PLANNING COMMISSION
August 28, 2024

Meeting Minutes

The Planning Commission of Monroe County conducted a hybrid virtual and in-person meeting on **Wednesday, August 28, 2024,** beginning at 10:00 a.m.

CALL TO ORDER by Chair Scarpelli

PLEDGE OF ALLEGIANCE

ROLL CALL by Ilze Aguila

PLANNING COMMISSION MEMBERS

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

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
Barbara Powell, Planning Policy Advisor
Matthew Restaino, Senior Planner
Stephanie Reed, Planner
Tiffany Stankiewicz, Development Administrator
Peter Morris, Assistant County Attorney
Dirk Smits, Planning Commission Counsel
Jessica McKinney, Senior Planning Commission Coordinator
Ilze Aguila, Sr. Administrator, Operations, Planning and Environmental Resources

New Planning Commissioner Eric Anderson was welcomed.

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

SUBMISSION OF PROPERTY POSTING AFFIDAVITS AND PHOTOGRAPHS
Ms. Ilze Aguila confirmed receipt of all necessary paperwork,

CHANGES TO THE AGENDA

Applicant for Item 5 requested to be continued to the September 25, 2024 meeting. A motion was required.

Mr. Peter Morris, Assistant County Attorney, as a precaution, asked if there was anyone out in the Zoom world wishing to speak on the motion to continue as this is an item with a lot of interest that does constitute action by the panel. Chair Scarpelli then asked for public comment on the motion to postpone Item 5. There was none. Public comment was closed.

Motion: Commissioner Demes made a motion to continue Item 5 to the September 25, 2024 meeting. Commissioner Neugent seconded the motion. There was no opposition. The motion passed unanimously.

APPROVAL OF MINUTES

Motion: Commissioner Neugent made a motion to approve the July 23, 2024 meeting minutes. Commissioner Demes seconded the motion. There was no opposition. The motion passed unanimously.

DISCLOSURE OF EX PARTE COMMUNICATIONS

Mr. Dirk Smits, Planning Commission Counsel, asked for disclosure of any ex parte communications. Mr. Peter Morris, Assistant County Attorney, stated that this would be uniquely applicable to quasi-judicial proceedings to include Agenda Items 3, 4, 7 and 8. Mr. Smits added that it's not required unless the Commissioners have a conscious need to let it go.

Commissioner Demes stated that he has had plenty of conversations dating back some time in general terms on the Swanson property and the property out towards the marina, but nothing that he has discussed would change or impact his decision on the facts presented today. Chair Scarpelli stated that he had also had conversations with Mr. Bart Smith and the Swansons regarding Item 8, but nothing that would sway his decision making here today. Mr. Morris noted that the disclosures are more in the interest of risk management, adding that staff had also furnished briefings to the Commissioners on the items.

SWEARING OF COUNTY STAFF

County staff was sworn in by Mr. Dirk Smits.

MEETING

AGENDA ITEMS

1. A PUBLIC HEARING TO CONSIDER AND FINALIZE THE RANKING OF APPLICATIONS IN THE DWELLING UNIT ALLOCATION SYSTEM FOR APRIL 13, 2024, THROUGH JULY 12, 2024, ROGO (QUARTER 4, YEAR 32). ALLOCATION AWARDS WILL BE ALLOCATED FOR ALL UNINCORPORATED MONROE COUNTY. (FILE 2023-183)

(10:03 a.m.) Ms. Tiffany Stankiewicz, Development Administrator, presented the staff report for the residential dwelling unit allocations for Lower and Upper Keys subareas and Big Pine and No Name Key

subareas. The Planning Department is recommending approval of the following market rate rankings: Lower Keys applicants ranked 1 through 7 recommended for allocation awards; Big Pine/No Name applicant ranked 1, recommended for allocation award subject to mitigation availability at the time of permitting; Upper Keys applicants ranked 1 through 7 recommended for allocation awards. All other applications, market and affordable housing, roll over to the next quarter.

There were no comments or questions by the Commissioners. Chair Scarpelli then asked for public comment. There was none. Public comment was closed.

Motion: Commissioner Neugent made a motion to approve. Commissioner Thomas seconded the motion. Motion passed unanimously.

2. AN ORDINANCE BY THE MONROE COUNTY BOARD OF COUNTY COMMISSIONERS AMENDING THE MONROE COUNTY TIER OVERLAY DISTRICT MAP FROM TIER I TO TIER III, FOR VACANT PROPERTY LOCATED AT NORTH OCEAN DRIVE, KEY LARGO, DESCRIBED AS A PARCEL OF LAND IN SECTION 29, TOWNSHIP 60 SOUTH, RANGE 40 EAST, ISLAND OF KEY LARGO, MONROE COUNTY, FLORIDA, HAVING PARCEL ID NUMBER 00083200-000000, AS PROPOSED BY DAVID DEHAAS GROSSECK ON BEHALF OF DONNA J. WILSON, BRIAN C. WILSON, SHELLEY W. AVIRETT AND RICHARD T. WILSON; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL OF CONFLICTING PROVISIONS; PROVIDING FOR TRANSMITTAL TO THE STATE LAND PLANNING AGENCY AND THE SECRETARY OF STATE; PROVIDING FOR AMENDMENT TO THE TIER OVERLAY DISTRICT MAP; PROVIDING FOR AN EFFECTIVE DATE. (FILE 2024-014)

(10:09 a.m.) Mr. Mike Roberts, Assistant Director, Environmental Resources, presented the staff report. This is a request for a tier map amendment for vacant property located at North Ocean Drive in Key Largo. Mr. Roberts presented a site map and explained that the existing condition of the parcel outlined in black and to the left is currently Tier I. The map to the right shows the parcel with the proposed Tier III amendment. The existing vegetation on site is based on the 2024 habitat mapping that was recently updated. The western portion of the property is dominated by exotic vegetation, and the eastern shoreline portion is mangrove. Mr. Roberts presented a zoomed out map representing the district map for North Key Largo with the subject parcel being in the lower right-hand corner. A zoomed in view was presented of the conservation land owned by TIITF, the Trustees Internal Improvement Trust Fund, and Monroe County. A zoomed out version of the map was presented showing the federally owned parcels to the west of 905 which is primarily Crocodile Lake National Wildlife Refuge.

In review of the application for the tier map amendment, staff went through the tier overlay district designation criteria. In accordance with Policy 205.1.1 of the Comprehensive Plan, the County shall establish the following criteria at a minimum to use when designating the tiers: Land located outside of Big Pine Key and No Name Key shall be designated as Tier I based on the following criteria: Natural areas including old and new growth, upland native vegetated areas above four acres, vacant land which can be restored to connect upland native habitat patches and reduce further fragmentation of native upland habitat, lands required to provide an undeveloped buffer up to 500 feet in depth, if indicated by appropriate special species studies, between natural areas and development to reduce secondary impacts. Canals or roadways, depending on size, may form a boundary that remove the need for the buffer or reduces its depth; and, lands designated for acquisition by public agencies for conservation and natural resource protection. It should be noted that this parcel is within the acquisition boundaries of the State's Florida Forever Program for North Key Largo Hammocks Project. Another criteria is known locations of threatened and endangered species.

As indicated in the existing conditions report provided with the application, there are two endangered plants on the property that were designated in the vegetation survey, and at least one additional plant species that is considered regionally important. Documentation has also been received from members of the public regarding the American crocodile in near shore waters immediately adjacent to the parcel. Additional criteria include areas with minimal existing development and the overall area from the intersection of U.S. 1 where it cuts off north. The area, generally referred to as North Key Largo, is primarily undeveloped. The community in which the parcel lies in Gulfstream Shores is approximately 31 percent developed.

As noted in the letter of understanding previously prepared for this property in 2022, a significant portion of land area north and south of the subject parcel is characterized as environmentally sensitive and not substantially developed. Only 31 percent of the 154 parcels are developed. In addition to the Comp Plan tier boundary criteria, Section 130-130 of the Land Development Code, the application needs to demonstrate consistency with the proposed amendment with provisions and intent of the Land Development Code. Based on the analysis previously evaluated and discussed, staff has determined that the proposed tier overlay district map amendment is not consistent with the provisions and intent of Section 130-130 of the Land Development Code. The application also needs to demonstrate consistency with the Principles for Guiding Development in the Florida Keys Area of Critical State Concern, pursuant to Florida Statutes Chapter 380.0552(7). For the purposes of reviewing consistency of the Land Development Code or any amendments to the code, and with the Principles for Guiding Development and any amendments to the Principles, the Principles should be construed as a whole and no specific provisions shall be construed or applied in isolation from the other provisions. After review of the Principles, staff finds the proposed amendment is inconsistent with the Principles for Guiding Development as a whole.

The County Commission may consider adoption of an ordinance enacting the proposed change based on one or more of the following factors: Changed projections, changed assumptions, and data errors which are not applicable. The current designation of Tier I is consistent with the criteria of the Comp Plan and Section 130-130. The tier overlay district designation of Tier I does not constitute a drafting or data error. Under new issues, recognition of need for additional detail or comprehensiveness and data updates are not applicable. As to impact on community character, staff's position is that the proposed amendment would negatively impact the minimally developed community character of the surrounding Tier I subdivision properties. Overall, staff recommends denial of the proposed amendment as the designated parcel satisfies multiple criteria for Tier I designation in accordance with the criteria of Comp Plan Policy 205.1.1 and Section 130-130(c)(1) of the Land Development Code.

There were no questions for Mr. Roberts from the Commissioners. Chair Scarpelli then asked if the applicant wished to speak.

Mr. David DeHaas Grosseck of DeHaas Consulting and Design, agent for the applicant, stated that he has been designing projects and consulting on projects for 35 years. He pledged to be honest and knowledgeable and his qualifications include 35 years of successfully bringing applicants before the Commission. He has college degrees, and equivalency in the State of Florida says that his experience equals a master's degree. The State of Florida has passed a law that says if he were hired today his military service must be considered as part of that equivalency. He is here today to change the tier designation of a large piece of property that is zoned Tier I and should be Tier III, and he will prove it to the Commission. There has been a great deal of effort to acquire this piece of property by any means necessary, which he will prove. The staff report leaves things out and has changed continuously every time he receives communication from the Planning Department, which he believes has been three times. A data error alone allows the tier criteria to change, and he believes he can prove it is wrong. The zoning for this property is IS, improved subdivision, and it is not a part of a subdivision and should not have been zoned IS. Because it is zoned IS, in order to be able to build a single-family home on this previously scarified property it must have a

designation of Tier III, not I. Changing the tier designation would give the owners the right to get in line in ROGO to build a home. He is not sure what a drafting error is, but the very poorly written overlay for ROGO says that the tier boundaries shall follow property lines whenever possible. The reason for that is because you can have a hammock on one side and next to it a cleared property. Those were supposed to be identified, and Monroe County has a history of not doing that.

The diagram presented showed everything to be green. The fact that you have a house and your lawn is cleared, you are still zoned Tier I. Today, none of those property owners are affected, but at some time in the near future something will change and it might affect them. Elsewhere inside the tier regulations it says when making application to change to Tier I, which he doesn't want to do, one acre is sufficient. This property is almost three acres of land and should have been identified to begin with. What constitutes an error? The presentation showed this land was undeveloped. That is a data error because this is a previously developed property and the land, in conjunction with Monroe County, has been cleared by other agencies. Land clearing denotes development. You can say it's previously developed or not in use currently, but not undeveloped. There are no grounds for it. If you do not have the characteristics of Tier I, then you are Tier III, but there is no list of characteristics for Tier III. It only talks about what you need to be Tier I. The report says environmental sensitivity is on this property and it really isn't. This was a previously cleared property. After a pre-application conference he received a LOU stating that the property appraiser classified the property as hardwood hammock. That was put into the report by the Planning Department knowing it was false. For 35 years he's been told you could never use the property appraiser's classification of a property to present arguments to the Planning Department. That is a mistake in data and seems to be intentional. Monroe County was to identify areas which are not in Tier I. This property has been cleared of any hardwood hammock or any environmental sensitivity for almost a hundred years. The rights of this property predate all land development regulations, long before September 15, 1986. At one time it was classified as B2, business 2, because it was a small fishing lodge resort.

The Conservancy came onto this property and got now deceased Jane Wilson to sign an application, and they paid to clear this property. Their job is to acquire land. This land obviously had no environmental sensitivity if Monroe County issued a permit in 2010 to clear this property to an agency, not the homeowner. Then they got caught illegally planting native trees on the property. The Conservancy with about 15 or more people began planting native trees to try and make it environmentally sensitive which it wasn't and isn't. The Commission was just told there are environmentally sensitive plants on this property. The County was given a report that said it seems obvious that these trees really don't belong here and they were planted, and the Department is aware of the fact that the Conservancy was required to remove the trees, and the fact is they didn't get all of them. They have no right to be and shouldn't be there as it is an illegal planting. They tried to make it something. Was it for the purpose of lowering the value of the property so they could buy it? Does this tier overlay help lower the value of a very valuable, developable land? The agenda for this property is not in keeping with the rights of a property owner.

Mr. DeHaas then presented that this property has been owned by one family from the early sixties and they operated a resort on the property. George Wilson was very active in trying to stay abreast of these changes. He died, and Jane Wilson had Alzheimer's. Mr. DeHaas presented a postcard depicting the Gulfstream Fishing Lodge. The last building was control-burned in the 1970s. This property had six cabins, a swimming pool and a dock, which is development. Mr. DeHaas presented a newspaper article from 1986 talking about this resort. Mr. DeHaas presented a letter from the surveyor stating that this parcel was never part of Gulfstream Shores Subdivision from the fifties and sixties. Mr. DeHaas presented a letter from George Wilson to the Attorney General of the State of Florida wanting to know what was going on, which shows that this man had tried to stay abreast of what was happening to his property until the day he died. The letters that were supposed to be sent out when the designation of this property was changed were never

sent. It was noticed in newspaper articles which these people never saw. The property appraiser record from 1976 was presented showing multiple buildings, a swimming pool and dock.

Mr. DeHaas has claimed that Ms. Wilson actually never signed the permit to clear the property and the Planning Department produced a document that said she did, so he was wrong. It was an accident. The fact still remains that Jane Wilson, the only living owner in 2010, did not pay for or was not present for the clearing of this property. It was done by landscapers hired by the Florida Conservancy. When the property was cleared, violations were started. DEP had to be brought in because the landscapers dumped mulch into the wetlands. The site is now incredibly overgrown with exotics. This certification that the property was being cleared up of the violations was signed by Bruce Franck, DEP, a Certificate of Clearing, 2010, who now works for the County in the Environmental Department. Mr. DeHaas noted that in the cleared areas there are still Australian pines, but no native vegetation or environmental sensitivity. What is prevalent is the remaining foundations of the development. Mr. DeHaas then presented an email from Ms. Alison Higgins of the Conservancy that states they did plant plants on the property and apologized. The note in the complaint said 15 people are on the property with chainsaws on a Sunday, claiming it was chainsaw training. The reason he has this information is because it was necessary to hire Attorney James Lupino to get them stop. It was stated that there are some environmentally sensitive plants in the corner of the property which could be preserved if the owner is allowed to build. The upland of this property is just about three acres of land. Giving the right to build by changing the tier designation would allow one house in that whole area, and people are talking about an impact. All of the other lots and blocks down the street are 7,500 square feet and technically a house can be built on every one of them; not now because everything is Tier I, including lots that are cleared.

Mr. DeHaas presented the boundaries of the property, and stated that the regulations say to follow boundary lines whenever possible. There are streets and access on three sides of this property. This should have been cut out as Tier III as all the data was there. When Mr. DeHaas submitted the pre-application, he had turned in 70 documents showing what occurred on the property and they weren't even recognized. The LOC states there were six items.

The idea of the tier is for ROGO points and good planning practices to steer development to the right places. No one wants a golf course in the middle of a pristine area. This isn't cutting down hardwood hammock in giant areas of land. The development would be moved to infill, back where the development was. Technically, it would be redevelopment. The Future Land Use Map shows it is residential medium, but an improved subdivision lot needs to be Tier III to develop. They keep trying to tell the Commission something that isn't true. Somebody told the Planning Department that somebody saw an alligator and that they have documentation. Mr. DeHaas has never seen it and doesn't know what that is. This area is immediately adjacent to a crocodile preserve and someone saw a crocodile swimming in the water. He does not know what that has to do with this tier. This property meets the criteria of Tier III and he hopes he's proven that to the Commission. This is not an isolated incident. This is Monroe County's modus operandi. In 1986, all properties south of the traffic light in Key Largo on the bay side were all zoned residential, and they are all mom-and-pop resorts. He is still working on rezoning because the County won't make it right and correct things. Mr. Joe Haberman was the last one that tried to look at things and change them. This is very wrong. The owners have a right to have their rights restored. The report is trying to make this something it's not. Mr. DeHaas asked the Commission to please vote to this property Tier III.

Chair Scarpelli first thanked Mr. DeHaas for his service, and added that although Planning staff may not always be right all the time, he does not agree that they would do something maliciously. Everyone does the best they can do with the information they have at the time. Commissioner Neugent asked when the tier maps had been gone through. Ms. Schemper responded that she believes it was 2006. Commissioner

Neugent stated that a year had been taken to do this and residents were heard from. Ms. Schemper added that challenges were made and the final maps were different from the original maps, but this area was not part of that challenge. No changes were made to this area. The entire North Key Largo, even already developed properties, privately owned vacant undeveloped properties and the entire area was given a designation of Tier I. Commissioner Neugent asked why it took so long for this to be brought up, from 2006 until now; and, why did the development of that piece of property from the marina camp collapse and stop. Mr. DeHaas stated that it was because of the age of the owners. They got old and couldn't run the camp. They finally had to close it and didn't sell it. They held onto the property for their children who are coming forward today with this application. Jane Wilson had Alzheimer's. When they went to get an appraisal on this property, they found out about this situation and did not know until very recently.

Ms. Schemper interjected that the fire that had destroyed the fishing lodge and development happened in the late fifties. She did not want the Commission to get the impression that this current family continued the operation and 20 years ago finally stopped the operation. This has been a vacant property for decades. Commissioner Neugent asked if it could have been redeveloped back then. Ms. Schemper responded that she could not go back in time that far and state what could have been repaired or reestablished, but there is no record of any efforts made to continue or restore the operation of that use formerly on the property. That was prior to the current zoning code and zoning map even going into effect in the eighties. Commissioner Neugent stated that the Land Authority tried to buy this nice, big piece of property, and the fact that it's in a conservation area is clear. He would think the Land Authority should be looking to it for acquisition. Ms. Schemper stated that her understanding is that the Land Authority has made multiple attempts to purchase the property.

Ms. Donna Wilson, one of the property owners, stated that her mom had Alzheimer's and dementia for a long time. When this property was cleared, she didn't even realize what was happening. Then one of them had driven by and saw all of these plants being planted and said, what's going on, and they had to hire an attorney. Ms. Wilson's dad died early, unexpectedly, and didn't want to develop it, rather wanted more to pass it down to his children to possibly build a house or something like that. To her knowledge and her parents' records, they never received any notice of change in the tier designation. She believes her parents were unaware of what was going on. She remembers going to the property as a child, remembers the buildings and it being cleared, and playing around the pool. It was a beautiful piece of property. Mr. DeHaas asked her how soon after learning this had she hired him. Ms. Wilson responded that they hadn't really learned there was a tier designation change until the Conservatory tried to come in and plant plants and illegally had a "how to use a chainsaw" class on the property, which they don't even have liability on the property. Ms. Schemper interrupted, stating that she did not know where this was going and if the Chair could focus on the item. Chair Scarpelli responded that he was trying to give the applicant her time. Ms. Schemper stated that the comments coming in from the side were not getting on the record and that's what she is concerned about. Ms. Wilson then stated that her mom passed in 2019, and it was then the four children got the property and started investigating. That's when they turned to Mr. DeHaas. She has no record of any offer on this property. Chair Scarpelli asked if she'd spoken to her mother about this property. Ms. Wilson responded only when the Conservatory went on the property and started clearing in 2010. Chair Scarpelli added that the tier designations went into effect in 2006. Ms. Wilson did not think her mother had even known the tier designation had changed. Chair Scarpelli clarified that there was no change, but that it had gone into effect. It had been a long, arduous process. When you've got a piece of property this size, you've got to keep your head in the game.

Mr. DeHaas responded that just because it was done doesn't mean it's right, and he wants the Commission to think about that. The regulations were still supposed to be followed. The Land Development Regulations knew things would be missed, that's why the amendment process was created, and that's why he is here to correct this. He had asked in writing to the Director of Planning and he has been stopped from talking to

her, is there a time limitation or a time designation on development. In many cases, you lose a lot of your rights at a certain period of time. But in this case, with the development itself, when did it become undeveloped. There's no such thing as being undeveloped if you've been developed. Chair Scarpelli then asked if a property was left without a use that those rights would eventually be lost. Ms. Schemper stated that was correct, that under the definition of abandoned, if the property is left vacant for 18 months, that's a voluntary discontinuation of the land use. Chair Scarpelli added that that also is effective for hurricane damage as well. Mr. DeHaas stated that the word "abandoned" had been used, and now we're talking about development and under the criteria of this department, in 2010 the land was cleared and that's development again. That is not an opinion. Development includes land clearing. This was developed and had development on it. Chair Scarpelli added that that was land clearing and/or clearing of land as an adjunct of construction. So that's land clearing with the intent to construct, and that was not the case for 2010. Mr. DeHaas added that when it was cleared you could still see the foundations. All of these conversations do not negate the fact that this is not an environmentally sensitive piece of land, so this was supposed to be identified as being Tier III. The fact that around it may be environmentally sensitive lands does not make this one Tier I. This should be cut out. Referring to someone trying to acquire this land, they were trying to acquire it and make it environmentally sensitive so it had no value. When changed to Tier III, it will be worth a lot of money.

Chair Scarpelli asked if the Commission had any further comment or questions. There were none. Chair Scarpelli then asked for public comment.

Ms. Nancy Diersing has lived in this immediate vicinity for 30-plus years, and she has not seen any use of the property by people, but certainly has seen a lot of wildlife passing through; migrating owls, hawks, songbirds, and the American crocodile which may represent a small population. She has reason to suspect that nesting is going on there having found a small dead crocodile in the vicinity of the mangroves. They are very shy creatures so development even of a home could be quite disruptive on that expanse of virtually undeveloped shoreline in an area where houses are few and far between, all being classified as Tier I. She was living there in 2006 when the tier overlay came into being. She didn't follow those issues carefully, but as a property owner she knows it is your responsibility to not claim, "Oops, I didn't quite get it at the time." The time for evaluating, changing or even challenging this tier designation is long gone. Rules and regulations have been changing with the Area of Critical State Concern, and during that time there was no attempt that she knows of to challenge this tier designation. She believes it still meets the criteria of Tier I designation. This is not an area slated for development and is not close to county services the way other areas are. Long before this issue came up, she learned that the Gulfstream Fishing Lodge burned down in 1958. It changed ownership after that point and she believes that is when the Wilsons bought it. It also suffered damage in Hurricanes Donna and Betsy. The property is basically unoccupied and already belongs to the birds and the bees and the trees. Yes, it does have exotic plants. Ms. Diersing believes if the tier designation is changed this would open the County up to a takings case, and also the property could be opened up to commercial development after a zoning change as there was a fishing lodge there at one point, which has been gone for 60-plus years. That would be a real shame for the neighborhoods, the community, the wildlife, and the commitment to the Area of Critical State Concern and other policies in place.

Ms. Dottie Moses, President of the Island of Key Largo Federation of Homeowners Associations, had submitted a letter from Mr. Richard Grosso that they are in opposition to changing the tier in this area which has been completely Tier I from the beginning of 905 all the way up to the county line. This area is highly sensitive, is a precious area, and is one of the last continuous hardwood hammocks left in the contiguous United States. This was rightfully made Tier I as all of the properties in this area are. It is very sparsely developed, the infrastructure is limited in that area, and the protections should continue to be maintained.

There was no further public comment. Public comment was closed. The applicant requested brief rebuttal. Chair Scarpelli stated that testimony had ended and asked if the Commission had any questions for the planning staff. There were none. Chair Scarpelli asked Ms. Schemper if the homes presently developed that are currently in Tier I would be allowed to be redeveloped in the same footprint if their house was destroyed. Ms. Schemper stated that there is no prohibition for them to be redeveloped if it were destroyed. Tier I, on its own, does not prohibit development. If the argument is that a tier change is necessary in order to develop a home, there is a different issue not allowing development of a home. The correct approach would be to correct the actual issue. Using a tier change to sidestep other regulations when it clearly meets three out of six Tier I criteria, and only needs to meet one, is not appropriate simply because there are other regulations causing an issue. She would urge the Commission to focus on the tier criteria and what is required for a tier amendment. This is not a request to develop a home. This applicant requested in 2022 a letter of understanding regarding a tier amendment and what it would take to get a tier amendment. Staff met with Mr. DeHaas and the owner and went through the criteria. The applicant is hung up on whether it was developed or not, which is not one of the criteria. The LOU even references the property as undeveloped so if that was the question, that was already determined in the LOU. The LOU actually stated that this property would not be appropriate for a designation other than Tier I. That LOU was not appealed. Chair Scarpelli noted that the tier overlay didn't stop at the property line of homes that already existed. Ms. Schemper responded that it would be odd if you had an area where every individual property had a different tier designation. However, the property itself, per the applicant's own environmental consultant, meets the criteria.

Mr. DeHaas then added that this property had burned down in 1958, but was being taxed on these buildings in 1976. Mr. DeHaas asked the Commission to please carefully review the information. The only idea of development is that it's part of the reason that it doesn't fit the criteria. The reference being supplied to him keeps changing all the time. As far to the criteria from the environmentalist, the report said that any environmental species or the plants identified were probably planted. You can't make this an environmentally sensitive or aren't supposed to. If this wasn't zoned IS and was a Tier I somewhere else, the property owners could go in and cut down up to 40 percent of hardwood hammock to build a house, wait in line, and cut down this very, very important sensitive property we're talking about. But this property that has been scarified and overrun with invasive vegetation doesn't meet the qualifications. It should be a Tier III. Ms. Schemper apologized for the error on discontinuation. She had been going by the date of the fire. If it did continue past the date of the fire, she can accept that. However, it's been decades since the use was in operation, clearly beyond 18 months.

Commissioner Demes stated that the fire in the fifties yet the building still being there in '76 had been confusing to him, and thanked Ms. Schemper for the clarification. Commissioner Neugent stated that although he is sympathetic to the situation, he believes the killer here is the time lapse of the process moving forward, and he believes this whole area is environmentally sensitive. When Port Bougainville was going in the County and the State spent a lot of money acquiring a lot of property in that area. And, because of the time and the abandonment of the property, even with the extenuating circumstances that caused that, he would make a motion to approve staff's recommendation to deny. Commissioner Thomas seconded that motion. Chair Scarpelli stated that he agreed, that it's unfortunate, and he feels for the homeowners but the one tier criteria that this attests to is vacant land which can be restored to connect upland native habitat patches and reduce further fragmentation of upland native habitat. We're talking about undeveloped shoreline on both sides of this property and to violate that would be a tragedy.

Motion: Commissioner Neugent made a motion to approve staff's recommendation for denial. Commissioner Thomas seconded the motion.

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

3. EL MOCHO RESTAURANT CORP., 5704 MALONEY AVENUE, STOCK ISLAND, MILE MARKER 5: A PUBLIC HEARING CONCERNING A REQUEST FOR A 2COP ALCOHOLIC BEVERAGE USE PERMIT, WHICH WOULD ALLOW FOR THE SALE OF BEER AND WINE BY THE DRINK (CONSUMPTION ON PREMISES) AND IN SEALED CONTAINERS FOR PACKAGE SALES WITHIN AN EXISTING RESTAURANT. THE PROPERTY IS DESCRIBED AS LOTS 3, 4, 5 AND A PART OF LOT 6, IN BLOCK 43, OF GEORGE L. MCDONALD'S PLAT OF STOCK ISLAND, ACCORDING TO THE MAP OR PLAT THEREOF, AS RECORDED IN PLAT BOOK 1, PAGE 55, OF THE PUBLIC RECORDS OF MONROE COUNTY, FLORIDA; LESS THAT PART OF LOT 6, WHICH IS NORTH OF OLD STATE ROAD 4-A (MALONEY AVENUE); AND FURTHER LESS THOSE PORTIONS OF LOTS 4, 5 AND 6, IN BLOCK 43 LYING WITHIN THE RIGHT-OF-WAY OF THE SAID MALONEY AVENUE, HAVING PARCEL IDENTIFICATION NUMBER 00125480-000000. (FILE 2024-039)

(11:25 a.m.) Mr. Matthew Restaino, Senior Planner, presented the staff report. This application was submitted by Agent Thomas Francis-Siburg of Trepanier and Associates on behalf of the property owner. Mr. Restaino presented a satellite image of the property with the land use district overlay of mixed use. The established use on site is a restaurant. There are no changes proposed to the site as part of this application. The Planning Department reviewed the application and found that the granting of a 2COP alcoholic beverage license is in compliance with all five criteria. Staff recommends approval with three conditions as listed in the staff report.

Commissioner Demes noted that the report states alcohol sales and consumption should occur within the areas allowed, but asked where the alcohol could actually be consumed on site. Mr. Restaino responded that there is no exterior seating for the restaurant, it is all interior, so it would be in the air-conditioned space of the building. There have been other alcoholic beverage licenses with exterior seating but that is not the case with this application. Chair Scarpelli asked if outdoor seating were added whether that would matter. Ms. Devin Tolpin, Planning and Development Review Manager, stated that in order to expend the restaurant seating the applicant would have to apply for a building permit to approve that use, where staff would then review for consistency and compliance with the code. It would be required to come back before the Commission to amend the alcoholic beverage permit that approved the seating area. Commissioner Thomas moved that the permit be approved, and Commissioner Demes seconded the motion. Chair Scarpelli then asked for public comment.

Owen Trepanier, agent for the applicant, asked about some seating being moved out onto the front porch, weather permitting, and wanted to know if that could be allowed, limited to under roof rather than under air conditioned space. Commissioner Demes stated that that was specifically why he asked the question because he thought there was outdoor seating on the porch along the highway. Mr. Trepanier stated that nobody sits outside at this time of year. Chair Scarpelli clarified with Ms. Tolpin that that outdoor seating would require a permit. Mr. Trepanier explained that there are 36 seats and they are not proposing any increase in seats. Chair Scarpelli asked if that would be allowed if there was no increase in seats but the seats move. Ms. Tolpin responded that staff does not generally review for configuration of interior seats if they're not in the setbacks. Perhaps the Building Department or Fire Marshal would review for that, but this is getting out of the realm being discussed today. Mr. Trepanier asked if rather than adding the air conditioned space, which was not in staff report, whether the permit would allow for under roof. Ms. Schemper clarified that if seats are moved from inside to the outside but within the deck area, Planning

does not have a problem with that based on the specifics of this site as long as it's not additional seats. If the Commission has specific considerations for seating with the alcoholic beverage license being outside versus inside, that should be added in now so it's all covered for the entire area. Chair Scarpelli stated that he would like it limited to the deck space and the interior space, and to 36 seats. Commissioner Demes wanted the applicant to understand that when it says interior, it's interior. He has no objection to under the porch area and adding no additional seating. Ms. Schemper asked if the limitation could be for the area indoors or on the deck, and limited to the number of seats officially approved by the Planning Department. The Commission agreed with that clarification. If the seats are allowed, they need to be inside or on that deck.

Chair Scarpelli then asked for public comment. There was none. Public comment was closed. There were no further questions from the Commission.

Motion: Commissioner Thomas made a motion to approve with staff's amendments. Commissioner Demes seconded the motion. Motion passed unanimously.

4. SURFIN USA, LLC, 102700 OVERSEAS HIGHWAY, KEY LARGO, MILE MARKER 102, BAY SIDE: APUBLIC HEARING CONCERNING A REQUEST FOR A 2APS ALCOHOLIC BEVERAGE USE PERMIT, WHICH WOULD ALLOW FOR BEER AND WINE PACKAGE SALES FOR OFF PREMISESCONSUMPTION TO CUSTOMERS OF THE EXISTING COMMERCIAL RETAIL BUILDING. THEPROPERTY IS DESCRIBED AS LOTS 9 THROUGH 13, INCLUSIVE, BLOCK 12, TWIN LAKES,ACCORDING TO THE PLAT THEREOF, RECORDED IN PLAT BOOK 3, PAGE 160, OF THE PUBLICRECORDS OF MONROE COUNTY, FLORIDA, TOGETHER WITH THAT PARCEL OF LAND LYING INSECTION 15, TOWNSHIP 61 SOUTH, RANGE 39 EAST, KEY LARGO, MONROE COUNTY, FLORIDA,BEING A PORTION OF FLORIDA STATE ROAD NUMBER 5 (U.S. 1) AS SHOWN ON THE STATE OFFLORIDA DEPARTMENT OF TRANSPORTATION RIGHT OF WAY MAP FOR SECTION 90060-2516,BEING A PARCEL OF LAND 250 FEET WIDE BY 30 FEET IN DEPTH, LYING SOUTHEASTERLY OFAND ADJACENT TO THE SOUTHEASTERLY BOUNDARY OF LOTS 9 THROUGH 13, BLOCK 12, TWINLAKES, ACCORDING TO THE PLAT THEREOF, AS RECORDED IN PLAT BOOK 3, PAGE 160 OF THEPUBLIC RECORDS OF MONROE COUNTY, FLORIDA, HAVING PARCEL IDENTIFICATION NUMBER00549660-000000. (FILE 2024-067)

(11:37 a.m.) Ms. Stephanie Reed, Planner, presented the staff report. This is a request for a 2COP alcoholic beverage use permit allowing for beer and wine package sales for off premises consumption to customers at the existing commercial retail building directly across from Pennekamp State Park. Ms. Reed presented a survey of part of the Twin Lakes Subdivision. On October 5, 1988, development order number 38-88 was issued and approved for a minor conditional use permit for construction of a 6,000 square foot retail store. The current proposed use is a general store selling souvenir, apparel, beverages, package foods, et cetera, which is congruent with the conditions of approval of that existing minor conditional use permit. As part of this request, there are no proposed changes to the site layout. Staff finds the property compliant with the code of ordinances, and suitable in regards to its location, site characteristics and intended purpose. Staff does not anticipate that approval of this request would have a negative impact on the immediate neighborhood, access, traffic, parking, utility demands or public services, and as of the date of this report, there are no open code compliance cases to the property. Staff recommends approval with the standard conditions of the use running with the land, and areas limited to those approved.

Commissioner Thomas asked if this is the place that has kind of a western look to it. Ms. Reed confirmed that to be correct. Commissioner Demes stated that he drove by yesterday and it is the general store. Chair Scarpelli then asked for public comment. There was none. Public comment was closed.

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

5. 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, HAVING PARCEL ID NUMBER 00113570-000100. (FILE 2023-045)

(Item 5 Continued)

Items 6 and 7 were then read together.

6. AN ORDINANCE BY THE MONROE COUNTY BOARD OF COUNTY COMMISSIONERS AMENDING POLICY 212.3.2 OF THE MONROE COUNTY 2030 COMPREHENSIVE PLAN TO INCLUDE ADDITIONAL LANGUAGE TO PERMIT MARINAS AS AN ALLOWED USE WITHIN UNIT 57 OF THE COASTAL BARRIER RESOURCE SYSTEM AS PROPOSED BY JKYD, LLC; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL OF CONFLICTING PROVISIONS; PROVIDING FOR TRANSMITTAL TO THE STATE LAND PLANNING AGENCY AND THE SECRETARY OF STATE; PROVIDING FOR INCLUSION IN THE MONROE COUNTY COMPREHENSIVE PLAN; PROVIDING FOR AN EFFECTIVE DATE. (FILE 2023-244)

7. AN ORDINANCE BY THE MONROE COUNTY BOARD OF COUNTY COMMISSIONERS AMENDING MONROE COUNTY LAND DEVELOPMENT CODE SECTION 118-15(5) MARINA SITING CRITERIA, TO INCLUDE ADDITIONAL LANGUAGE TO ALLOW MARINAS WITHIN UNIT 57 OF THE COASTAL BARRIER RESOURCE SYSTEM AND LOCATED WITHIN SAFE HARBOR COMMUNITY CENTER OVERLAY DISTRICT AS PROPOSED BY JKYD, LLC; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL OF CONFLICTING PROVISIONS; PROVIDING FOR TRANSMITTAL TO THE STATE LAND PLANNING AGENCY AND THE SECRETARY OF STATE; PROVIDING FOR INCLUSION IN THE LAND DEVELOPMENT CODE; PROVIDING FOR AN EFFECTIVE DATE. (FILE 2023-245)

(11:44 a.m.) Ms. Barbara Powell, Planning Policy Advisor, presented the staff report. As described, this ordinance would remove the prohibition on marinas in the Coastal Barrier Resource System, specifically Unit 57 of the system. If the ordinances are approved, it would allow for future development of a marina on a parcel on Shrimp Road in Stock Island. Ms. Powell presented the map of the specific property. The Comprehensive Plan text amendment would add the language highlighted in blue, but not withstanding the

preceding sentence, "Marinas shall be permitted on parcels within Unit 57 of the Coastal Barrier Resource System and located within Safe Harbor. The Land Development Code text amendment is similar. Ms. Powell presented an aerial of the affected parcel. The FLUM designation is mixed use commercial. The current zoning map district is maritime industries. Ms. Powell presented CBRS Unit 57 covering the entirety of Robbie's Marina and approximately half of the subject parcel. Ms. Powell presented historic photos going from 1959 to 1985. In 1982, the Coastal Barrier Resource Act was passed by congress and the units are generally comprised of private lands that were relatively undeveloped at the time of their designation in the CBRS. The U.S. Fish and Wildlife maintains these official maps. The designation does not prevent development and it imposes no restrictions on development that are conducted with non-federal funds. Staff verified with the Floodplain Manager that this would not have a negative impact on the community rating system should the ordinances pass. From the 1981 historic photo, this property was developed, being used as auto salvage and storage at the time of the Act being passed, and in '85 it was fully in use as boat and auto storage and salvage. The habitat map for the property shows it's covered with exotics with predominantly Australian pine. Previous BOCC action adopted a resolution to support the legislation to exclude Harbor Enterprises, Inc. and Robbie's Safe Harbor Marine from the CBRS. The resolution specified two parcels, one of which is the subject parcel, and stated that it was fully developed as that term is defined in the Coastal Barrier Resource Act, and that it was developed as an operational marina and auto salvage yard.

At the Development Review Committee, staff recommended approval pending the following edits to address inconsistency with Comp Plan Policies. It was only a change to the Comp Plan Amendment Policy that was necessary for consistency, and that was to add Policy 102.7.2 to the "notwithstanding" language of the policy. That language simply states that Monroe County should not create new access via bridges, causeways, paved roads, and new commercial marinas to or on units of the CBRS. Staff recommends approval.

Commissioner Demes asked about Policy 102.7.2 and what year that had been put in place. As he looks at the history of that site the Clean Water Act would have prevented certain things from filling in the wetlands, and then he sees the road being constructed about that time, and then this policy which seems to contradict that particular action seen on the history. It says will not create new access via bridges or new causeways, and that's exactly what's happened in the photos. Ms. Schemper stated that she was looking to find that answer.

Mr. Bart Smith, agent for the applicant, interjected that the first Comp Plan adoption was 1992. That roadway was completed before July 1, 1975, which was the end of dredge and fill. Dredge and fill was adopted January 1, 1973. The Clean Water Act was 1972. Mr. Smith fully supports staff's recommendation including the additional language. He has a presentation but does not want to take up more time if the presentation is not needed. Commissioner Demes could not find the public notice for this. Mr. Smith stated that it was posted on the fence on the Shrimp Road side, nearer to Robbie's.

Ms. Christina Gardner, Ex-Officio Member NASKW stated that this is within the MIAI within the 60 to 64 DNL, and requests notifications to customers, no drones, and all the normal players. Mr. Smith agreed, adding that this will be a major conditional use, as they all are, and that the applicant will certainly agree to all of those conditions for the major conditional use going forward.

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

Motion: Commissioner Demes made a motion to approve Item 6. Commissioner Neugent seconded the motion. Motion passed unanimously.

Motion: Commissioner Neugent made a motion to approve Item 7 with staff recommended edits. Commissioner Demes seconded the motion. Motion passed unanimously.

(Recess from 11:57 p.m. to 12:07 p.m.)

8. TIMOTHY AND LISA C. SWANSON, 941 BUTTONWOOD DRIVE, SUGARLOAF KEY, MILE MARKER 17, OCEAN SIDE: A PUBLIC HEARING TO RESOLVE THE THRESHOLD ISSUE OF THE JURISDICTION OF THE MONROE COUNTY PLANNING COMMISSION, UNDER MONROE COUNTY LAND DEVELOPMENT CODE SECTIONS 102-185(A) AND 102-185(C), TO HEAR AND CONSIDER THE JURISDICTIONAL TIMELINESS OF AN APPEAL APPLICATION RECEIVED BY THE MONROE COUNTY PLANNING & ENVIRONMENTAL RESOURCES DEPARTMENT ("PLANNING DEPARTMENT") ON MAY 1ST, 2024, FILED BY SMITH-HAWKS P.L., SEEKING TO HAVE THE PLANNING COMMISSION EXERCISE APPELLATE JURISDICTION AND CONDUCT APPELLATE REVIEW OF A WRITTEN DETERMINATION ISSUED BY THE PLANNING DEPARTMENT ON DECEMBER 4TH, 2023, AND RESTATED VERBATIM ON APRIL 9TH, 2024, REGARDING A BUILDING PERMIT APPLICATION DETERMINATION CONCERNING THE HEIGHT REQUIREMENTS OF THE MONROE COUNTY LAND DEVELOPMENT CODE. THE SUBJECT PROPERTY IS LEGALLY DESCRIBED AS LOT 6, SUGARLOAF SHORES PLAT #2 SEC C, ACCORDING TO THE PLAT THEREOF, RECORDED IN PLAT BOOK 3, PAGE 53 OF THE PUBLIC RECORDS OF MONROE COUNTY, FLORIDA, HAVING PARCEL IDENTIFICATION NUMBER 00165880-000000.

(12:07 p.m.) Ms. Emily Schemper, Senior Director of Planning and Environmental Resources, presented the staff report. This is an appeal of an administrative decision. The property involved is located at 941 Buttonwood Drive on Sugarloaf Key. The property owners are Timothy and Lisa Swanson and their agent is Bart Smith. Ms. Schemper presented the plat with Lot 6 highlighted in yellow. Sugarloaf Boulevard is a 100-foot-wide right-of-way abutting Lots 5, 6, 7 and 8. However, because of the geometry of Sugarloaf Boulevard as the bridge goes over the canal to the north of Lot 5, the resulting configuration of roadways within that right-of-way resulted in a separate road which is an extension of Buttonwood Drive directly adjacent to those lots, and which provides the only access for the subject property. An aerial image was also presented. The embankment in front of this property goes up approximately ten feet. Then Sugarloaf Boulevard goes up and over the bridge. Current day ground-level photographs were also presented depicting the vacant lot beyond the palm trees as the subject property, again, an extension of Buttonwood Drive and the existing house just before that on Lot 7. The garbage receptacles are on the county-maintained road with access to the public. The meeting postings were identified. What is unique about this public hearing today is there are two distinct questions being asked of the Planning Commission. The first is more of a jurisdictional question. The decision being appealed is related to a determination made in a building permit application for a single-family home related to height. The determination was made originally December 4, 2023. The application for appeal was filed in May of 2024. Staff determined this was not a timely appeal. Section 102-185 allows appeal of an administrative decision within 30 days of the decision.

On December 4, 2023, the property owner receives a written decision regarding the building permit associated with height. The plan reviewer determines the plans do not comply with the height requirement as the measurement is from the wrong road, and advises them to revise the plans to comply with the height requirements. On December 20, 2023, the manager who supervises that staff member doing the review sends an additional email to Mr. Bart Smith's office giving more detail as a professional courtesy to explain why that determination was made. February 22, 2024, at the applicant's attorney's request, Ms. Schemper

sent an email confirming both the manager's and the plans reviewer's determination, and stating agreement with their determinations. None of those emails were appealed. On April 9, 2024, following the submittal of some corrections addressing other items for the building permit, there had been no attempt to comply with the height requirements as determined by staff in December. The staff copied and pasted verbatim the notes from the December 4 plan review. This April 9 email is the decision that the appellant says they are appealing. The appeal was received on May 1, which was within 30 days of this April 9 email. Staff's opinion is that the determination was actually made back in December; and December 4, December 20, or the February 22 final email from the Planning Director, none of those were appealed.

The first question before the Commission is whether this is a timely appeal and actually something the Planning Commission could make a decision on. However, Ms. Schemper then went through the argument for and against the appeal because legal wants a decision on both the timing and the merits of the appeal. Mr. Peter Morris, Assistant County Attorney, added that this had been done with the Largo Management Bay Side Grill. There was one motion on whether there was jurisdiction, and then one on the substantive arguments that were raised.

Ms. Schemper stated that staff's opinion is that the window to timely appeal the determination that the plans do not comply with height requirements expired by operation of law 30 days after December 4, 2023, so that would have been January 3, 2024. Keeping that in mind, Ms. Schemper went over the substance of the appeal. For this property, the Swansons were issued a building permit on March 1 of 2023, for a new 3,000 square foot single-family home at 941 Buttonwood Drive. Plans were included and issued with that permit, compliant with building height, and those plans that were issued remain active for this permit ongoing. The building height for those was measured from crown of road of Buttonwood Drive, directly adjacent to the property. The elevation for that permit was stated to be 3.6 feet above sea level. In November of 2023, a request for Revision A was received including a complete change of house plans with all new design and new plans. The access road with elevations shown on the site plan is about a ten foot difference, depending on exactly where you measured the crown of road. Revision A attempted to measure height from the crown of the elevated approach of the bridge on Sugarloaf Boulevard instead of the adjacent Buttonwood Drive. The way height is measured per the Land Development Code is based on definitions. Height is the vertical distance between grade and the highest part of any structure. Grade can be measured from the crown or curb of the nearest road directly adjacent to the structure. There are multiple definitions and multiple types of roads in the Land Development Code. This smaller access road can easily meet the definition of a local road, for example. It is a publicly maintained road, within the right-of-way, not a private easement, is open to the public, and serves three to four parcels. The Director of Engineering Services also agreed this is a road. It also meets the statutory definition of a road in Florida Statute Chapter 334. It's labeled as a road on the submitted survey and site plan and would clearly be the nearest road directly adjacent which is the criteria for measuring height. It is separated from Sugarloaf Boulevard by a sizeable rise of the embankment, bears U.S. postal addresses on Buttonwood Drive for this property and others, and has been maintained by the Roads and Bridges Department making it a County road.

The appellant's basis of appeal has three parts. The first is that the connection is an access driveway serving two or more lots and fails to meet the standards in the Land Development Code and Public Works Manual. The Monroe County Code of Ordinances were cited, Section 19-32. This section is not actually defining the minimum standards for county roadways. It's specifically a section under Article II which is a public right-of-way use permit. So the purpose of that is to provide standards and procedures and a fee schedule for permitting the use of County public rights-of-way. This is when someone comes in and applies for a right-of-way permit if they have a driveway that is going to extend onto the right-of-way, or for a roadway that is eventually going to be dedicated to the County. Ms. Schemper is sure there are many County roads that do not meet the current standards in that Public Works Manual. The Director of Engineering has confirmed that just because an area of pavement does not meet the minimum standards for a road today

does not mean we don't consider it a road. In addition to that, the height regulations lie within Section 131-2 of the Land Development Code. It clearly meets the definition of a road in the Land Development Code and the statutory definition as well.

The appellant also claims that it should be called an access driveway under Chapter 19-41, as previously described. It talks about requiring a permit and the amount of intrusion into the County right-of-way. So this is a driveway from someone's home that is extending onto the right-of-way to connect to the paved portion of the street. This is not the same type of scenario. This is not a private property owner's driveway. It is a public road open to everyone. In appellant's July 8 memo an email from Judy Clarke, Director of Engineering Services, was included and she specifically says Sugarloaf Boulevard is a County-maintained road right-of-way. The smaller road in front of the home is also a County-maintained road and part of Buttonwood Drive East. That further supports staff's determination.

The next basis of appeal is previous County precedence. The two examples are from 2017 and 2015 under the former Planning Director. They are both commercial properties on U.S. 1. The first on Big Coppitt is an area where there is an additional side travel lane on U.S. 1, so this could be considered part of U.S. 1. The addresses for these businesses and properties are on U.S. 1. Ms. Schemper would still consider that to be part of U.S. 1, the same roadway. The other example is on Little Torch, the Dolphin Resort Property that the Planning Commission has heard about extensively. There is no actual parallel travel lane or road or drive there between the main lanes of U.S. 1 and the property itself, so Ms. Schemper is not clear on the relevance of that example but does not believe these make a huge difference. The applicant references the closest paved area and that is not the regulatory standard. The standard is the nearest roadway adjacent to the property.

Ms. Schemper pointed out another example next door to the property in question, actually owned and occupied by Mr. and Mrs. Swanson at this time. This home was built in 2008. The height was measured from the centerline of Buttonwood Drive. Ms. Schemper presented the surveyor's verification of the building height and noted that it does not exceed the height limitation based on the centerline elevation of Buttonwood Drive, approximately 3.41 feet. The measurement was 3.6 in the set of plans for the subject property that have actually been issued and approved already.

The final basis of appeal is regarding the FEMA flood map changes. The appellant states that the current FEMA flood insurance maps are in the process of being revised. This property is anticipated to change from an AE10 to a VE12. The appellant states that they are seeking to avoid the creation of a nonconforming structure by utilizing the grade of Sugarloaf Boulevard, allowing them to develop the structure at an elevation that complies not only with current code provisions but with the requirements of a structure within a VE12 flood hazard zone which will be required upon the adoption of the FEMA flood insurance maps. The preliminary flood insurance maps are currently pending FEMA review of the County's appeal of those maps. The date on which they will issue the final maps is uncertain. Once those final maps are issued, the County needs to adopt them which will take several months. Upon adoption, there already is a provision in the code that will become effective that will allow structures that meet the new flood insurance requirements to be built to 40 feet above grade rather than 35. The BOCC, considering the new flood maps coming out and understanding that many properties will be required to elevate higher than they are today, decided to adopt code that said when that happens they will let people go to 40 feet to give a little extra room to make sure they can meet those flood requirements. This structure the way it's proposed would still exceed that 40-foot requirement after the new maps are in effect so it is not that they are building exactly to what the new code will be when the maps come out. Regardless of that, it would not be legal to approve a structure now that exceeds the current height limits based on the idea of a future change to the regulation. Ms. Schemper can appreciate trying to plan ahead for that, and many property owners are doing that now, building to the new flood requirements, but they are making design

considerations to make sure they meet the current height requirements because they have to. Some are even phasing projects.

This applicant can modify their design to meet the current height requirements and comply with anticipated flood elevation requirements, and they could also modify the design to meet the new height limit but phase it accordingly. In general, to try to not comply with the current regulations because of something that you think is coming is not the appropriate way to do this. If a change to the height regulations is desired then the appropriate way would be to request a text amendment to the code and/or Comp Plan that changes the height regulations. Ms. Schemper does not see this as being an appropriate basis of appeal for implementation of the current regulations today. Staff's recommendation is that the written determination issued by the department was based on the plain meaning of the operative Monroe County Development Code. Following review of all of the available relevant information, the department's professional staff is requesting that the Planning Commission affirm the decision of the department.

The two factors are the jurisdictional, was it a timely appeal; and then, affirm or deny the decision of the department on the actual merits of the appeal. Ms. Schemper asked if there was anything further from Legal. Mr. Morris asked if Mr. Smith would be willing to stipulate to Ms. Schemper's expertise in planning and application of the code and to get recognition on the record. Chair Scarpelli stated that without a doubt, the Commission would recognize her as an expert. Chair Scarpelli then asked if the applicant wished to speak.

Mr. Bart Smith, agent for the applicant, asked Ms. Schemper regarding Section 101-1 which is the definition section of the Land Development Code to bring up the slide with definitions including right-of-way. Ms. Schemper read the definition into the record. Mr. Smith asked if she would agree that there are streets, boulevards and access for ingress and egress as all separate things in rights-of-way. Mr. Morris objected that it calls for a legal conclusion asking Ms. Schemper to divine what the meaning of the text of the Land Development Code is. Ms. Schemper was not sure she could answer that as a hypothetical, and was not comfortable answering a step-by-step, do you agree with this, and do you agree with that. Mr. Smith asked if right-of-ways could include streets. Ms. Schemper responded that a street could be within a right-of-way, as well as a boulevard and access for ingress and egress. Mr. Smith referenced the slide with the plat. Mr. Morris interjected, requesting a ruling on his objection. Chair Scarpelli stated he could object but he didn't see any inference. Mr. Smits asked Mr. Morris to restate his objection. Mr. Morris stated the objection was to calling for a legal conclusion, basically calling for statutory interpretation, and that there are different methodologies that lawyers or judges can read a provision of law. It seems inappropriate to ask a fact witness to provide the legal interpretation of whether something is included or excluded from the ambit of a definition. Chair Scarpelli asked if Ms. Schemper didn't have to make those interpretations every day. Ms. Schemper responded that she does, but not on the fly with just one type of question. Chair Scarpelli agreed. Mr. Smith stated that she is qualified as an expert in planning and is allowed to give her opinions. He asked if she agreed those things could be in the right-of-way and she had stated yes. Mr. Morris asked for a roll call vote on whether or not to sustain or not sustain the objection.

Chair Scarpelli asked for a roll call on whether to sustain Mr. Morris' objection to Mr. Smith's question. Yes would be to uphold the objection, and no would be to overrule the objection.

Roll Call: Commissioner Demes, Yes; Commissioner Thomas, Yes; Commissioner Neugent, No; Commissioner Anderson, Yes; Chair Scarpelli, No. The objection was sustained, 3 to 2. Mr. Bart Smith asked that it be certified for the record.

Mr. Smith asked that the plat be presented and continued questioning Ms. Schemper, asking if she was aware of any amendments to the plat since it was approved. Ms. Schemper responded that

she has not seen any. Mr. Smith asked if the paved area directly in front of it was within the Sugarloaf Boulevard right-of-way. Ms. Schemper responded that it was within the same right-of-way that is labeled as Sugarloaf Boulevard, and confirmed is not in the Buttonwood-labeled right-of-way.

Mr. Smith then called Ms. Lisa Swanson as a witness, confirming the address as Sugarloaf Boulevard and not Buttonwood Drive as stated on the plat, the deed and the address. She is not aware of any change to Buttonwood Drive. The new home will be a custom concrete 8,200 square foot beautiful new home. The original permit was put in by D'Asign Source to get the ROGO, and was not the house they intended to submit for. They dedicated two parcels of land costing $130,000 to get the ROGO. Then the plans were revised and submitted in November 2023. The height of the new design was increased because there is a significant problem with flooding on the three properties. Mr. Smith pointed out the right-of-way for Sugarloaf Boulevard which Ms. Swanson stated the property abuts and pointed out the mailbox, the embankment and the driveway which is about ten feet wide. Two cars cannot fit down that driveway. There is significant drainage problems as the runoff from Sugarloaf Boulevard and the driveway go into 961 Buttonwood Drive where she lives. About two feet of water collects under her home, and the silt from the embankment comes onto the slab under her home. With all of the silt under the house her husband fell and broke his knee, requiring four months to recover, and a cost of $150,000 in surgery fees. Ms. Swanson explained the difference between the existing and proposed FEMA maps from AE10 to VE12. The property is at about 3.6 feet base flood. The new maps are 1.5 feet higher. Going to VE12 brings it to 3.5 feet, changing the plans by 6.5 feet.

As to the 30-day time line to appeal the decision, Ms. Swanson stated the appeal was within 30 days. The denial is for the height and significant other things which Mr. Smith stated he would go through. Ms. Swanson stated that they had taken into account the proposed flood map changes. There are a lot of major issues with insurance nowadays and they wanted to mitigate any future insurance problems as they are investing four to five-million dollars to build. They want to be proactive rather than reactive. Going from AE10 to VE12 is significant. Citizens only insures up to a million dollars so they need to self insure. It would cost a lot of money to wait to build. Additionally, the ROGO could expire. The entire time they were trying to work with the county they waited for months for any answers, and they had to use their once-only six-month extension which they paid $250 for. They have been under significant financial risk during this entire process and they want to build and add value to the community. This is good for the County, for property taxes, and they want to do the right thing.

Mr. Morris questioned Ms. Swanson, confirming that her permit is due to expire in March of 2027, noting they got that because of Governor DeSantis declaring the state of emergency. Mr. Morris presented the recorded deed referring to Lot 7, Section C, Sugarloaf Shores, Plat Number 2, for her current residence, with an address of 961 Buttonwood Drive. Mr. Morris presented another recorded deed for the subject Lot 6, Sugarloaf Shores, with a post office address of P.O. Box 420793, Summerland Key. Ms. Swanson confirmed the ceiling height on the proposed structure to be 12 feet.

Mr. Bart Smith then stated that this application was revised November 20, 2023, and there are two parts, one being the jurisdictional issue which he addressed first. They applied for building permits

where you get pass-fails from every department. Within those pass-fails is a section that provides, "In order to have the building permit approved by the Planning and Environmental," "you must submit corrections addressing the items listed above. Further, the comment letter provided that this notice is being provided at the completion of this one review. It does not include other corrections that may be potentially identified by other plan examiners. Therefore, other corrections from other disciplines may be required. If you desire, you can wait to address all comments received at one time." That does not mean you have to appeal the comments that they provide, that you can wait until everything is addressed or you can appeal it at that time. It is optional, and it should be optional because this is a big policy decision. Every time you get a set of comments or one comment, you don't have to appeal it at that time. The proper thing is because they have the language that says if you desire you can wait for all of the corrections and address them all. They tried to work out the roadway in between and had back-and-forth with the department. The language of Ms. Schemper's email did not have any language of finality in it, but simply said she agreed with staff, and they had 30 days to appeal her final decision as the Planning Director. Nothing was in the February email stating this is the final decision, you must appeal. The only language says you can wait for all of the comments and address them all at once. In April, they were at that point and were provided a letter which has language that provides expressly that, "The comments provided that the plans do not comply with the height requirements. The measurements for the crown of the road need to be taken from the nearest road directly adjacent to the structure, which would be the access road as shown on the survey provided and not elevated Sugarloaf Boulevard which is farther from the structure. And further provides that grade must be measured from what the County identifies as the access road." It then provides, "You may appeal decisions made in this letter. The appeal must be filed with the County Administrator 30 calendar days from the date of this letter." It doesn't provide you're also barred because of jurisdiction because you didn't appeal back on December, because the first letter said you can address all the comments at once, and if you decide to appeal you can address those comments when you file again. At this point, this is the final decision so we need to now substantively address it and agree on this. So we're being faced with a policy decision that we're going to hold that anytime anyone that fails on a building permit for a house, they say corrections are needed, so you're given an opportunity to wait for all of the comments and then attempt to correct the corrections and ultimately, you get this failure letter. It doesn't state that you're barred by the subject matter jurisdiction. We are appealing the substantive issue of whether we are going from the access driveway or Sugarloaf Boulevard. Mr. Smith stated the better decision is to follow what it says. Appeal immediately, or go through all of the comments and then identify what you can address and appeal it. There is no language in the April 9 letter that says they're time barred. This letter states there is 30 days to appeal. Mr. Smith asks that the Commission first find they are timely, and second that the appropriate roadway be used.

Mr. Smith explained that there is a term called a connection under 101-1 which is defined as a driveway, turnout or other means of providing movement of vehicles to or from roads. This is certainly not a legal roadway that has two lanes or even enough to get by, and it's not within its own right-of-way. The other project in 2017 was identified as being in the U.S. 1 right-of-way, so even though it's another roadway it's in the U.S. 1 right-of-way so you can use the highest point of the right-of-way, which is what this one is as well. Access driveways were identified because access driveways are in turn utilized to identify where you have a driveway that is for more than one parcel to enter onto a right-of-way. This is an access driveway for three homes that enter onto

Sugarloaf Boulevard. The County's position is it's a local road. The applicant's position is that it's a connection and access driveway and part of the broader right-of-way of Sugarloaf Boulevard. There is nothing in the plat that identifies it as Buttonwood Drive. There is no Commission action that has ever provided that this access driveway is anything more than part of Sugarloaf Boulevard, which is 100 feet wide and includes these four homes since its inception, which is the appropriate place. Ms. Swanson confirmed that her neighbor was the one that requested the access get paved, and his address is Lot 5, Sugarloaf Boulevard. Mr. Morris objected to hearsay as the neighbor is not here. Mr. Smith responded that this is a quasi-judicial hearing and hearsay is admissible. Mr. Morris deferred to general counsel. Mr. Smits stated that hearsay is admissible to corroborate other admissible evidence. So, if the issue is addressed in one way through admissible evidence, then what Ms. Swanson says is also admissible. Mr. Smith stated that he would withdraw the statement.

A local road has minimal through-traffic movement, and this doesn't have traffic movement. It's for three properties to access their homes off of Sugarloaf Boulevard. Chapter 19 deals with the permitting of roadways and provides the manual for permitting roadways, right-of-ways, connections to right-of-ways, all of which are done through the Public Works Manual, and provides different requirements including speed of 20 miles per hour. If you went 20 miles per hour down this roadway you would probably run into the water. Going down all nine to ten feet of this roadway is eight feet short of being the smallest roadway. This has no drainage requirements it is not maintained or utilized and is their access driveway.

In 2017, the appeal before this Commission for storage is adjacent to U.S. 1 with a very clear drive that goes right in front of it that's in the same right-of-way. This access drive is in the same right-of-way. The County utilized U.S. 1 which is the highest point of the right-of-way for the measurement and it was approved by them, and is clearly the same precedent as here. This needs to be consistent. When there's an access drive, the access drive hasn't been used. Map changes are affecting everyone. This is a 6.5 foot change. After this appeal was filed, they were fortunate enough to get an extension based on Hurricane Debbie coming close enough to the Keys to be put in a state of emergency and they now have a 24-month extension. The adjacent roadway is Sugarloaf Boulevard. Mr. Smith asks that the Commission find the appropriate right-of-way and road to be Sugarloaf Boulevard.

Mr. Morris then responded. This road is not maintained by the Swansons or the community association and it is paved. The file associated with this appeal contains correspondence between a member of Mr. Smith's firm and the County Engineering Director who confirms this is a County road. That correspondence appears on pages 37 and 38 of the file. In an email of March 7, 2024, at 4:22 p.m., Mr. Jess Goodall of Mr. Smith's firm asks if the drive shown below Sugarloaf Drive is a County roadway. Ms. Clarke responds yes. The second question is can the property owners apply for a right-of-way permit and build a driveway from their property to Sugarloaf Boulevard. Mr. Morris applauds the novelty of the argument but if this is actually a driveway, then why is a member of the firm representing the appellants asking the County Engineering Director if they can construct a driveway to Sugarloaf Boulevard. It is a neck-snapping 180. The address of the property and the one next door is Buttonwood Drive. The property appraiser's property record card refers to both of these properties as Buttonwood Drive, as does the tax collector's office. One of the deeds refers to Buttonwood Drive, and the other to a P.O. Box. For the jurisdictional

argument, the County simply relies on the plain meaning of the law. As was shown on the presentation by Ms. Schemper, the December 2023 failed determination notes explicitly that Mr. Schwartz on behalf of the Planning Department is failing the permit. That does not sound tentative. It indicates in the closing paragraph to that failed determination, in writing, that the Swansons may appeal the decision. There are many reasons to squint very hard and see things that might lead to a serpentine path out of a conundrum. That conundrum, pursuant to the plain meaning of the law and its simple straightforward operation, is that the right to an appeal is waived. It's jurisdictional. The first two sentences of Section 102-185(c) provides, "A notice of appeal in the form prescribed by the Planning Director must be filed with the County Administrator and the office or department rendering the decision, determination or interpretation within 30 calendar days of the decision. Failure to file such appeal shall constitute a waiver of any rights under this Land Development Code and Comprehensive Plan to appeal any such decision, interpretation or determination made by an administrative official." To that end, Section 1-2 of the County's Code provides that, "The term 'shall' is construed as being mandatory."

The County does not require alternative facts, a gyrating interpretation of excerpts from random deeds that don't involve Monroe County, or random bits of different parts of correspondence over the saga for this attempt to evade what is required under the democratic process in order to obtain the relief that the Swanson's actually want which is to apply for a text amendment to the Code rather than litigate in order to bypass the plain meaning of the law as it currently exists. That's the County's position and the County respectfully requests that the Commission first motion and approve dismissal of the appeal as jurisdictionally improper, and with respect to the second motion that you approve a motion affirming and upholding the decision of the Planning and Environmental Resources Department.

Chair Scarpelli then asked for public comment. There was none. Public comment was closed. Commissioner Demes stated that until Friday when he got briefed by staff he was in a different place. He rides by this very frequently on his bicycle and always assumed it was a private drive. When people want variances to build their houses closer to the County road, he normally would be against it knowing you can't turn around. He has listened to the definition of the road and didn't know it was in the right-of-way of Sugarloaf Boulevard, and that it's a maintained road of the County. As far as the timeliness, he has had no previous knowledge of the building permit applications and the language in the letters that clearly state in that first one in December denying the permit based on height. He would envision some correspondence clarifying how serious that is because it starts the clock, and it's pretty direct language. He also didn't know you would put a ROGO in for a house that you had absolutely no intention of building. This was an eye opener for him going through this with staff. He has thought about some of the issues that Mr. Smith brought up, and Little Palm and how the Commission decided to do that, but that wasn't a roadway between that and U.S. 1, that was any type of conveyance owned by the County. Personally, in a perfect world, he'd say use Sugarloaf Boulevard as the centerline, but in view of the other facts he has learned, he can't see doing that.

Commissioner Anderson asked if, theoretically, there were a severe storm and it washed away the road, if the County would put it back. Ms. Schemper did not believe her department could answer that. Commissioner Anderson added that the County states they are maintaining it and whether that meant filling in potholes and repaving it. Mr. Morris responded that that is an area of law that

is somewhat settled, but not completely in terms of the statutory obligations and the absence of a right-of-way abandonment. But, typically, if there is damage to the road, it is repaired. It doesn't look impaired or damaged. He would rely on the evidence produced that it is a County-maintained road.

Commissioner Thomas stated that if she got a letter such as the one in December, she would want to send an email or make an appointment and find out what was going on, and not just ignore it. What bothers her in her mind is the total disregard of doing anything for months and then all of a sudden coming back and saying it said you could do something else. The letter is very clear, you have 30 days, and you chose not to send an email, make a phone call or do anything, and now you want forgiveness. Ms. Schemper explained that they did ask for clarification, which the manager did. After that, the 30-day clock still ticking, they requested that I weigh in so she weighed in and agreed. But, rather than move on and correct the issue, it was a continuing, keep asking, keep asking, keep asking. Commissioner Thomas stated that that was her point. How many times do you have to ask the same question hoping for a different answer? They kept getting the same darn answer.

Chair Scarpelli asked if it took four months to get the permit review. Mr. Smith stated that a series of other comments were addressed in the next round of comments, and they got comments from each section. Chair Scarpelli interjected that the whole cycle was completed much before April 9. Mr. Smith responded that he is not aware of that date, but then you address the comments and have the ability to come back to address the further comments. Chair Scarpelli asked, how do you wait more than 30 days? With that logic you could say, every time, I'm going to just keep on filing stuff, and every time I file something new, even though I didn't address the original comments, I can appeal comments from years ago. Mr. Smith stated that until you feel there's a stalemate and you're at an area where there's finality, in court, normally finality has language that this is 30 days to appeal. When they got that letter specifically as to the road with 30 days to appeal, April 9, that was the finality that they felt we were no longer able to work through the comments. Chair Scarpelli stated that the same language was in the December 4 letter. Mr. Smith responded that they could wait and address them all at once. Chair Scarpelli noted that all of the comments were received prior to April 9. All comments would have been received from all departments at some point in time sometime in January, so that's when he would have appealed. Ms. Schemper explained that you don't get to wait until you get all disciplines' comments. Chair Scarpelli agreed that it is two different statements in two different paragraphs. The paragraph about addressing comments all at one time is if you're going to resubmit plans. The following paragraph is, hey, I think you did me wrong here, I'm appealing your decision on this specific merit on this specific topic. Mr. Smith is saying that area is gray, and the County disagrees.

Commissioner Neugent asked Commissioner Demes regarding the Sugarloaf Homeowners Association not being here, so there would be no objection from the homeowners association. The other thing he's not heard from both sides of the presentation is that there's any harm done and there's no reason why the Commission can't work to help. He sees a lot of times where because it's black and white and not an interpretation to try to solve the issue at hand that these kinds of thing come up, and it's up to the Planning Commission to make a decision based upon the presentations. He asked if there was something that the Commission could do to move this project along and make it right to move along. Mr. Morris interjected that he does not share that view,

with respect, because this links to something Mr. Smith said earlier that was a mischaracterization. Mr. Smith referred to the Planning Commission in this circumstance as a policy-making body. Mr. Smith interrupted and objected that Mr. Morris was getting another bite at the apple. Mr. Morris continued that this body sits as a policy-making entity when it's operating in its quasi-legislative capacity. However, this is an appeal to review the record and the law, not to seek a way to perform mediations, move a project along, or to formulate policy such as creating law. Mr. Smits is certified in governmental law as well and can speak to the distinction between policy formulation which is quasi-legislative, which is precisely opposite of what the Commission is doing here today. Commissioner Neugent stated that as a Planning Commission they can respond and make their own motions rather than Mr. Morris giving them motions to make and make a decision. Mr. Morris stated that that is incorrect, that he believes Commissioner Neugent is misapprehending the role of the Planning Commission based on his comments. The Planning Commission is sitting as an appellate body engaged in appellate review of actions that have already occurred, not acting in a mediating capacity or formulating policy. Mr. Morris deferred to Mr. Smits. Mr. Smith stated that he wanted to speak first, because these are interpretations and setting precedence as to when appeals are ripe. Every time the Commission makes a decision they are making an interpretation of the Code, and that interpretation is a precedent, which is what he stated. Now Mr. Smits can say what he wants. Chair Scarpelli stated that he is more of an open book. This is part of the discussion factor of the decision making process and he likes hearing everyone's input. Mr. Smits added that he did not want to give input if there's no question. Chair Scarpelli noted that there is no motion on the floor so Mr. Morris or Mr. Smith can speak, as long as everyone is being nice and not talking over each other, and asked if he was within his purview to allow that. Mr. Smits indicated that was correct.

Chair Scarpelli asked the Commission to focus on the timeliness and have a motion on that. Commissioner Demes asked for clarification as to the Commission's role and whether it is to hear the evidence and make a decision based upon their understanding of the law. Chair Scarpelli responded that that was correct.

Motion: Commissioner Thomas made a motion to approve dismissal of the appeal due to untimely submittal. 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.

Chair Scarpelli then stated that as far as the height discussion goes, if you're planning on parking underneath this home he would elevate the grade at least two feet. The height differential from future flood, first floor slab to first floor slab, current regulations, would be about one foot difference. That's with an 8-foot-6 head height clearance for parking underneath, unless you want to go lower. On elevating the property at least a foot and-a-half, that's including a 20-inch tie beam. To say that you can't build a nice house here because you want to plan for future flood is a little out of touch, especially considering that you do get the three-foot height bonus to go to 38 feet currently, which even if you want to make it compliant with future flood that would still allow 10-foot ceilings on two floors enclosed with a 3-12 roof pitch. He appreciates wanting to do a grandiose home with 12-foot ceilings but doesn't see extending the reach to Sugarloaf Boulevard

off an embankment. Even in the Little Palm scenario, the developer in that case conceded and moved it to the top of Pirates Road which was further down.

Commissioner Demes reiterated that as of yesterday, he had changed the way he looked at this. If the property owners would have gotten together and asked for condemnation proceedings and that road would no longer be a County road, he would absolutely be saying that they should use the approach to the bridge, but that is not the case. It is a County road and it is actually wider than some he's been on. He cannot go with that not being the road to use. Commissioner Demes made a motion consistent with the centerline being off of Buttonwood Drive and not Sugarloaf Boulevard.

Motion: Commissioner Demes made a motion confirming that the centerline should be off of Buttonwood Drive and not Sugarloaf Boulevard, for height calculations. Commissioner Thomas seconded the motion.

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

9. AN ORDINANCE BY THE MONROE COUNTY BOARD OF COUNTY COMMISSIONERS AMENDING THE MONROE COUNTY COMPREHENSIVE PLAN TO ESTABLISH GOAL 113, OBJECTIVE 113.1, AND SITE SPECIFIC SUBAREA POLICY 113.1.1, TAVERNIER WORKFORCE HOUSING SUBAREA 1 FOR A PORTION OF PROPERTY LOCATED AT 92501 OVERSEAS HIGHWAY, KEY LARGO, APPROXIMATE MILE MARKER 92.5, CURRENTLY HAVING PARCEL IDENTIFICATION NUMBER 00089490-000000, WHICH INCLUDES CHANGES TO EXISTING COMPREHENSIVE PLAN POLICIES LIMITING DISPOSITION OF EARLY EVACUATION UNIT ALLOCATIONS TO 1-FOR-1 EXCHANGE PROGRAM FOR BANKING INTO ADMINISTRATIVE RELIEF POOL FOR TAKINGS AND BERT HARRIS ACT LIABILITY REDUCTION COUNTYWIDE AS PROPOSED BY CEMEX CONSTRUCTION MATERIALS, FLORIDA, LLC ; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL OF CONFLICTING PROVISIONS; PROVIDING FOR TRANSMITTAL TO THE STATE LAND PLANNING AGENCY AND THE SECRETARY OF STATE; PROVIDING FOR AMENDMENT TO THE COMPREHENSIVE PLAN; PROVIDING FOR AN EFFECTIVE DATE. (FILE 2023-205)

(1:40 p.m.) Ms. Devin Tolpin, Planning and Development Review Manager, presented the staff report. She will be reading a lot of information in this presentation which covers an application for a privately-proposed text amendment to the County's Comp Plan to establish a new goal, objective and site-specific subarea policy. The applicants state the reason for the requested amendment is to create and provide language for Goal 113, Objective 113.1 and Policy 113.1.1, Tavernier Workforce Housing Subarea, creating a site-specific subarea for workforce housing and to allow the property to receive 86 workforce housing early-evacuation ROGO allocations allocated for Monroe County to permit construction of 86 much needed multi-family workforce housing dwelling units near a large employment center. The amendment will permit the applicant to redevelop the property with up to 86 desperately needed deed-restricted workforce dwelling units in an ideal location for the Islamorada employment center. The applicants' full statement and explanation for justification of the proposed amendment is included in the application file.

The new goal that is proposed allows for the use of site-specific policies in the Upper Keys subarea for the development of workforce housing. The proposed objective is limited to provide for these site-specific subarea policies within Tavernier and to only a portion of a property located at 92501 Overseas Highway, which is in suburban commercial zoning, the mixed use FLUM category, and within the Tavernier Creek to mile marker 97 corridor, otherwise known as the TC overlay district. The property is also subject to the policies and guidelines provided in the Tavernier Livable CommuniKeys Plan which is part of the Comp Plan. In addition to this request to amend the County's Comp Plan, the applicants have also pursued an amendment to the County's code to establish the Tavernier Commercial Overlay which was adopted by the Board. The applicants have also submitted requests to amend the Land Use Map to apply that overlay to the property, a request for a development agreement, and a request for a major conditional use permit for the phased development of a commercial supermarket and 86 affordable dwelling units. In accordance with the adopted process to review amendments to the Comp Plan, a concept meeting was held on March 13, 2024, to discuss this proposed text amendment where it was determined that the amendment would result in a Countywide impact. On April 17, 2024, a BOCC impact meeting was held where staff identified the impacts of the proposed amendment in writing. The Board had an opportunity to offer their initial opinions, and the public had the opportunity to offer input on the proposed amendment. On May 20, 2024, a community meeting was held to discuss the proposed amendment. Concerns included the intent of the adoption of the early-evacuation ROGO units in 2021, takings liability, and the effectiveness of the adoption of the Tavernier commercial overlay district. On July 22, 2024, the proposed amendment was presented to the DRC who recommended denial. On July 31, 2024, the applicant submitted revised text that is currently proposed through this application. Today, the amendment will be heard by the Planning Commission to make a recommendation to the BOCC who will consider the amendment for transmittal to the State Land Planning Agency and eventual adoption. The process for changing the text of the Comp Plan shall follow the process established in Chapter 163, part two of Florida Statutes.

Ms. Tolpin shared clips of the proposed amendment. There is only new language proposed. The applicant is not proposing to edit or delete language elsewhere in the Comp Plan. The text for Goal 113 and Objective 113.1 will be gone through in greater detail when discussing the staff-recommended edits. The boundary of the Tavernier Workforce Subarea 1 is limited to the portion of the property highlighted in red with a snap of Policy 113.1.1. The applicant is also proposing to utilize footnotes on referencing the ordinances. The County does not traditionally use those in the Comp Plan and staff is recommending those be stricken.

A brief history is included on pages seven through nine of the staff report. The affordable ROGO allocations that would be allocated through the proposed site-specific subarea policy were accepted by the County as part of the workforce housing initiative. On July 15, 2020, during a discussion item on potentially shifting market rate allocations to the affordable housing pool, the Board provided further direction to staff on accepting the 300 workforce housing early evacuation unit building permit allocations. The Board directed staff to accept those 300 units to be used in exchange for existing affordable allocations at multifamily developments for developers that agreed to the early evacuation restriction, and the affordable allocations returned to the County be set aside and banked for future takings cases; in other words banked in the Administrative Relief Pool. On April 21, 2021, the Board passed and adopted amendments to the Comp Plan and Code

to establish a new building permit allocation category to accept and award the 300 workforce housing early evacuation unit building permit allocations pursuant to the workforce housing initiative. Staff has reviewed the applicant's position and supporting documentation and does agree that there is an inadequate availability of affordable housing in Monroe County and it is one of our current primary issues. This is supported based on the 2022 ALICE report which affirms an increased trend and difficulty in being able to afford safe, well-constructed housing, even in the Upper Keys.

The portion of the property that is within the boundaries of the Tavernier Workforce Housing Subarea 1 and the subject of this report does appear to be an appropriate location for affordable housing. The property is located within the suburban commercial zoning district, is designated as mixed use commercial on the future land use map where attached and detached dwelling units designated employee housing are permitted. While it is evident that affordable housing is a pressing issue within Monroe County, staff still must review the proposed amendment for internal consistency with the County's Comp Plan, the Tavernier Livable CommuniKeys Plan, the Land Development Code and State Statutes. The proposed amendment includes changes to existing Comp Plan policies limiting the disposition of early evacuation unit allocations to a one-for-one exchange program for banking into the County's administrative relief pool for reducing takings and Bert Harris Act liability countywide. During the adoption hearing of the workforce initiative allocation awards eligibility and requirements, it was emphasized that the BOCC policy direction to utilize the 300 early-out allocations was to develop an exchange program that limits the use of the early-evacuation allocations only for the exchange with existing affordable units of approved affordable allocations and not for the development of new units, thereby not increasing current development potential. The applicant's proposal utilizes 86 workforce initiative allocation awards for new development with no exchange, and is inconsistent with the adopted workforce housing initiative as intended by the Board. Acceptance of the 300 workforce housing early evacuation units through the establishment of the workforce initiative was intended to result in a net zero increase of ROGO allocations in unincorporated Monroe County, except for those to be banked into the County's administrative relief pool to be used at a later time to reduce takings liability. As proposed, the amendment would result in a net decrease of 86 ROGO allocations from the County's administrative relief pool and inversely, an increase of 86 dwelling units. The applicants have not proposed any mitigation measures that would offset the increase of 86 dwelling units within Monroe County or decrease of allocations in the administrative relief pool. It should also be noted that none of the 300 workforce housing early evacuation unit building permit allocations have been exchanged and therefore, no affordable allocations have been added to the administrative relief pool to resolve takings and Harris Act claims pursuant to the Comp Plan. Through this amendment, the property that is included within the boundaries of the subarea would only be exempt from the requirements of Comp Plan Policies 101.3.12(a) and Code Section 138-24(e)(2)(a) through the utilization of the term "notwithstanding." With that being said, Planning Department staff has reviewed the applicant's proposed text and, if approved, would recommend the following edits at this time in order to provide for internal consistency with the adopted Comp Plan and Land Development Code. The recommended changes to the Goal and Objective are primarily related to consistency with the language used throughout the Code and the Comp Plan.

If approved, staff has recommended the language be revised to also exempt the site specific subarea policy from 101.3.12(k) which indicates that properties that are utilizing these earlier-out ROGO

units should be located to areas accessible to the Key West, Stock Island and Marathon employment centers. To provide for consistency, staff is also recommending that the subarea be exempt from that requirement. Additionally, staff is recommending an even split of income categories of allocations issued within the Tavernier Workforce Housing Subarea 1; in other words, 25 percent of the units restricted as moderate income, 25 percent medium, 25 percent low and 25 percent very low. When submitted, the applicant did not provide any proposed income distribution. Staff is also recommending deleting the footnotes that reference the ordinances adopting the workforce housing initiative.

If adopted with staff recommended edits, all units within the Tavernier Workforce Housing Subarea 1 would still be required to comply with the requirements listed in items (b) through (k) of the Workforce Housing Initiative policies. These include approval of a contract with the BOCC to confirm compliance with the initiative, a 99-year deed restriction ensuring occupants evacuate during phase one of a 48-hour evacuation, and workforce housing early evacuation units will require on-site property managers trained in evacuation procedures. The proposed amendment with staff-recommended edits is not inconsistent with the Principles for Guiding Development, nor Florida Statutes. However, under the current adopted regulations in place, including Comprehensive Plan Policy 101.3.12(a) and without any official direction at this time from the BOCC to change policy course, the applicant's proposed amendment that would allow for them to engage in development using 86 early evacuation unit ROGO allocations without complying with the operative takings and Harris Act mitigation reduction requirement to return an equal number of affordable ROGO allocations to the County in conformity with the established one-for-one exchange program would not be consistent with the adopted Comprehensive Plan. Staff is acknowledging that therefore, the recommendation should be denial. However, Planning Department staff also recognizes that the following is materially relevant to this request: The current housing stock in Monroe County offers inadequate affordable housing and, at the time the workforce housing initiative was adopted, the County had a sufficient balance of affordable ROGO allocations, whereas at this time, the County has approximately two left that are available for new projects. As of today, none of the 300 workforce housing early evacuation unit building permit allocations has been exchanged and therefore, no affordable allocations have been added to the administrative relief pool to resolve takings and Harris Act claims pursuant to the existing policy.

If the BOCC approves direction to Planning and Environmental Resources staff to change course to allow utilization of the subject 86 early evacuation unit ROGO allocations without the required one-for-one takings and Harris Act liability reduction exchange, staff does recommend approval with staff-recommended edits to the amendment to the Comp Plan to establish Goal 113, Objective 113.1, and the site-specific subarea Policy 113.1.1, the Tavernier Workforce Housing Subarea 1.

Chair Scarpelli wanted to be clear on what the Commission was voting on since the staff report sort of says no, but yes, and that the Commission would be saying either yes or no to staff's recommendations as the Commission's recommendations to the BOCC. Mr. Morris confirmed that was correct. There is one wrinkle that Mr. Smith wants to address, but aside from that, it's because the law, without direction from the Board to open up the 86 and an ensuing change in the law, you can't really recommend straight up yes or no, but you can sort of conditionally say yes, contingent no. If there were 86 regular affordable employee housing units, this would be an appropriate site and we wouldn't be dealing with the comparatively different subject matter of the

early evacuations. Because the law hasn't changed in this respect with regard to unlocking 86 of the early evacuations, pursuant to direction from the BOCC, and there's the issue of timing where Planning Commission meets before the BOCC, that's why there's this unique staff recommendation of conditionally yes.

Mr. Bart Smith, agent for the applicant, thanked staff for a fantastic presentation, adding that the end of it is the best part about it. This is a fantastic site for workforce housing. It is part of a 20-acre site with 15 scarified acres. It is one of the few last appropriate locations in the Upper Keys if not the entire Keys for an affordable housing project of any significant scale. If scarified land that isn't being utilized to highest and best use were surveyed, you will find there are very few places left. The need for affordable has not disappeared, and rather has increased since Covid. More people have found out about the Keys and they have bought up every house and are living here, working remotely, and the prices have increased dramatically. To provide for adequate housing throughout the Keys is an important part of it, including the Upper Keys. Tavernier is right in the heart of between Key Largo, Tavernier South and Islamorada. Right on Tavernier you have the FKEC, Baptist Hospital, and a large shopping center. In Key Largo there are all sorts of businesses, and Islamorada which is a very metropolitan city for the Keys that has a lot of workers. This is right in the heart of that. It's scarified upland, zoned suburban commercial, and mixed use commercial for its FLUM, it has the density for the units, and meets all the criteria for it. The problem is that we ran out of affordable ROGOs. But, in 2017, after Irma, Governor Rick Scott said a lot of housing was destroyed that were mobile homes that the workforce was living in, and people bought the lots and built much more expensive homes that are no longer quasi-affordable housing. The governor provided for early evacuation units. The County ultimately adopted them, but at the time they put some restrictions on them and said they would be used to substitute out for affordable projects and hopefully use these to reduce takings. Even if you utilize and substitute out for affordable, and then use the affordable, you're not doing a net zero sum gain, you're actually utilizing them. The fact of the matter is that these 300 are supposed to be used for workforce housing. At the time, there were a significant number of units when this was adopted, and now there are none. Staff recognizes that. We have one of the few sites and a project that can utilize them. The applicant is looking to the Planning Commission as the advisory board to the BOCC to recommend approval to allow for 86 units to be utilized on this site.

The applicant agrees with the staff recommended changes except for one which is the income breakdown. The income breakdown was not included because when developing affordable units, you can't develop them at the current price of construction without some type of financial provisos. The other part that will be utilized for this project is working with Florida Housing Finance Corp to understand what types of bonds and grants and tax credits will be available. What the applicant will be using for the unit breakdowns is a type of low income housing tax credits, and then you get a normal conventional loan for the moderate income units. In other jurisdictions, it's actually market rate, but in the Keys we do moderate. In order to make the project comply with the low income housing tax credit program, a minimum of 45 percent are required to be low income, and up to 47 percent can be moderate income. We're proposing the income categories to be 39 or 45 percent low income units, and up to 47 or 55 percent moderate income units. We added in that once the 86 employee housing units are developed, the affordable housing income restriction units may be reconfigured with the property so as to ensure occupants can meet the income requirements for the unit occupied; but always being required to maintain the minimum of 39 units of low

income and maximum of up to 47 moderate, it's just identifying which unit is what. That is the only proposed change that the applicant requests to be made to staff's language. The other changes are all fine. This is not inconsistent with the Comp Plan. It's a policy legislative decision and you're providing a recommendation. We believe that where we stand today is not where we stood four years ago. The applicant requests the recommendation be to approve the amendment with staff's proposed language changes except for the income, and provide for what the applicant has requested. Mr. Smith presented the design of the project.

Chair Scarpelli asked if Mr. Smith had consulted with the Housing Authority to help determine the breakdown of units. Mr. Smith stated that he had not on this project, but is always talking with Randy Sterling in the Housing Authority about their breakdown of units and what they have been seeing. Chair Scarpelli asked staff if there were any needs data required to make the determinations. Ms. Schemper stated they did not have specific enough data for that. Those breakdowns are in the Code. She personally would like to see some median as there are a lot of moderate units in the Upper Keys. Chair Scarpelli then asked about the bedroom breakdown and Mr. Smith stated that this is the bigger picture, but that they would be coming back to the Commission with a development agreement and major conditional use approval. All of that information would be put together at that time.

Commissioner Neugent thought the BOCC was the final determination of the breakdowns. Ms. Schemper stated that that is often included in the development agreement, and the overlay district for the larger property that includes the non-residential piece has a requirement in it for a development agreement which must specify the percentages. She does not believe the percentages need to be in this Comp Plan policy. Mr. Morris thought that could be left out at this recommendation stage. Chair Scarpelli wanted to get more data from the Housing Authority before making that decision. Mr. Smith suggested recommending staff's language and eliminating the language at (2)(a)(ii). Ms. Schemper did not have a problem with that, but would like to see that in the development agreement or the conditional use permit, and not in the Comp Plan.

There were no further questions from the Commissioners. Chair Scarpelli then asked for public comment. There was none. Public comment was closed.

Motion: Commissioner Demes made a motion to approve accepting staff's alternate recommendations with the percentages not included striking paragraph (2)(a)(ii). Commissioner Thomas seconded the motion.

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

BOARD DISCUSSION

Chair Scarpelli would like staff to start looking at changing height determinations based on other criteria, regardless of the impending flood map changes, with sea level changes and storm hardening overall. He believes it's smart to look at that if possible and would be happy to share his research with staff to see if there's a way to solve some problems if not all problems. He's worked on other projects on open water where there are real waves and they have fewer restrictions than we do as to height. Not crazy, though, because we're not Miami, we're in the Keys.

GROWTH MANAGEMENT COMMENTS
None.

RESOLUTIONS FOR SIGNATURE
None.

ADJOURNMENT
The Monroe County Planning Commission meeting was adjourned at 2:22 p.m.