pool with a vendor who can monitor consumption and enforce the glass policy which he does see people with glass containers. It will also cut down on traffic on Burton Drive immensely because people could just stay on property. Mr. Rodriguez added that Ocean Pointe has 24-7 security and is gated.

Mr. Nelson Diaz, owner, appreciates the time taken for the Commission to look into this. Ocean Pointe is zoned residential but over 90 percent of the units are rentals that the County has issued exemptions for to allow daily rentals, so the County has recognized that these units are rented on

as little as a daily basis which is not something someone does with a home they permanently live in. It is a unique property that to his knowledge, there is no zoning for a condo hotel that is individually, privately owned and operated in this manner, so they are left with the residential zoning. While the property is not zoned as a hotel, it operates almost as a hotel. While not zoned as a restaurant, because it can't be, there is a food license in two locations. While not zoned as a marina, there is a 26-slip marina. He believes staff's hands are tied, but not the Commission's. He does not believe the Commission must vote against this request by law. While staff identified several options which are not realistic, there is a fourth option and that is for the Commission to issue the permit. The Commission exists to recognize the uniqueness of this property in this zoning classification and issue the permit nonetheless.

Mr. Frank Cano, owner and full-time resident of Monroe County, thanked the Commission for their service. For nearly 30 years, Ocean Pointe has been able to serve alcohol at the cocktail lounge and have done so responsibly and without incident. It was determined because of the lawsuit that they were exempt from getting a County permit. He is not sure if it is possible but asked if it could be considered that the exemption that Ocean Pointe falls under could be extended to these areas which are directly adjacent to the cocktail lounge and the pool area. He is confident the State will give them the licensing for that area, and the County has exempted them from having to have a permit, so could they meet in the middle and extend that exemption to those areas.

Commissioner Demes asked Ms. Schemper if they had a permit and were applying for renewal. Ms. Schemper responded that her understanding is that the judge's order stated alcoholic beverages may be sold in the private cocktail lounge shown on the approved plans. The County did not ever issue an alcoholic beverage permit for that area because it's based on the judge's order that they are allowed to do it. Ms. Devin Tolpin confirmed that the final order quashed the Planning Commission Resolution that had initially denied the ability to sell alcohol in the private part of the lounge. They are able to continue to sell alcohol within the private cocktail lounge. This request is to be able to sell alcohol outside of that cocktail lounge. Staff is regularly signing off on DBPR forms so they can sell alcohol in the lounge. The code does not allow selling alcohol outside of the lounge and at the pool.

Commissioner Neugent stated that there is a request by the applicant for a license that's underway, and asked if technically they were operating without a license under the judge's order. Ms. Schemper stated that was correct for the cocktail lounge area operating without a County license. They have the required State license from DBPR. County staff has to sign off on the zoning portion of that application every time they submit to the state, and County staff has been doing that as long as the license is for the cocktail lounge area. There is no Planning Commission approval specifically for the cocktail lounge as it is all based on the judge's order. This request is for a County permit for the area outside of the cocktail lounge, and that is what staff is saying does not meet the requirements of the code. This is not discretionary. Based on the code it is not allowed in this area, therefore staff recommends denial. Commissioner Neugent asked if they are operating without a license because they are operating under the judge's ruling. Mr. Morris stated that the judge's ruling functions as the County approval because it contains affirmative language that states they may operate within that narrowly-delineated area of the lounge. They have the liquor license from the state and the County has

signed off on it. Commissioner Neugent asked why they didn't have a liquor license like any other such as the yacht club or any lounge. It would be broader reaching to have a 4COP or 5COP license that would allow them to be treated like other businesses with a liquor license. Ms. Schemper added that issuing anything broader than what the judge ordered is not allowed by the code. There is no broader application of any sort of alcoholic beverage permit from the County. Whether or not the State would issue their State liquor license to whatever area on the property is up to the DBPR who controls that. Commissioner Neugent asked if they made a request for a regular liquor license, as he is not familiar with the 11C, would it be okay if DBPR gave them a license if they could do that. Ms. Schemper explained that DBPR has a section on their application form that requests the local zoning department to sign off to say that the request meets the local zoning requirements, and staff would not sign off on that. Staff has been signing and will sign off on the judge's ordered alcoholic beverage license only. Anything beyond that requires approval by the Planning Commission of a special alcoholic beverage permit per the County local rules. That is the request today, to get an alcoholic beverage permit for the expanded area from the County based upon the County's rules but it does not meet the standard for the County rules. Therefore, staff is not recommending approval.

Commissioner Neugent asked whether the Planning Commission could approve this if it wanted to. Ms. Schemper responded that it would be illegal, but that the Commission could vote yes. Since it does not meet the requirements of the Code, the Commission would be voting to approve something that is in conflict with the Monroe County Code. Mr. Morris added that this statement was accurate. Commissioner Neugent asked what makes that illegal. Ms. Schemper stated that it is against the law. In Section 4-7 the code establishes the law regarding special alcoholic beverage permits. Commissioner Neugent asked if it would be a criminal violation. Chair Scarpelli stated this was getting off the cuff. Commissioner Neugent stated that he interprets anything illegal as being a potential criminal violation. Chair Scarpelli did not believe anything in the Land Development Code was technically criminal.

Mr. John Herin, Planning Commission Counsel, responded that there is nothing in the Land Development Code that criminalizes any of the contents. It would potentially be a civil matter. What he believes staff is saying is that based upon their professional opinion, they do not believe the request meets the requirement of the code. Conversely, if this body believes that from what it's heard here today there is sufficient, competent, substantial evidence in the record to grant the application, then certainly the Commission can vote to do so and it would be at the discretion of staff or any other member of the public to potentially challenge that action in a subsequent appeal, which would then go to DOAH. Regarding what's taking place here, an 11C license is what is called an 11 Club, and according to the DBPR it authorizes the sale of alcohol by the drink for members and members' guests of lodges or clubs, national, fraternal or benevolent associations, social clubs, clubs devoted to community and governmental development, which is where this would qualify. Mr. Herin continued reading the definition. This license limits the sale to the location that is physically identified in the DBPR application and license which at this point in time is the lounge and only the lounge because that's where the club is physically defined to exist. The applicant is seeking to expand the geographical footprint of the lounge to now include the pool area. The specific language of the court order specifies the private cocktail lounge shown in the approved major development plan. The footprint of the approval is the lounge or club that exists on the property. The applicant is seeking to expand that. Staff is

saying such an expansion would not comply with the code. Mr. Morris added that determinations of criminal liability are solely reserved to the bailiwick of the State Attorney's Office, but he concurs that it would be illegal to approve this application as a matter of administration of the Land Development Code. The staff report quotes verbatim Section 3-7(g) of the code, which was read into the record. The text is plain and there is no leg room for novel interpretation or susceptible to ambiguity. He does not see a flight path under this law. The remedy typically would be, Schoolhouse Rock, if you don't like the law, you apply for a text amendment to amend the law.

Chair Scarpelli commented to Commissioner Neugent's point that if this Commission deems it acceptable to serve the alcohol in this area, then that resolution would be the thing that allows them to do it. Commissioner Neugent then asked if this Commission did that, if the BOCC could weigh in on that. Chair Scarpelli responded that the decision would go to a DOAH judge if appealed by the County. Mr. Herin confirmed that a resolution by the Commission would be essentially the County's approval for DBPR, but he would recommend that a condition be imposed that the effectiveness of the County approval is subject to DBPR authorizing the expansion as well because while the Commission may give the approval here today, the DBPR may not be persuaded that they qualify for an expansion to the site. If anyone buys the alcohol from the existing club, they can consume it anywhere on the property. Ms. Schemper added that staff has no personal agenda against this application and are not here to argue over the merits of whether or not it should be served nor argue with the Planning Commissioners. Staff's recommendation is purely based on the law in place and has nothing to do with personal feelings. Mr. Morris added that it's law, not vibes, and that's where the professional staff is coming from. Commissioner Neugent stated he appreciates that, however he thinks with the long history and reading about the hoops this applicant has had to jump through over time, when there's no harm done to the environment or anything else and it seems to be a technicality, he is a business-friendly person and does not know why it is made so difficult for someone to do something that appears to be so simple. Ms. Schemper replied that she has to apply the code, so the code would have to be changed.

Commissioner Demes wanted to firmly understand that the only place a drink could be served was in the upstairs café area or if the café upstairs includes the downstairs. Also, listening to Mr. Herin, it sounded like members can be served a drink, and he asked if residents that are renting can legally get a drink not being part of one of the association. Mr. Herin responded that they could, in Florida, under the 11C license. If they are authorized by definition of the internal rules of the club, they are authorized. But, it does not permit package sales and only allows the guest to consume on premises. So it's the footprint the applicant is looking to expand the sales from the private club to the beach and pool area.

Commissioner Anderson asked if anyone knew why the liquor license was denied in the nineties, and if they knew the judge's thoughts when he overruled that. Ms. Tolpin responded there were multiple reasons listed and read the first reason from the judge's order into the record. The proposed lounge would have a deleterious effect upon the surrounding properties in the immediate neighborhood due to the fact that the nature of the project has expanded beyond the scope of the original development approval rendered in 1984, and the project is now being marketed as a vacation resort project. It then describes reasons why the Planning Commission

found that the premises would not be suitable for the proposed alcoholic beverage permit, which was the resolution quashed by the court order. Commissioner Neugent added, rightfully so.

Mr. Shawn Finger is an owner of a residence directly adjacent to Ocean Pointe. He owns a vacant lot that he plans on building on which is directly behind gate of the Ocean Pointe back entrance. He also owns a house on the other side on Palmetto Avenue where his back yard is close to the beach area. His concerns are the possible noise and whether alcohol sales would be allowed at the beach area because the notice he received stated it was to expand to the pool area. The pool is very far away from him, as opposed to beach area which is practically in his back yard. Any time you have alcohol sales, it promotes possible music and parties, late nights, and a club atmosphere that he is very concerned about. Chair Scarpelli confirmed it was to the beach area as well. Mr. Finger stated that was not on the public hearing notice at all. That makes a big difference to him, and he has two other neighbors that could also have a problem. It had been stated earlier that there had been no complaints about noise. He has been there 22 years and he's not the kind of guy to pick up the phone and cry about a party that they have a few times a year for holidays and such but they sometimes have some pretty loud parties out there which is one thing. If it was on a nightly basis, that would be a problem. It's basically like having a bar in your back yard. He has been in food and beverage for 37 years and watched Ocean Pointe being built so he's not a newbie. He's made his bread and butter in food and beverage and is business friendly as well, but it is a concern. Mr. Finger asked what his options were as he would not be happy about it being approved. Ms. Schemper clarified that the existing cocktail lounge is over by the beach. So when the notice said outside of the existing cocktail lounge, that's the outdoor area around the cocktail lounge, and at the pool area which is more interior to the property. Mr. Finger stated that since 90 percent of the people don't really live there, they rent, it's basically a business under a club contingency but allows guests to buy alcohol within the premise under this 11C. Mr. Finger confirmed that if this were to go through, his only option would be to get a copy of this through a court reporter. Mr. Morris added that minutes would be available once approved at the next meeting, roughly 30 days. To obtain the transcript, he would need to hire a court reporter to transcribe the video of the meeting. Chair Scarpelli stated the decision would be made today and the video available likely tomorrow.

Ms. Kathy Marlow, owner, lives in Broward County and is a retired principal after 34 years. She has worked with many things in the City of Plantation working on committees and thanked the Planning Commission for their work. She understands there are laws written, but it is a breath of fresh air to hear that the Commission is looking for a way to approve this request. She understands there are laws, but sometimes laws are in place and sometimes bills need to be written or ways to navigate around it when you have existing circumstances. Ocean Pointe has a waiver exemption and the judge overruled this back in '91 for a reason. The property didn't abut U.S. 1, yet the judge overruled and approved it. If the Planning Commission approves this, it allows Ocean Pointe the first step towards a path around this to achieve the expansion. She would like to see that. For 240 units this would reduce traffic. She would love to be there and never have to leave the property, as would many other unit owners and renters. This is an unusual piece of property in Tavernier and it is an exceptional place, one of a kind, and she is asking for the Commission's vote to start the path toward getting what everybody wants. It would be a beautiful thing. She thanked the Commission for their time and strong consideration for this.

Mr. Gabriel Pacheco has resided 15 114 Normandy Drive for 25 years, approximately 100 yards from the entrance of Ocean Pointe. He has no ownership or interest in Ocean Pointe. Over the last 20 years he has placed his family and friends at Ocean Pointe out of convenience and it is beyond amazing. He is very in favor of this request not as a consumer but as a very close neighbor. Having two young children playing outside and a wife driving up and down every day, he loves the idea of owners and guests of Ocean Pointe having a concealed drinking compound. There is no need to go to the bars, drive out to restaurants and come back intoxicated, and no need to go to the store if you run out of liquor. He hopes Ocean Pointe grows by having more concessions and options for the boaters that don't have to leave the property. We want to get people off the road that are drinking and driving. In the last 20 years he has zero complaints about Ocean Pointe, other than the occasional fire alarm going off in the middle of the night, but he'll take that. No complaints about security, traffic control, and they've improved their security by moving it further into the property away from Burton Drive to accommodate the neighborhood. He appreciates staff being professional, stating facts and following the codes they're saying are in black and white, and the recommendations expressed. He strongly believes this approval would complement the property, owners and guests staying there and it just makes good sense.

Ms. Laurie Signorelli owns two units which she and her family use and rent. She heard the prior neighbor who spoke out of concern for having the expanded service of alcohol. At the moment, people would just go up to the café and get it. One of the reasons for seeking this expansion is for the ability to control the alcohol consumption and behavior on the premises. Right now, everyone brings coolers to these areas and it is not being policed. This would give ability to control the consumption of alcohol in the beach and pool areas and to stop someone from being over served. This is a safety consideration for owners and the community as well, and keeps people on site if they have been drinking. Rather than promoting poor behavior, this would improve safety and positive behavior at the community level, and provide a positive experience to visitors in the Keys.

Ms. Elizabeth Finch, owner of two units, thanked the Commissioners for trying to understand and making the right decision for this community. This is a 100 percent investment for herself and her husband and they rely on that for their future and retirement. They would love to be able to sit poolside and have someone serve them. Being an investor in the Keys, they are looking at the availability and excitement of bringing this out from the designated area to the pool area and beach. Bringing more people here and having more of a draw for the area will help support the local economy in other ways which is important to them. Ms. Finch asked if she had heard correctly that if the alcohol was purchased in the café area that it could then be carried by someone to the pool area, so if they had a concessioner running that area for the association if they could send someone out to the pool to take an order, have the physical money transaction happen within the café, but then have the alcohol carried out to the pool area since they can have it wherever they want on property.

Ms. Schemper responded that the State license is very specific about how that works. That would be a State license question. The County permits are specific, but she believes the State license is limited to the cocktail lounge area. If they bring it from home, there is no rule about drinking in your back yard, versus your front yard, versus your house. Commissioner Demes

stated that this is huge because he is hearing that if you buy the drink, you can take it anywhere, and if you buy that drink you have to consume it within the café. Commissioner Neugent added that COP means consumed on premises. Commissioner Demes asked if anyone knows whether the café includes the first floor underneath the building. Ms. Tolpin responded that she does not recall it including a first floor but that is based off of memory. Floor plans were not submitted as part of this application. Commissioner Neugent added that there is a package license which allows you to take it off premise, but the COP licenses are consumed on premises. Mr. Herin confirmed that to be correct. The 11C license does not allow package sales, only individual drink sales presumptively for consumption on premises. The question is what the premises are that is covered by the 11C, as well as arguably the County regulations that become dispositive here. The prior court action says that the 1992 existing regulations weren't enforceable against this particular location. Therefore the plaintiff may sell alcoholic beverages in the private cocktail lounge shown in the approved major development plan for Ocean Pointe. That's the limiting factor. He suspects that was then transferred over to the 11C license issued by the DBPR. He does not know the answer to the question if the point of sale were technically within the private cocktail lounge and whether that would solve the problem. That is a decision for DBPR to opine on but information available online seems to infer that the consumption must be on site. Chair Scarpelli added that that was at the DBPR level, but everything he had been reading has said "sale." Mr. Herin agreed it's very clear that once you acquire your purchase, where you go is of not of concern to the County. Ms. Schemper clarified that her earlier comments regarding where the alcohol is consumed were in the context of a residential property. Where you get the alcohol from, she doesn't know, but you can go outside or on your porch to drink it. For a special alcoholic beverage permit, the County classification will match up with the State classifications. If someone was requesting a different classification within the same footprint or building, they would need to come back to the Commission to get a new approval for that classification. Staff can look deeper into the approvals for the major development approval. The plans in the files next to the alcoholic beverage case from that time show the footprint of the cocktail lounge as 1,987 square feet of gross floor area, and that is the same footprint today. She does not know what is upstairs or downstairs at this point. She does not know if this level of detail is relevant to today's decision but is responding since this was asked. Mr. Morris added that the application before the Commission today is what is outside of the presumptive area that is delineated in the approved plans. It's nice to know the history of everything that came before with respect to the judicial order, but what is before the Commission today is whether or not the law allows approval of expansion of this outside of the presumptive area of the approved plans that exist today.

Commissioner Neugent added that it would seem to him that in the application for a liquor license, and based on what he's hearing, that there is a package liquor license that can be requested from DBPR which would allow sale of liquor to be transported. However, then the discussion comes up what the premises is. Under the premises part of it, defining that could be all encompassing; but, the other thing is the liquor license that allows package sales to be consumed off premises.

Ms. Karen Sherman, a new owner since 2020, asked if when the original permit was granted to sell liquor, whether the pool area even existed. And if the pool existed back then, would the judge have also approved the permit for that pool area. Mr. Morris thought it was irrelevant and

called for speculation. Ms. Sherman understands that. She sees all benefits to this expansion. She understands Ms. Schemper's interpretation against it and can completely appreciate that. But her question is whether this would be able to be approved through the legal system to expand because she is not sure if the pool existed in 1991. Ms. Tolpin clarified that there was a pool in the final approved development plan at that time.

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

Commissioner Demes referred to a letter received by the Commissioners and asked what the letter has to do with what is being decided today. Mr. Morris stated that staff also received it this morning just before the meeting. He had basically reviewed it and believes it to be irrelevant. It appears to be a letter from an attorney hypothesizing what the State would do for the County to render an approval. Beyond that, it runs afoul of the adopted rules of procedure requirements that any documents from the applicant or member of the public be provided five to ten days prior to the meeting. Obviously, this was adopted to prevent advertent or inadvertent ambush of Commission members and staff with "but-wait-there's-more" tranches of documents moments before a hearing. But, even if it was timely, it's not relevant in his view. Commissioner Demes stated that words mean a lot. The term license is used with the State and he asked if the County uses the term permit. Ms. Schemper confirmed the County uses the term permit. Commissioner Demes continued that this site is quite different, and initially he had thought who could complain about this, it's in middle of nowhere, maybe some wildlife and it's definitely isolated, though he can see now that there are residents that can hear it and are concerned about having music. Amplified music would require other things as far as he understands it. The footprint looks to be the second floor, not the ground floor, but he doesn't know that. The issue to him after reading the package was what does the premises mean, understanding it's a condo association. The chronology and legal battles baffles him and looks involved, which he takes at face value, but the briefings explained how it aligns with County Code. He had asked about any precedence anywhere else in the County and none surfaced. When it comes to the Planning Commission versus the BOCC, he looks at things in black and white within the laws, regulations and codes he is given to make decisions. The BOCC has the authority to change those things, but Planning Commission does not. Though he likes the idea of granting some type of exception, as Commissioner Neugent had expressed, he believes that answer is no. It's unfortunate, but he believes Planning Commission's hands are tied.

Chair Scarpelli wanted to fully understand the idea brought by the applicant regarding the idea of a concession stand by the pool area and asked if other regulations needed to be in place such as seating capacity. Ms. Schemper did not believe anything like that had been applied for. Ms. Tolpin responded that that could be required and would be very relevant when looking at a restaurant or some non-residential use. This is unique because it is a permanent multi-family development. Pools and the cocktail lounge were not originally permitted as a restaurant and are not regulated as such. These are accessory to residential units that happen to have vacation rental requirements. They likely could apply for other accessory structures and uses on the property where seating capacity may not be required because it doesn't contemplate additional traffic or parking requirements being generated as it is for guests or residents of the permanent multi-family units. Chair Scarpelli confirmed that since it is already part of an established use, that's why there are no plans in front of the Commission as they usually get, adding that Joe

Schmo from Idaho could hop on and start serving alcohol because it's not being regulated as a business. Commissioner Neugent added that it's a gated community and it's regulated internally. Chair Scarpelli stated that if it's regulated internally, all he's heard from the applicant was that people were breaking the regulations. Right now, apparently, there's no regulation. Somehow, we're going to have someone serving alcohol that's suddenly going to regulate it. Commissioner Neugent responded that essentially, who goes in and comes out is regulated. It's not like Joe Schmoe is able to go in. Chair Scarpelli stated he heard that people are not following their association rules, are breaking the rule and somehow providing an alcoholic beverage permit without any type of seating capacity or plan for the permit. This is where he gets confused. If you're going to operate as a hotel resort and you're not that, how can you be that.

Commissioner Neugent pointed out that this came into existence prior to a Comprehensive Plan and how archaic this is and what happened when it says that this property does not abut U.S. 1. Commissioner Neugent asked if there was any SR zoning on U.S. 1, and Ms. Schemper responded affirmatively. Commissioner Neugent thought there were certainly a lot of residential and commercial properties that do not abut U.S. 1 that operate as a business. Chair Scarpelli stated that was why he asked about the seating charts and stuff like that because if I has a house in SR zoning, a large property, a cabana and security, he can apply and start his own club. You're a member, but there's no floor plan or seating chart. Commissioner Neugent stated that most don't have 46 acres of land. Chair Scarpelli pointed out that there is no acreage requirement for an 11C license. Commissioner Neugent noted that that was other than parking and things in the Land Development Codes. Chair Scarpelli thinks this is a slippery slope.

Ms. Schemper responded that this is a unique site because the approved use on the site is a residential use. You can fit a lot of things in as accessory to the residential use, but they have to meet the definition of accessory. It has to be subordinate to and serving the occupants and needs of the residents of the residential use. The specific approval for this entire property would need to be looked at because it does have the cocktail lounge, but she believes there are restrictions on the use in terms of operating as a restaurant or a lounge that outside people can come to. It may be nuanced in the language of residents or guests of the property and at what point someone becomes a guest. A guest to your home is different than a guest to a de facto resort that gets a day pass. She understands Chair Scarpelli's concern. At this time there are no proposals to add some sort of new use that requires a permit in terms of a structure or additional official seating. Putting lawn chairs on a beach doesn't require a permit for a residential property. You would assume no additional parking or traffic because it's only for the residential use on the property. The residences themselves which are permitted as multi-family residences only require parking as a resident. Yes, they have vacation rental approval under the Code which can't be updated to address any of these types of issues. Chair Scarpelli asked if when the regulations say members and guests, if the member needed to be present and the guest can't just show up. Commissioner Neugent believed those were internal policies and not regulated by DBPR. Mr. Herin stated he did not know as well, but he could inquire with the State. Chair Scarpelli stated that he was just curious.

Commissioner Anderson agreed that the property is very unique. It is in black and white, but it's got the marina and it's 90 percent rented, so it's more a condo- hotel, and the language and the law doesn't really address that. He heard the lone gentleman against it. He would have

preferred to hear from some of the unit owners that reside there permanently, even though it sounds like it's less than ten percent.

Commissioner Thomas stated that her comments would be brief. The applicant has wants and needs because they want to increase revenue, but there are also codes. Just because you want something doesn't necessarily mean you can break the law or violate the code. Mr. Morris added that in the event there is approval of this, given the language of 3-7(g) of the code, there will be no way to defend this from an appellate perspective. No amount of creative lawyering can alter the language of the text that exists today. As Commissioner Demes pointed out, the BOCC is the policy formulating body. They can amend the law. That's where requests are made for text amendments to the law. This body, in stark contrast, is charged with applications, reviewing the law as it exists and determining whether or not an application is consistent and compliant with the laws as they exist, not whether the law should be changed or is undesirable as enacted. If there's an appeal of an approval of this, 3-7(g) furnishes no avenue, not even a keyhole, to be able to defend that as a matter of law. These decisions go to court and a court of law looks at the law. Commissioner Thomas agreed, that this is against the law and it's the Commission's job uphold the law. Commissioner Neugent stated that he does not believe it's against the law. He believes it's a matter of codes that are put in place that may become and have become archaic when it deals with specifics such as this. The Commission's attorney has contradicted staff's attorney to some degree, and no one is going to be put in jail if this is approved. He is a business-friendly individual, and you have an opportunity to increase revenue without creating any harmful impacts. This place was started long before a Comp Plan and has been going on for 40 years. He does not see this request to be an onerous situation. This can be left up to the DBPR if they want to approve this liquor license request or not.

Commissioner Neugent made a motion to move forward with the request applicant has made. Commissioner Anderson seconded the motion for discussion.

Commissioner Demes asked about the marina on the property, as he thought these were merely docks, and asked if a marina was there under the auspices and regulations of the actual County. Ms. Tolpin responded that there is not a marina. The County has a very specific definition of a marina with addition of marina sighting criteria. The marina definition explicitly does not include docks that are accessory to a residential use.

**Motion: Commissioner Neugent made a motion to recommend approval. Commissioner Anderson seconded the motion.**

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

Mr. Morris asked for a motion to formally deny the application based upon the professional staff report and presentation so there is a record for final action.

**Motion: Commissioner Thomas made a motion to recommend denial based on the professional staff report. Commissioner Demes seconded the motion.**

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

**3. LITTLE PALM DOLPHIN RESORT DEVELOPMENT, LLC, 28550 OVERSEAS HIGHWAY, LITTLE TORCH KEY, MILE MARKER 28.5:** A PUBLIC HEARING CONCERNING A REQUEST FOR A NON-USE VARIANCE REDUCING THE NUMBER OF 14' X 55' BOAT RAMP PARKING SPACES REQUIRED BY LAND DEVELOPMENT CODE SECTION 114-67(c) FROM SIX (6) SPACES TO ZERO (0) SPACES. THE REQUESTED VARIANCE IS ASSOCIATED WITH THE DEVELOPMENT OF A HOTEL USE. 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, MORE PARTICULARLY DESCRIBED AS CURRENTLY HAVING PARCEL ID NUMBER 00113570-000100. (FILE NO. 2023-045)

Chair Scarpelli stated that before these proceedings begin, he would like to read a statement into the record. "An ethics complaint was filed against me last November by Ms. Julee Marzella concerning my vote on the Dolphin Marina Major CUP we heard last October. Essentially, the complaint stated my vote was influenced by donations made to my wife's dance studio by Little Palm Island. At face value, this is completely unfounded and is purely filed as personal retaliatory action against me and my family. The fact that Ms. Marzella, Mr. Edward Dillard, and any acting member of Pirates Saving Paradise would sink as low as bringing my wife's dance studio, who teaches dance and promotes self confidence to the children of the Lower Keys, is an absolute disgrace. Our dear friend who recently passed away worked at Little Palm Island was also a mom to one of the students at my wife's dance studio, was the driving force behind the long history of donations from Little Palm that goes back to 2017, right after Hurricane Irma. My wife's dance studio has been a conduit for children to be creative and promote self growth since its beginning. Had the people that tried to drum up this unfound accusation been more involved in our community rather than protecting their own self interests, they would know that. Shame on you, and this idea of when you don't get what you want then we will prosecute and sue you into submission is a smear on our democratic process."

Chair Scarpelli stated that regarding his role on this Commission, he takes no personal pleasure on the dais during any of the proceedings he has been a part of. For some people, these proceedings are personal and it's the Commission's job to help determine the greater good based on the laws that are written. Sometimes it works out for everyone and sometimes it doesn't. It is the Commission's job to be objective regardless of personal feelings and he takes that very seriously. It is an honor for him to serve the community. Commissioner Demes gave an "amen" to the statement.

(12:15 a.m.) Ms. Emily Schemper, Senior Director of Planning and Environmental Resources, presented the staff report. This request is for what originally was an administrative variance to the parking requirements for a proposed, and now approved through a conditional use permit, hotel resort development on Little Torch Key. Within Section 102-186 of the code, which gives authorization to the Planning Director to approve certain levels of variance to different items within the code, not to use but to other aspects such as the number of parking spaces, there are certain percentages that are allowed to be approved by the Planning Director. However, within

the procedures of 102-186 there is an option for an affected property owner to request a Planning Commission hearing. That request was made by a property owner within the vicinity of the project. This site is on Little Torch Key, mile marker 23.5, just off of U.S. 1 on Pirates Road.

On October 25, 2023, the Planning Commission had a public hearing and voted to approve the major conditional use permit for the proposed project consisting of a 38-unit hotel resort with eight affordable employee housing units with some backup house operations. There is an existing boat ramp on the property because it used to operate as a marina. The marina use is not continuing with this new hotel resort use, and one of the conditions from the conditional use approval, Planning Commission Resolution P41-23, condition number ten is that the boat ramp is not permitted for use by guests, boat trailer parking is not permitted on site, and no area was approved for trailer parking or storage space.

Ms. Schemper presented the approved site plan for the variance application and the approved site plan for the P41-23 conditional use permit. It is the exact same site plan for both proposals. This specific variance request is to eliminate the requirement of the code to provide six boat trailer parking spaces which is a requirement when there is a boat ramp on site. Due to the fact that this boat ramp will not be used for the public or hotel guests, and boat trailer parking is not permitted on the site at all, even for their own boat trailers, the applicant is requesting the elimination of this requirement for the six boat trailer parking spaces. In terms of the total number of parking spaces on site, that would bring it down from 114 to 108, which is a 5.3 percent reduction. That percent reduction is how the administrative variance requirements were met. The Planning Director can approve a reduction of up to ten percent of the number of parking spaces. Because of the specific request for a Planning Commission hearing, the percentage reduction is a moot point as it is before the Planning Commission regardless. A higher percentage reduction would require a Planning Commission variance and it would come straight to the Planning Commission. The applicant contends that because there will be no boat trailer parking on site, there is no need for these boat trailer parking spaces and therefore, it does not make sense to require them and use up that land area. Ms. Schemper presented an operations statement from applicant regarding what boats use the dockage at site and how they are handled. It specifically states that they have three boat trailers which are kept off property. So even when they use this boat ramp to pull out their own boats for maintenance, the maintenance is done off site and the boat trailers themselves are also stored off site.

Ms. Schemper presented the eight standards that a request for a variance must meet to be approved, and all eight must be met. Staff has found that the application for this variance does meet all of these standards and therefore, the recommendation is approval of the requested non-use variance reducing the parking spaces from 114 to 108 by elimination of the six boat trailer parking spaces. There are two proposed conditions. The first identifies the precise site plan that this is associated with. Changes to that site plan that would affect this parking would require further approval. Second, the variance approval must reiterate that the launching or retrieval of boats by the public and/or hotel guests is not permitted, and the parking of any boat trailers on the site is not allowed. With those conditions, staff recommends approval.

Mr. Morris added that there are a few other conditions similar to the final two listed in the staff report but they are not enormously different. Chair Scarpelli asked if enforcement of these

regulations would fall under code compliance. Ms. Schemper confirmed that the applicant would then be in violation of their permits. Frequently, when building permits are issued for projects associated with a variance and/or conditional use permit, the conditions are frequently repeated again in the building permit. They would be subject to set fines and whatever was determined by Code Compliance. Mr. Morris added that there are different paths of enforcing code compliance. It can go straight to circuit court to seek an injunction if it's of such gravity that the concern warrants immediate enforcement, or it can go through the administrative process under Chapter 162 before a special magistrate. There is also the internal governor of the specter of liability if there's an injury that occurs in connection with something that was not approved. Chair Scarpelli stated that he wanted to be sure the County had the ability to regulate these measures. Commissioner Demes asked of the 38 units, plus the eight affordable housing units, if the eight were in addition to or within the 38. Ms. Schemper and Mr. Morris confirmed that it was in addition. Mr. Herin interjected a reminder to the Commission that the issue before them was solely for the variance to remove the requirements for the boat parking. Reasonable conditions can be imposed; for example, placing a locked gate across the boat ramp that can only be accessed by management of the resort and things of that nature. As staff has indicated, there is an existing condition that already exists that such a limitation is already there, so even that condition could be considered redundant. The point is that that is all that is before the Commission, so you have the discretion to request the speakers to focus their comments on the issue before you, not what has already come before you and been completed. Mr. Herin notified them that he would be getting off Zoom and calling back in so it was decided to take a recess.

(Recess from 12:33 p.m. to 12:45 p.m.)

Chair Scarpelli reconvened the meeting and asked if the applicant wished to speak. Mr. Morris first asked if the Commission could recognize Ms. Schemper as an expert in the field of administering the Land Development Code and Comprehensive Plan, adding that the applicant was previously in agreement. Chair Scarpelli agreed, adding that the Commission doesn't see it any other way.

Mr. Donald Craig, agent for the applicant, stated that Richard McChesney and Nicole Neugebauer were present with him. Mr. Craig reminded everyone that he had previously been recognized as an expert in planning having 37 years in Monroe County and a total of 51 years as a professional planner. The boat ramp that is the subject of this variance application has been in place since 1987, long before there were any parking requirements for boat trailers. In January of 2021, the applicant notified the County that the property would no longer be used as a marina because of the proposed development that was being considered at the time. The major conditional use approval by the Commission had been tested in an appeal so the approval stands and is a precursor to the actual application for the variance. Because of that approval which specifically prohibits the parking of trailers and boats on trailers on this property, and the use of the boat ramp by any guest or property owner at the property, that specifically burdens this property because to provide parking spaces which are prohibited by the major conditional use would be a superfluous act. There is no need for the parking whatsoever. The Commission may hear that County staff miscalculated the percentage of the variance being requested and someone may say that the variance should be considered in the area of the parking spaces provided. In his 51 years as a professional planner, he has never seen a parking variance considered by the area of

the parking spaces required. It is always by the number if one variance is being requested. Staff very carefully considered all of the criteria of granting a variance and all of those criteria have been met. Moreover, this variance, if not granted, would burden the property with an unnecessary area that is specifically prohibited by the approval, so they can't go there and also maintain the approval the Commission granted. Mr. McChesney, Ms. Neugebauer and he are available for any questions, and would like to reserve some time to rebut if there is a comment with which they disagree.

Commissioner Demes asked regarding "area" versus "parking spaces" if there is a minimum that is used for a parking space. Ms. Schemper responded it is eight and-a-half by 18. Chair Scarpelli added that it's 12 feet for handicap spaces. Chair Scarpelli asked Mr. Craig about the vessel operations. He had gone out on site and there are barges present, and asked if they would be typically kept in the water. Mr. Craig stated they would be either kept in the water at the Little Palm Island site or off site, adding that the Little Palm Island director of engineering is present and can provide any detail, but the operations plan was put together by the general manager and operations manager. They must live by that plan requiring the trailers to be removed from the site as per the major conditional use and per the operations plan for Little Palm. Chair Scarpelli asked if the operations plan was going along within the record of the conditional use permit. Mr. Craig responded that that was correct, that it was specifically submitted for that purpose to provide a record of how the resort will be operated, inclusive of Little Palm Island. Chair Scarpelli then asked for public comment.

Ms. Stephanie Brown is not a member of Pirates Saving Paradise but is an affected permanent, full-time resident of Jolly Rogers Estates. She asked to note her File 2023-045 email request regarding today's non-use variance contingent upon development order File 2021-248 with the four-fifths rule trigger, her two photographs submitted for presentation, and also a request to reserve a one-minute response. She thanked Commissioner Thomas for acknowledging code standards and voting against the major conditional use permit. By granting and overbuilding beyond the County's density standard land development code, the applicant has created their own parking hardship in direct conflict with code of ordinances Section 6-58 stating when granting a variance, any difficulty which may be characterized as a self-created hardship shall not be considered material or relevant. The applicant is again asking for special permission status to first not only build beyond the standard code but is now compounding that ask by requesting another special exemption with an exceptional hardship plea which is based on a hardship of their need to redesign the site, eliminating units, and thereby lessening the value of the property. These are in nature financial hardships, thus in conflict with LDC Section 101 stating financial hardships do not qualify as exceptional hardships. Furthermore, the applicant is transferring the impact of the trailer parking requirements to the adjacent Jolly Rogers community. Ms. Brown presented photo one which demonstrates the use of a bobcat unlawfully, illegally moving unregistered, unlicensed boat trailers on several adjacent residential community County roadways, trucking nearly one mile in each direction to and from the resort. Photo two shows how they now store their boat trailer and boats in violation of County right-of-way code of ordinances Section 25-35, indicating this has been here for over month. One day is in violation as you're not allowed to store your trailers on public right-of-way. Chair Scarpelli stated that as of August of this year, you cannot park on Pirates Road for the first 500 feet, and the Sheriff can ticket you for \$200 for every violation. That was just passed. Commissioner Neugent stated

they should have signs up. Ms. Brown stated the signs are up and she had spoken to the director of that department who had facilitated that after their conversation. The director also stated that it is in direct violation. Chair Scarpelli agreed. Ms. Brown stated that they have plenty of room to keep it on site right now and they're not doing that, so being good neighbors is certainly not reflected. Referring to the DRC meeting, the manager acknowledged that boat trailer parking is required for current ongoing FWC, Border Patrol, State and Federal government site access. These minutes also reflect the applicant's cowardly response that if the applicant would be required then they would no longer offer the ramp to FWC and like governmental agency access, thereby preventing and compromising the longstanding level of safety and welfare the community and the Florida Keys residents and visitors has been receiving. If their self-created hardship, self-imposed community hardship, public health and safety are not significant enough for the variance denial, a variance approval should be conditional upon installation of permanent bollards at the existing boat ramp mitigating the applicant's alleged consideration that filling in the existing boat ramp to eliminate the code boat trailer parking requirement may result in environmental impacts. Chair Scarpelli asked when the photos were taken. Ms. Brown responded they were all taken August 29, 2024.

Ms. Jane Graham is an attorney at Sunshine City Law representing Ms. Julie Marzella as an individual and Pirates Saving Paradise. She is respectfully requesting the Commission deny this variance. It is outside the bounds of what the law allows. A mere economic disadvantage due to the owner's preference based on an over-designed site is not an extraordinary hardship. It is a self-created hardship. Florida law as well as the code clearly rejects self-created hardships for variances. Otherwise, people will be asking to skirt the law whenever it doesn't make economic sense for them. Granting this is treating Little Palm Dolphin differently from everyone else in the County and giving them a special privilege that no one else is getting. By continuing to offer a boat ramp without required parking, Little Palm Dolphin is creating a safety hazard when boats do need to park there. Pirates claims that they have standing to intervene in this matter and are composed of members who live directly by the proposal, and they have a special injury above and beyond that of someone within Monroe County due to the direct proximity of this approval to their property that impacts the safety, recreation, access and compatibility. Three initial objections: First, Monroe County is under a tropical storm warning and the site in question is in the Lower Keys which is especially at risk from Helene, so this meeting should have been postponed to allow people to come and give their comments for the due process issue. Second, notice is deficient because it was on the FDOT property instead of on the site itself. Third, she heard there were some broad ex parte communications but they weren't specific, which needs to be further clarified for this particular issue. Little Palm has the burden to prove the existence of their hardship and that they meet the conditions under Chapter 102, 101-87 or 86, depending on which one it could be. Section 114-67C requires six boat parking spaces. They are requesting zero. This is not a 5.3 percent reduction. It is a 100 percent reduction, a deletion of what they're asking for. Nothing in the code speaks to a non-use variance. The distinction between a public marina and a continued private boat ramp is fiction. The code makes no distinction. Looking at the vessel variance, it's clear that Little Palm is still planning to use the boat ramp so you can't have it both ways.

Ms. Graham then went through the standards of the variance. One, applicant shall demonstrate a showing of good and sufficient cause for granting the variance. Here the staff report creates a

false distinction between whether a boat ramp is used publicly or privately. Nothing under 114-67 creates this exemption. It speaks to every use. Applicant Donald Craig admitted during the October 25, 2022 hearing that any emergency responders would be able to continue to use the dockage on site. No matter who is using the boat ramp, there is no good cause to dispense with this parking requirement. Two, failure to grant the variance would result in exceptional hardship to the applicant. Ms. Graham had submitted a letter months ago which is still good law that speaks to the fact that hardship must arise from circumstances particular to the realty alone, unrelated to the conduct or self-originating expectations of the owners or buyers. Mere economic disadvantage due to the owner's preference is not sufficient to constitute a hardship. As far as parking variance applicants, Florida courts have found that failing to prove necessary hardship when the applicant was previously aware of the property's size, shape and requirements upon purchasing the property, and this is what happened here, they knew what was happening, and then they premised the conditional use permit on this variance when it should have been other way around. The staff report cites that the issue is that it lessens the value of the property. Lessening the value is insufficient economic grounds upon which to justify a variance. Number three, granting the variance will not increase public expenses, create a threat to public health and safety or create a public nuisance. Ms. Marzella had submitted a letter from Mr. Drew O'Rourke, a professional engineer who is based in Tallahassee and is unable to attend. He analyzed the parking calculations and found some significant flaws, some of which go to the idea that the site is over designed. It depends on shared parking for residential and office space which is inappropriate because the residential is for employee housing and they don't vacate the parking spaces like a normal residential development would. That is relevant here because it speaks to the fact that even without the boat ramp variance, the site is already over designed and they are asking for even more of a variance now because of this. This is not how the law is supposed to work. There are other issues as to why it doesn't meet the standards. Ms. Graham urged the Commission to follow the law and deny this variance.

Chair Scarpelli asked about the broad ex parte communications and asked what she was describing there. Ms. Graham stated that she had been slightly troubled at the beginning of the meeting with the broad disclosures and it was a little unclear as to whether those were for this particular item. She would like clarification on whether there were any ex parte communications for this particular item. Mr. Herin asked the Commissioners to re-disclose any ex parte communications they may have had regarding this item and indicate whether they could base their decision on what is heard today as opposed to those communications. Commissioner Demes stated that he has had many conversations about this property and can't remember who all they were with, but he does not believe he's had any regarding this variance. He may have spoken with Mayor Pro Tem Scholl about it but cannot remember the conversation, so it will not affect his judgment. Commissioner Thomas stated that she has had none. Commissioner Anderson stated he that has had none. Commissioner Neugent stated that he has had none. Chair Scarpelli stated that a he did have a conversation with Jack Earls, a resident of Jolly Rogers Estates, but it would not influence his decision here today. Mr. Morris added, though it would not constitute an ex parte communication, that the professional staff had provided baseline briefings to the Commission.

Chair Scarpelli asked Mr. Craig to clarify that he had done the shared parking calculation based on County Code regulations for this particular property. Mr. Donald Craig confirmed that was

correct, and that he had done the shared parking calculations at least three times and reviewed those with the then Development Director Brad Stein who said they were correct and according to code. They were also determined to be correct by the staff report for the major conditional use. That major conditional use was challenged and was found to be consistent with Monroe County Code in every way, and therefore the appeal was not sustained. Those calculations were correct with County Code and are not a part of this variance application.

Ms. Hereen Gershman, part-time Keys resident and business owner on Big Pine, stated that she wants to shed light on additional facts giving the Commission even more reason to deny the parking variance. This large-scale development should have never been approved on this size property but, regrettably, that is said and done. The developers knew they did not have enough parking spaces and have asked for a parking variance stating that not getting the variance would create a financial hardship. This is clearly a self-created hardship. They have known from the beginning what could and could not be done on this 4.5 acre building site. Ms. Gershman stated that the applicant had advised Monroe County Planner Brad Stein that the boat ramp was not used by anybody other than for LPI business. She has photos illustrating this is not the case. The boat ramp has been used by others not associated with LPI. On numerous occasions more than ten boat trailers have been on this location, fourteen being the most at any one time. The applicant stated that if a vessel needs service or repairs it is trailered off site for work, yet there have been numerous times that both the Wilson and the Truman vessels have been lifted out of the water by crane and repaired and/or serviced on site. Since the parking variance was first requested, vessels have been added to the fleet. For example, the passenger ferry Beth is not included on the application. Apparently no one told Mr. Craig that numerous people go to LPI daily who are not registered guests. They go to eat lunch and dinner and that adds to the parking for which there is none. There are weddings that take place at LPI which would be even more people who are not registered guests of the resort and everything that goes into the works of a wedding. There are workers such as electricians, plumbers, et cetera, that need to go out to the island for upkeep and repairs. Parking calculations did not consider all of the uses. There are nowhere near enough parking spaces. This current calculation is fatally flawed. The developers created this hardship and that cannot be legally ignored. Ms. Gershman asked the Commission to please deny this parking variance, adding that she believes they work for the citizens of the Keys and not developers.

Ms. Beth Fennell has lived in the Keys since 1975, is not a member of Pirates in Paradise but cares deeply about sound planning, particularly in the fragile environment, and has over 30 years of experience in planning. She has witnessed a lot of highs and lows in the Keys, particularly how County government treats resident goals versus developer goals. The 1970s the County Commission was nicknamed the Concrete Coalition due to their lack of development controls which were harming our unique environment. The State stepped in and placed development controls by declaring the Keys an Area of Critical Concern. That is still in effect today. 20 years ago there was the optimism and full resident participation in the Livable CommuniKeys documents outlining what each different Keys community wanted as far as future development today, a document that apparently can be ignored when convenient. In the last five to seven years, the pendulum appears to have swung back to concrete. If the variance is passed, the only recourse will be a code complaint and maybe a fine. The genie can't be put back in the bottle once this is approved. The project continues to have boat trailers on the site while performing

work on the boats out of the water. There have been multiple opportunities and specific and numbered statutes quoted by the public to deny this project based on the increase in density and the project not being compatible to the Comp Plan or Livable CommuniKeys document. Today is another opportunity to make this right as the developer cannot proceed without the requested rule bend to allow a parking variance. Florida Statutes and Monroe County Development Codes state that a variance cannot be characterized as a self-created hardship or granted for self-created actions like wanting a parking variance to allow more density. A mere economic disadvantage due to the owner's preference as to what he would like to do with the property is not sufficient to constitute a hardship entitling a variance. This is Burger King v. Metropolitan Dade County. Also codified are the determinations that a granting of a variance will not create a nuisance or cause victimization of the public and will not have a significant detrimental impact on adjacent property values. A nearly-four-times increase in density and the accompanying lights, noise and traffic does victimize the public and will have a significant detrimental attack on adjacent property values. Ms. Fennell implores the Commission to do the right thing for the constituents and not grant this variance.

Ms. Millie Simon stated that she and her husband had gone to the Planning Commission in 2023, and the person at the desk was not happy to see them. They had requested to see the director, Mr. Brad Stein, who had told them at that time, even before they started talking to him, that no matter what this was going through, that it would not be stopped. They found that very surprising. She and her husband are both professional people with licenses to maintain and understand that they have to do things correctly. They questioned all that's happening right now, the parking situation being created, the hardship given to the residents, and the development that they want to make and, like everyone else said, they knew the nature of the property and they are going beyond the law and the codes of the area that we own property in. This is jeopardizing the health, environment and safety of residents by all of the stuff they are doing with this development and not considering anything about the residents. Ms. Simon asked what gives Ms. Schemper, and what her background is, the ability to give this okay on this variance; and, what is the final calculation in the difference in the parking from the beginning to now because it was said that there was a mistake in the calculation.

Chair Scarpelli asked Mr. Morris to explain Ms. Schemper's expertise. Mr. Morris stated that Ms. Schemper has two master's degrees from the University of Michigan in urban planning and urban design, has worked in the private sector as a professional planning consultant to the United States and United Kingdom for over two years, and has worked for the Monroe County Planning and Environmental Resources Department interpreting, administering and applying the Monroe County Land Development Code and Comprehensive Plan for over twelve years. Mr. Morris believes this well justifies her prior recognition as an expert in those disciplines. Ms. Simon asked how long Ms. Schemper has had these master's degrees. Mr. Morris responded over fourteen years. Ms. Simon stated that she is from Michigan and wanted to know if Ms. Schemper had gone to U of M or Michigan State. Mr. Morris responded it was the University of Michigan, and that this is not the usual course. Ms. Simon asked what the calculation mistake was that was made. Mr. Morris responded that there was no mistake and that this isn't the opportunity for back and forth; but, because the Planning Director's qualifications were impugned, he thought it was appropriate to clear the air on the record. Chair Scarpelli stated he did not recall a mistake on the calculations. They were based on the County code and as a

professional architect he had done the calculations himself as well. If they were reviewed and approved by County staff, they are following what is allowed by the shared parking calculations within the code which have not been changed at any recent point in time. Ms. Simon asked who took Brad Stein's position. Mr. Herin interrupted as relating to this current line of questioning, it is his understanding that it is not staff asserting nor have they ever stated there was a miscalculation. It was the opponents to the project that have asserted there is a miscalculation. The current speaker asks who made the miscalculation, and staff is saying they did not make a miscalculation, whereas the opponents are saying there was. It is up to the Commission as the decider of the facts as heard today to determine who is more credible in deliberating and ultimately making their decision.

Commissioner Demes asked about Mr. Stein having said this was going to go through, implying no matter what, and asked what the word "this" meant and whether it was the topic for today or the initial project. Ms. Simon responded that it was the initial project that was going to go through no matter what. He said the development will not be stopped when the compliance is met, that he was working on the development and it was approved on compliance with the County and State regulations. But, the developers keep changing everything all the time and are not staying within their parameters. Chair Scarpelli stated that he could assure her that the regulations pertaining to this project had not been changed. The Commission has been involved in a number of other subarea policies for other developments throughout the Keys and this is not one of them. The applicant has been in compliance with their zoning since the zoning was established. The only thing Chair Scarpelli thinks was changed in the past ten years may have been the max net density bonus for affordable housing and that was ten, twelve years ago or has been for a while.

Ms. Alicia Putney stated there has been an enormous amount of public involvement regarding this project and the vast majority of those who have addressed the Planning Commission are in opposition. Supporters have been few and none have given a single legitimate reason why the proposed development should be allowed to move forward on this specific site. Reviewing the site plan for the concurrent major conditional use to construct a 38-unit hotel one could quickly see that every single bit of available land is densely packed with 104 car parking spaces and four additional ADA spaces. That totals 108 parking spaces. The code requires 111 parking spaces and six additional boat ramp spaces at 14 by 55 feet. One could not get credit for the six boat ramp spaces because they do not exist on the site plan. The developer stated in the parking variance application that reducing the number of hotel units would create an exceptional hardship, "because of the need to redesign the site which would lessen the value of the property." Financial difficulty and hardship does not qualify as an exceptional hardship. No other exceptional hardship beyond profit is given by the applicant. As a working waterfront marina, dock space and boat trailer space are being used by the owners of Little Palm Island Resort along with the Federal Department of Homeland Security and Florida Fish and Wildlife Conservation Commission in their official capacities of non-routine operations. This current land use is a matter of public safety and cannot be changed with a variance. Ms. Putney asks that the Commission choose the above reasons for their findings of fact and to please do the right thing. Ms. Putney is reminded of a former Planning Commissioner who would often say, what you're trying to do is put ten pounds of flour in a five-pound sack which won't work and it will make a mess.

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

Chair Scarpelli asked the Little Palm Island operations manager, Mr. Luis Torro, to speak to why the boat trailer was parked on the County right-of-way, and Mr. Torro did not know. Mr. Morris asked if counsel for the applicant had wanted to rebut. Chair Scarpelli added that Ms. Brown had asked for rebuttal as well and that rebuttal was still available to Ms. Brown and Ms. Neugebauer, and they would be allowed to speak after the Commission's discussion. Commissioner Demes asked Little Palm management when the last time the boat ramp was used as he had gone out and looked at it didn't look like it had been used in a very long time. Mr. Luis Torro, Chief Engineer for Little Palm Island, responded that a log is kept of the boats that go in and out of the boat ramp, and the last one was on September 18, 2024, when one of their vessels was taken out of the water. Commissioner Demes stated that he had looked just last weekend and it looked like there was a dually that had been in there a long, long time and hadn't been used. Chair Scarpelli thought it looked like it was used, adding the way the property is being used right now is not the way it will be utilized when and if it's developed.

Mr. Donald Craig responded that going forward, the operational plan that was attached to the boat variance application will be the modus operandi. The only exception would be if FWC or Coast Guard or someone else has an emergency and must get to a place on the water with this being the closest available ramp. LPI will not stand in the way of law enforcement doing its duty to protect the citizens of Monroe County. There were several comments about the calculations of parking and that boat has sailed. That determination has been made by the Planning Commission, by staff, by an administrative law judge for the State of Florida, and the calculations have been found to be correct. The operational plan is part of the application. Mr. Craig defended his friend, Mr. Stein, who he has worked with for many, many years. Mr. Craig finds Mr. Stein to be a straightforward and by-the-book planner, and he resents anyone questioning his capability or honesty when he doesn't have the opportunity to respond to it. Chair Scarpelli agreed, stating that he has had the same experience. Mr. Craig continued that the applicant has provided the Commission with a reason for the variance, and staff has determined that the variance criteria has been met and has recommended approval. There is no reason not to approve the application.

Ms. Nicole Neugebauer, attorney with Stearns, Weaver, Miller, had a few rebuttal comments. As the general counsel for the County and Mr. Craig have asserted, this application is for a variance for boat ramp parking. Comments related to whether this property is appropriately developed, whether the overall project is consistent with the Code and Comp Plan or whether prior actions or development on the property was lawful, is not within the scope of this application. The Commission is here to review the eight variance factors in the Code related to a boat ramp parking variance. There is no financial hardship related to this application nor is the applicant alleging there is. The hardship here is that the Code is requiring parking for a use that is no longer going to be on the property per other redevelopment. With this variance request, we are asking for the variance with the hardship being that if required to provide these boat parking spaces, it will prevent the owner from efficient use of their space in accordance with the entitlement the County has provided to them. This variance is related to boat ramp parking, not vehicular parking for guests and employees. Florida law is very clear that staff reports do provide competent, substantial evidence of compliance with the local government code. The

applicant has provided additional competent, substantial evidence from their expert Donald Craig in support of this application. There is ample competent, substantial evidence in the record to support the variance application. Regarding the comment of Ms. Graham about standing on behalf of her clients, she objects to whether they do have standing under Florida law. Additionally, she made a couple of comments about this being a special privilege for Little Palm Island. This is not a special privilege. The County has a variance process that its citizens and property owners are allowed to use, and with that process is the opportunity to apply for a variance. This request is not special to them or some kind of additional privilege that wouldn't be available to anyone else in Monroe County. When the County is reviewing this application and considering these public comments, the County cannot treat this applicant differently than any other applicant with respect to how they interpret and apply their code. There have been a number of questions about whether you could use the size of the parking spaces versus the number of spaces. That is not appropriate. The code is very clear that you look at the number of spaces. The County has previously reviewed and granted applications related to the number, not the size. Any kind of different treatment would be a concern and potentially create an equal protection issue. Ms. Neugebauer thanked the Commission for their time.

Mr. Donald Craig added that Little Palm Island has been in existence since 1987, and he has worked with Little Palm Island since 1990 on each of their redevelopments and redesigns since being struck by several hurricanes. At each juncture, the County reviewed and approved the parking plan for Little Palm Island and the number of parking spaces generated for or required for both guests either at the resort, coming to the resort for lunch or dinner, and for maintenance and other personnel going to the island. They were approved and have been in place for years, the last time after the last hurricane.

Chair Scarpelli asked about a comment regarding an additional boat that is now being used that is not on the vessel manifest. Thinking futuristically, he asked if it is a reach to add a condition that any new future boats be added and updated to this operational list. Mr. Morris responded that in his view, he thinks it would be sufficient. Since Mr. Craig has affirmatively indicated that the vessel operations manual is going to be the modus operandi, if it's the will of the panel to approve, then that could be folded into the approval to update the manual in the event there is a change or meaningful departure from it. Mr. Craig responded that the applicant has no problem with that. Mr. Morris added that a situation shouldn't be created where you have to have a new variance or public hearing or explode the boundaries of comparison. Chair Scarpelli agreed that he didn't want to create an issue down the road as a way for someone to complain. Mr. Morris thought to balance the competing interests of sensibility and ensuring some fidelity to those representations, the panel could tie in the requirement that there shall be no meaningful departure from the vessel operations manual provided with the application. Mr. Craig stated the applicant would be happy to accept a condition that there shall be no meaningful departure from the operations plan, and will if required provide an annual update of the operational plan. Chair Scarpelli thought that that would be great. Mr. Craig added that currently marinas throughout Monroe County, even though they are no longer a marina, are required to have an annual plan file so it is no great burden. Chair Scarpelli then asked if Ms. Brown or Ms. Graham wished to rebut.

Ms. Stephanie Brown stated this is kind of a David vs. Goliath as residents. The engineer on site could not even answer the Chair's specific question, and the issue of bobcats driving on County roads over a mile back and forth with unregistered boat trailers was not addressed. She had reached out to Ms. Clarke about the parking signs on Pirates Road because of the safety issue and that this will be the only ingress and egress out of the community and traffic is a big issue. Ms. Brown implored the Commission to review the March 28, 2023 DRC meeting minutes where Mr. Craig speaks of his friend Mr. Bradley Stein whose wife worked for FWC. He specifically stated at that time that a boat trailer requirement is required for ongoing FWC, Border Patrol, State Patrol and government site access. Mr. Craig just mentioned that they were going to allow that to continue so that requires boat trailer parking. That was something that he was very clear about in those minutes, and that is specific to the variance. She has been careful and mindful to speak specifically to the variance and not the earlier issue. The applicant's attorney had indicated that financial hardship was not a part of this. However, looking at the application and staff report dated November 27, 2023, under Section C on page six of nine, number two, it says, "Failure to grant variance would result in exceptional hardship to the applicant." That is where we get into the whole thing about how the exceptional hardship plea is based on their need to redesign the site, by eliminating units, and thereby lessening the value of the property. These are financial in nature, financial hardships, and thus conflict with LDC Section 101 stating financial hardships do not qualify as exceptional hardships. Chair Scarpelli added that when he reads that, he agrees with her statement. But when you get to the end of the statement his interpretation changes where it says the trailer parking is not in need for this property because the boat ramp can't be used anymore and will not be utilized. By imposing the parking requirement you are now devaluing the usefulness of the property for a requirement that's no longer there. It's kind of a circular argument.

Ms. Schemper clarified that in the staff report for each of those standards, the way the staff report is structured it first states what the applicant claimed. After that, when you get outside of the quotes, then you get the staff analysis. The applicant may have said we're going to lose money, but staff did not necessarily use that as the basis for saying they met the standard. Ms. Brown added that she understood, and that better utilization of space could also be defined by the fact that they have overbuilt and that's why they don't have space. Chair Scarpelli added that that brings us back to what we're not supposed to talk about. Ms. Brown agreed but still believes her position stands given the additional language in the document being referenced. If these all become code compliance issues, the onus is being put on the residents to police the applicant and the properties and that is a burden. Chair Scarpelli agreed and said it is actually on the developer to be a good neighbor and follow the development agreement. Ms. Brown stated that that was certainly something when this process started that they had asked, and that hasn't happened as she has demonstrated. If they are not a good neighbor now, the chances of them becoming better are highly unlikely. Chair Scarpelli responded that, unfortunately, that's not what they're reviewing. If they were reviewing a good neighbor policy, seeing those boat trailers parked in the County right-of-way would be an F mark and there is no explanation. Unfortunately, that is not what's before the Commission right now and he can only ask them to do better. Ms. Brown hopes the Commission will stand steadfast to the codes. Ms. Brown reiterated that the applicant has said that the boat ramp is going to be used for LPI and emergency agencies and by doing that, as previously stated by Mr. Bradley Stein, the parking spaces are required. If this is going

to happen, where are the boat trailers being stored? And, if stored off site, will they be stored on properties owned in the adjacent neighborhood? Where is that location?

Mr. Craig clarified that FWC and other law enforcement agencies that ask to use the boat ramp for their operations will be required to remove their trailers from the site and can't leave them on site going forward. They have not yet gotten to the point where they can implement the major conditional use that has been approved, challenged, and found to be consistent with code. Once they do, the boat operation plan which will be filed annually will require all users of the boat ramp to find parking for their trailers at a marina, at other properties owned by the applicant, and at an appropriate place that is licensed for boat trailers. That is why the operational plan is in place. LPI has been in existence since 1987 and has been a good neighbor to the County, despite some of those who say otherwise. This is a private boat ramp and it does not provide access to anyone from the public, and there is no impact from the operation of the boat ramp for LPI and FWC on neighboring properties.

Commissioner Demes stated that to the Chair's point about personal feeling versus the way we vote, he does not like this project, but he could not see a reason within the code not to make it happen. The boat ramp is an extreme case when FWC or U.S. Coast Guard would trailer a boat there versus having somebody in the water already that would respond. Commissioner Demes has no question about Mr. Craig's or Mr. Stein's judgment or calculations, but he has questions about the reality of operating this area and the future when things could change hands. The reality is that enforcement of anything here would be a low priority and that's why things don't happen. Looking around the County, there's only so much code enforcement can do and this wouldn't be one of them, so they try to put provisions in to stop it from being an issue. If some other agency needed to go there it would be an extreme emergency and he personally doesn't see a trailer there for an extreme emergency when talking about a life-and-death situation and putting the burden on getting a trailer out of that area while they're responding, but he will leave that alone. He would go forward with this knowing that there is a condition that makes it not easy to use the boat ramp, but for those managing the property it would not be a burden. He would ask that there be one or two bollards put at above mean high sea level on that boat ramp to ensure it's not used. They're easy to remove when unlocked. He thinks gates are ugly. Commissioner Demes asked if the applicant would be amenable to that. Mr. Craig responded that the short answer is yes. Chair Scarpelli then asked if Ms. Graham wanted to speak in rebuttal.

Ms. Jane Graham stated that what has been said already by Ms. Brown is mostly what she wants to say, but she has a couple of quick points. Ms. Neugebauer and others have made the claim that the parking calculation has already been ruled on by DOAH. Ms. Graham was the attorney for Pirates and this was not actually an issue in the appeal, so there is no ruling on the parking calculations. That said, it was only brought up in this discussion as to the variance because it speaks to the fact that the site has been over designed, has gone back to the issue of peculiar and unique circumstances and financial hardship of over designing the site that is a self-created hardship. Ms. Brown made the point well and she would just highlight the fact that while LPI states that this is a non-use variance, we're talking about it being used. Referring to page six of the staff report it mentions at the very bottom that the alternative is having the applicant property owner voluntarily fill in the existing boat ramp to eliminate the boat trailer parking requirements, but then there were concerns about environmental impacts and it was never further evaluated.

The fact that we're talking in circles that it's not financial because it's non-use, but then it's really not non-use because we're talking about how to use it or when we're not using it. When something doesn't make sense there's a reason. Ms. Graham urges the Commission to vote against this variance as the vessel narrative shows that boats will be using it; the fact that FWC in an unusual circumstance needs to use the boat ramp; the exception proves the rule because it shows how in the event that the boat ramp is still open and is used then it may need to be used for a trailer. Maybe a boat pulls in and they've rescued someone and they need a trailer to drive them to a nearby hospital or a variety of other reasons. The intention is that it's still a private use and it's still going to be a boat ramp. It does not add up and Ms. Graham urges the Commission to please reject this. There is no universe that you can have this variance of non-use where it is not being used. It is still very clearly being used by the plain language of the staff report.

Mr. Morris asked to help clarify and stated that Ms. Graham may be misapprehending the legal significance of the distinction between a use variance and a non-use variance. In legal parlance, the most meaningful salience goes back to the way the courts review variance challenges. The law distinguishes, case law legion, between use variances and non-use variances. A use variance would be where an application seeks a variance that would allow a non-permitted use. The County does not have variances to use. However, were there to be a challenge, it needs to be abundantly clear that this is a non-use variance which goes to laxity under appropriate circumstances where standards have been met to say the bulk regulations, setbacks, things of that nature, parking in this instance. This is not a variance to use. It's a non-use variance which doesn't suggest that there's not going to be any use of the property. It's rather to signpost to attorneys and any reviewing administrative law judges and jurists that this is not a variance as to use. It's a variance as to parking. So, it's a non-use variance.

Chair Scarpelli added, regarding the boat ramp being private, that he has been on properties that have private boat ramps and asked if he were to redevelop a private residence that has a boat ramp if they would be required to have six parking spots. Ms. Schemper stated she was not prepared to answer that question today. Chair Scarpelli stated that, to him, it would seem ridiculous, and apologized if he's created additional issues.

Mr. Herin wanted to be clear on the record to be sure the Commission was procedurally in the right place, stating that they had taken a lot of comment from all three parties, County staff, the applicant, and those opposing the project, to include legal argument from the Mr. Morris. If the Commission is going to proceed to discuss the matter and entertain motions, it would be appropriate to formally close the public hearing so the matter is with the Commission. Mr. Morris quickly interjected before the drawbridge was pulled up, since there were two names on the staff report, he wanted to make clear on the record who had participated in preparation of it. Mr. Morris asked and Ms. Schemper confirmed that she had participated in the preparation of the staff report and agreed with all of its analyses and determinations of fact and law. Chair Scarpelli then allowed Ms. Brown to speak one more time but said the rebuttal needed to stop.

Ms. Stephanie Brown thanked the Chair for his indulgence stating she only asked because he had allowed rebuttal to her rebuttal. Mr. Craig did bring up the operational plan and there are some challenges with what they're doing today with the operational plan for the trailers. The DRC meeting minutes where Mr. Stein had talked about that what's happening now is more routine

usage and not emergency usage, and Commissioner Demes had spoken about more of an emergency situation. This is more of the routine safety and access to the Community that they have had ongoing for the safety. She has heard that the Planning Commission makes conditions regardless of whether the applicant is willing to put bollards up or not, and the applicant's willingness to do temporary bollards or not is not the issue. They should be permanent bollards and they should be because the staff report also states that the filling in of the boat ramp, which is an option, may result in adverse environmental impacts. So there was a conversation about negating the actual ramp. That is really what should happen and that would mitigate all of the other issues that are surrounding the impact to the community as well as the safety, health and well being of the residents and Keys visitors.

Chair Scarpelli then officially closed public input unless a Commissioner has a specific question for someone.

Commissioner Demes made a motion for approval per the staff report, but wanted to condition it on substantial removable bollards being installed, locked and controlled by the operator/owner, and to update the operations manual annually as explained by Chair Scarpelli. The motion was seconded by Commissioner Neugent. Ms. Schemper confirmed that the operations manual would go into the conditional use file or the plans file. Mr. Herin asked if the motion maker could say as part of the motion that otherwise, the application does or does not meet the requirements of the code as set forth in the staff report. Commissioners Demes and Neugent agreed with that.

Commissioner Thomas interjected that she would vote no as she believes this is a self-created hardship.

**Motion: Commissioner Demes made a motion to approve per the staff report with the condition of installing substantial removable bollards, locked and controlled by the operator/owner, and to update the operations manual annually, and that otherwise the application does not meet the requirements of the code as set forth in the staff report. Commissioner Neugent seconded the motion. Motion passed unanimously.**

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

#### **BOARD DISCUSSION**

None.

#### **GROWTH MANAGEMENT COMMENTS**

None.

#### **RESOLUTIONS FOR SIGNATURE**

None.

#### **ADJOURNMENT**

The Monroe County Planning Commission meeting was adjourned at 2:15 p.m.