

PLANNING COMMISSION
August 27, 2025

Meeting Minutes

The Planning Commission of Monroe County conducted a hybrid virtual and in-person meeting on **Wednesday, August 27, 2025**, beginning at 10:00 a.m.

CALL TO ORDER by Chair Scarpelli

PLEDGE OF ALLEGIANCE

ROLL CALL by Jessica McKinney

PLANNING COMMISSION MEMBERS

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

STAFF

Devin Tolpin, Senior Director of Planning and Environmental Resources
Mike Roberts, Assistant Director of Environmental Resources
Cheryl Cioffari, Assistant Director of Planning
Barbara Powell, Planning Policy Advisor
Tiffany Stankiewicz, Development Administrator
Jay Berenzweig, Principal Environmental Planner
Peter Morris, Assistant County Attorney
Dirk Smits, Planning Commission Counsel
Jessica McKinney, Senior Planning Commission Coordinator

COUNTY RESOLUTION 131-92 APPELLANT TO PROVIDE RECORD FOR APPEAL

County Resolution 131-92 was read into the record by Mr. Dirk Smits.

SWEARING OF COUNTY STAFF

County staff members and public attendees were sworn in by Mr. Dirk Smits.

SUBMISSION OF PROPERTY POSTING AFFIDAVITS AND PHOTOGRAPHS

Ms. Jessica McKinney confirmed receipt of all necessary paperwork.

CHANGES TO THE AGENDA

None.

APPROVAL OF MINUTES

Motion: Commissioner Neugent made a motion to approve the July 22, 2025 meeting minutes. Commissioner Thomas seconded the motion. There was no opposition. The motion passed unanimously.

DISCLOSURE OF EX PARTE COMMUNICATIONS

Mr. Dirk Smits, Planning Commission Counsel, clarified that ex parte communications do not include communications between the Commission and staff. Anything else is, including applicants, their agents, their counsel, or members of the general public regarding the quasi-judicial matter to be considered or decided by the Planning Commission, and it shall take place at the public hearings and be part of the record.

Commissioner Demes stated that he had spoken with Mr. Don Horton and had some very light discussion on the background of Item 5, had gone up to Angler's Cove and spoken to several people, from the very nice sentry named Jim, to the property manager, and some others that insisted on him having a tour. Nothing he discussed would change his perception of the project or his vote. It was more regarding the history and layout of the project.

MEETING

AGENDA ITEMS

1. A PUBLIC HEARING TO CONSIDER AND FINALIZE THE RANKING OF APPLICATIONS IN THE DWELLING UNIT ALLOCATION SYSTEM FOR APRIL 15, 2025 THROUGH JULY 14, 2025, ROGO (Quarter 4, Year 33). ALLOCATION AWARDS WILL BE ALLOCATED FOR ALL UNINCORPORATED MONROE COUNTY. (FILE NO. 2024-140)

(10:04 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 and Environmental Resources Department is recommending approval of the following market rate rankings: Lower Keys applicants ranked 1 through 6 recommended for allocation award; Lower Keys Administrative Relief, one applicant ranked 1 recommended for allocation award; Big Pine/No Name applicant ranked 1, recommended for allocation award subject to mitigation availability at the time of permitting; Upper Keys applicants ranked 1 through 8 recommended for allocation awards. All other market rate and affordable housing applications 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 Demes made a motion to approve. Commissioner Neugent seconded the motion. There was no opposition. Motion passed unanimously.

2. A PUBLIC HEARING TO CONSIDER AND FINALIZE THE RANKING OF APPLICATIONS IN THE NON-RESIDENTIAL ALLOCATION SYSTEM FOR APRIL 15, 2025 THROUGH JULY 14, 2025, NROGO (Quarter 4, Year 33). ALLOCATION

AWARDS WILL BE ALLOCATED FOR ALL UNINCORPORATED MONROE COUNTY. PURSUANT TO MONROE COUNTY CODE SECTION 138-53(E)(13). THE PLANNING AND ENVIRONMENTAL RESOURCES DEPARTMENT IS PROVIDING A NOTIFICATION TO THE GENERAL PUBLIC OF THE NROGO ACCOUNT BALANCES. (FILE NO. 2024-141)

(10:06 a.m.) Ms. Tiffany Stankiewicz, Development Administrator, presented the staff report for NROGO allocations. The Planning Department is recommending approval of the 1 NROGO applicant.

Commissioner Demes stated that normally he likes to look at where the actual property is. In this particular case, it doesn't have a property number and he's not familiar with that site. He tried to look in Google Maps, but can imagine this is new area and he couldn't find it, but he has no problem with it. Chair Scarpelli confirmed with Ms. Stankiewicz that typically, NROGO, like regular ROGO, has to still go through the full vetting of permitting and planning review prior to even getting on the list.

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

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

3. AN ORDINANCE BY THE MONROE COUNTY BOARD OF COUNTY COMMISSIONERS AMENDING THE MONROE COUNTY TIER OVERLAY DISTRICT MAP FROM TIER I TO TIER III AS REQUESTED BY BRETT BILLER FOR PROPERTY LOCATED AT 305 AVENUE 'A', BIG COPPITT, LEGALLY DESCRIBED AS BLOCK 3 LOT 6 JOHNSONVILLE PLAT BOOK 1, PAGE 53, BIG COPPITT KEY, HAVING PARCEL ID NUMBER 00151350-000000; APPROXIMATE MILE MARKER 10. (FILE NO. 2024-191)

(10:09 a.m.) Mr. Mike Roberts, Assistant Director, Environmental Resources, presented the staff report. This application originally came to the Commission in February of 2025, and has been continued pending coordination with the Florida Department of Environmental Protection's Land Acquisition and Restoration Counsel. The property is located on Big Coppitt by the Lower Keys Cemetery. Mr. Roberts presented an aerial of the location. Staff's original recommendation for the tier amendment was based on the fact that at the time of the initial application review, the property was on the Florida Forever list within the Lower Keys project boundary. Subsequent to that, the property owner approached the Land Acquisition and Restoration Counsel and requested removal from the Florida Forever list. That request was granted August 8, 2025, at the ARC meeting, so the property is no longer on the Florida Forever list. As a result, staff has amended their recommendation from denial to approval.

Chair Scarpelli asked for questions or comments from Commissioners. There were none. Chair Scarpelli then asked for public comment.

Ms. Natallie Liz thanked Mr. Roberts for his help. She had wanted to attend in person but was having car trouble. She thanked staff for their willingness to work with her and for their help in

guiding her through the process toward working with ARC. She also appreciates the multiple meetings and the Commission's attention to this matter.

There was no further public comment. Public comment was closed. The item was opened for discussion.

Ms. Christina Gardner, Ex-Officio Member, NASKW, stated for the record that the property is within the 55 to 64 DNL of the MIAI and the Navy requests all requirements of MIAI be incorporated in any future uses.

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

4. LITTLE PALM DOLPHIN RESORT DEVELOPMENT, LLC, 28550 OVERSEAS HIGHWAY, LITTLE TORCH KEY, MILE MARKER 28, OCEANSIDE: A PUBLIC HEARING CONCERNING AN APPEAL, PURSUANT TO SECTION 102-185 OF THE MONROE COUNTY LAND DEVELOPMENT CODE, BY AN ADVERSELY AFFECTED PROPERTY OWNER, PIRATES SAVING PARADISE, INC., TO THE PLANNING COMMISSION, CONCERNING A MINOR DEVIATION TO A MAJOR CONDITIONAL USE PERMIT APPROVED BY THE SENIOR DIRECTOR OF PLANNING & ENVIRONMENTAL RESOURCES, DATED MAY 6, 2025. THE PROPERTY IS DESCRIBED AS A PARCEL OF LAND IN SECTION 28, TOWNSHIP 66 SOUTH, RANGE 29 EAST, LITTLE TORCH KEY, MONROE COUNTY, FLORIDA, CURRENTLY BEARING PROPERTY IDENTIFICATION NUMBER 00113570-000000. (FILE NO. 2025-110)

(10:13 a.m.) Mr. Peter Morris, Assistant County Attorney, stated that this item is a little different. The Department has already gone over a lot of the substantive background facts several times. This property once had an established hotel on it. Hurricane Irma severely impacted the property and the previous hotel use or structure ceased operations. The current property owner sought to redevelop it with a hotel. The property is located on U.S. 1 in the Lower/Middle Keys. The Planning Commission first encountered this property pursuant to a major conditional use permit that was applied for by the same property owner. The application clocked in around 2021-2022. There was no associated request to change the zoning or the FLUM category. The Planning Commission voted to approve the MCUP. A closely-held corporation by a non-homesteaded property owner in the fully built out subdivision across the canal to the south of the site, which is the appellant before the Commission today, Pirates Saving Paradise, behind which is Ms. Julee Marzella and Mr. Todd Humphries, filed an appeal. The appeal went before DOAH. The ALJ issued an order affirming the decision of the Planning Commission consistent with the Department's recommendation of approval. The affirmation from the DOAH ALJ was in all respects, including both the substantive law and facts at hand. No further appeal was taken and the conditional use permit remains approved.

The conditional use permit had an original site plan which proposed no boat trailer parking spaces. There is a boat ramp on the site. The Land Development Code has a default requirement to provide six boat trailer parking spaces per boat ramp. Because the original approved site plan associated with the MCUP proposed zero parking spaces, obviously the property owner needed a

manner in which to align the fact that the site plan didn't conform to the default parking requirements. To do so, a condition of the MCUP was for the property owner to obtain a variance in order to vary from the default requirement of six trailer spaces to zero that was part of the original approval. Subsequent to that, the property owner, which is the intervenor in this case, Little Palm Dolphin Resort Development, LLC, requested a variance. The variance was limited to the reduction of the parking compliance requirements to go from six to zero. The Planning Commission approved the variance, and the Pirates Saving Paradise, Inc., entity sued again. That went to the Circuit Court which quashed the variance. However, in the staff report and in the minor deviation approval that is under appeal today, as issued by the Planning Director Ms. Tolpin, the Court's order specifically road mapped the flight plan of two alternatives that were expressly recognized by the Court as legitimate avenues to proceed for the developer. One of those was to basically put in the six trailer parking spots required by default by the Land Development Code. The property owner, Little Palm, applied for a minor deviation in order to amend the site plan to put in the six boat trailer spots.

The minor deviation process is a process whereby de minimis changes under a threshold of five percent with regard to elements such as open space or landscaping, if you're going to reduce those, can be approved executively by the Planning Director. Little Palm applied for the minor deviation with proposed reductions in open space and landscaping being two and three percent, so it was below the mathematical threshold for a minor deviation, and the site plan did propose six trailer parking spots which makes the site plan conforming to the default requirements of the code and the Planning Director approved that. Subsequent to that, Ms. Marzella and Pirates Saving Paradise filed another appeal, and that's the appeal before the Commission today.

To focus the lens appropriately, this appeal is not a revisit of the MCUP. It is not a revisit of the variance. The question before the Commission is whether or not the minor deviation approved by Ms. Tolpin was lawful, so it's very limited in scope. Mr. Morris anticipates arguments that the property owner is trapped between the stools such that they have a MCUP but they have to get the variance no matter what because that's a condition of approval. On behalf of the Department, Mr. Morris parts ways with that argument. The condition of approval to obtain the variance was predicated upon the original site plan which proposed zero trailer parking spaces. When the underlying facts changed, an associated condition predicated on those underlying facts also changes. In this case, the requirement for the variance is no more because now you have a site plan that's been approved, and the minor deviation then makes the site plan of record the site plan that's associated with the minor deviation approval. It conforms to the parking rules. Now you have six trailer parking spaces. It's a logical impossibility to force an applicant to obtain a variance when they're not trying to vary from the parking rules. Mr. Morris views Ms. Tolpin's decision as correct in all respects; on the facts and the law.

There are some public speakers present, as well as counsel for both the appellant, Ms. Graham, and the Little Palm property owner, Mr. Clark. Mr. Morris believes it would be best to get public comment out of the way and then have the appellant put on their case in chief because, on appeals, the initial burden is on the appellant to demonstrate reversible error. There is a presumption of correctness that the appealing party has to overturn. It would probably be the most orderly process to have any third persons who wish to speak, let them speak, and then the appellant, Ms. Graham, can put on her case; and then Mr. Clark, on behalf of the Intervenor,

Little Palm, can respond. Counsel for the Department is here to offer any clarifying comments at any stage.

Chair Scarpelli asked if Little Palm would be considered public comment. Mr. Morris explained that there has been an objection from the appellant to Little Palm being granted Intervenor status. That is a technical term that would be assigned to, in this posture, the property owner who was granted a development approval that is under appeal. They obviously have standing to participate, so they wouldn't be a third person. There people present who are neither a principal of Pirates Saving Paradise, Inc., nor of Little Palm, may have views they wish to share. Technically, the Commission probably doesn't have to afford public comment on an appeal, but because of the litigiousness of this particular property, it is probably cleanest just to allow public comment. Mr. Smits stated that was fine if nobody objects, but technically rule 4D(2) says the staff presents first, followed by the applicant, and then the hearing will be open for public comment. Mr. Morris interjected that that rule only refers to applicants and this is an appellant. Mr. Smits agreed. Mr. Morris stated that the Planning Director would make a few comments before moving down the sequence.

Ms. Graham, counsel for the appellant, objected to the sequence as irregular. The appellant in this case, Pirates Saving Paradise, has never seen public comment taken prior to an appellant or applicant's presentation. As far as appellate law, you would never have this and she objects. Mr. Morris stated that he hadn't heard an explanation of any prejudice. Mr. Smits responded that he would suggest the least objectionable order. Chair Scarpelli agreed. Ms. Graham confirmed that she would get rebuttal as well.

Ms. Devin Tolpin, Senior Director of Planning and Environmental Resources, wanted to state on the record some of the relevant code sections that led to the approval of this minor deviation. This property is located within the suburban commercial land use district, is designated as mixed use commercial on the FLUM, is Tier III, and has flood zones of AE and AE9 and 8. The decision being appealed is approval of a minor deviation to a major conditional use permit. The property owner's application for a minor deviation to the conditional use permit simply sought to change site plan of original conditional use permit to keep the six code-required boat trailer parking spots in accordance with the Circuit Court's decision. Ms. Tolpin presented the site plan approved through the original major conditional use permit Resolution No. P41-23. There were no boat trailer parking spaces at that time. There was approximately 40.2 percent open space on the site, and over 15,000 square feet of parking lot landscaping provided at that time. The County's Land Development Code Section 110-73(c)(2) allows for minor deviations to minor or major conditional use permits to be approved by the Planning Director. Such modifications are limited to the following: Additional development that requires a deviation of up to 10 percent of one or more of the following requirements:

Ms. Tolpin presented the site plan submitted as part of the minor deviation with the six boat trailer parking spaces highlighted. It resulted in a decrease of 1.5 percent of parking lot landscaping, and 1.5 percent of previously-approved open space. The site plan is still in compliance with the minimum amount of open space and minimum amount of parking lot landscaping as required by code. However, due to the decreases from the previously-approved site plan, the code required that this go through the minor deviation process. The minor

deviation to the original conditional use permit simply requested to change the original conditional use permit site plan by adding the six boat trailer parking spaces as expressly authorized by the Circuit Court. The property owner did just that and in doing so, has resulted in a 1.5 percent decrease of both the previously approved open space and landscaping. In summary, revising the conditional use permit to include these six boat trailer parking spaces as required by County's Land Development Code Section 114-67(c) obviated and mooted the condition of effectiveness that was required by the property owner to obtain the variance to render the original conditional use permit lawful, notwithstanding Code Section 114-67(c)'s requirement to provide the six parking spaces. Ms. Tolpin presented a slide showing the criteria necessary to approve a deviation to a conditional use permit. Staff recommends the Planning Commission affirm and uphold the approval granted on May 6, 2025, the minor deviation to the major conditional use permit.

There were no questions from the Commission. Chair Scarpelli then asked for the appellant's presentation.

Ms. Jane Graham, attorney representing Pirates Saving Paradise, Inc., presented her credentials and confirmed that all ex parte disclosures had been made. Mr. Morris added that ex parte communications do not include staff briefings, and disclosed that staff had briefed the Commissioners on each and every item as common practice and follows the established rules of procedure.

Ms. Graham stated that this is an appeal of the Planning Director's approval of a minor deviation to the major conditional use permit. Pirates Saving Paradise is a Florida non-profit composed of property owners in the immediate neighborhood surrounding this resort on Little Torch Key. Ms. Julee Marzella is the president and owns the property at 133 Blackbeard Road. Mr. Joseph Wottreng is a board member and lives at 163 Blackbeard Road. Ms. Beverly Culligan is also a board member and is at 142 Blackbeard Road. Pirates Saving Paradise has previously been recognized as having standing in all proceedings relating to this issue before the County, Florida Division of Administrative Hearings and Monroe County Circuit Court. Pirates Saving Paradise is appealing the May 6, 2025, minor deviation on three grounds. It does not comply with the tone of the development order, it has a fatal omission in the application as such requirements are strictly construed, and the addition of six boat trailer parking spots is not the type of deviation specifically listed as something that could be a minor deviation in the code and must follow the proper process to be amendment. She appreciates Mr. Morris' context for the history of this case. This appeal does not contest the substance of any architectural drawings or voracity of any plan submitted by Little Palm. This appeal is based on the plain language of the approvals, related court cases, and County Land Development Code. The plain language of the Code must be interpreted. Florida Courts have explained they only look to clear text for statutory meaning, not to the stars. Ms. Graham gave some case citations. Pirates Saving Paradise is asking for the Code to be applied clearly, fairly and consistently and for all proper procedures to be followed.

Ms. Graham presented a site map pointing out the location of Ms. Marzell's property. There was a major conditional use approval, Pirates appealed it, and the appeal was rejected. Then a parking variance was granted by this Planning Commission. Pirates petitioned for writ of certiorari. The Court agreed to quash the order granting the variance. After that, the minor

deviation was applied for and granted. Today's Planning Commission appeal is not a question of if, but a question of how. The Court said there are options that the owner has. They can keep the Code-required boat trailer parking spots and change the site plan, or they can fill in the boat ramp. When the Court said they can keep the boat trailer parking spots, he means that there are six spots that need to be there and they should be put there. There is a question of keep versus add. That goes to semantics. As a threshold issue, the first question is the variance of the boat trailer parking spots was a requirement as part of the development order. The development order is not in effect because its effectiveness was contingent on the variance being granted. Pirates argued in its appeal to DOAH that the major conditional use permit boat parking must be obtained by the applicant prior to the issuance of the resolution for the conditional use permit. The judge disagreed but explained in the July 30, 2024 order. "The Commission issued the development order of the condition that must be satisfied prior to its effectiveness. The Commission did not impose a condition that must be satisfied prior to the issuance of the development order". The ALJ continued, "The plain language of 110-68 authorizes the Commission to attach such conditions to a conditional use permit as are necessary to carry out the purposes of the Comprehensive Plan and the Land Development Code. The Commission issued the development order with the conditions that must be satisfied prior to its effectiveness."

Controlling local law is Section 110-68 which allows Monroe County to issue a development order granting a major conditional use permit subject to the conditions subsequently satisfied by the property owner. That means it was subject to this administrative variance and had to be complied with. Looking at Section 110-73(c) of the Code, "Concerning major conditional use permits, regardless of compliance with preceding requirements, improvements or additional development may not be permitted as a minor deviation, especially resulting in a substantial change in the overall impact or intent of the development order or violate a provision or condition of the development order. Such improvements or additional development may only be approved by the Planning Commission through a major deviation or an amendment to a major conditional use permit." Again, this isn't a question of if, it's a question of how. And the how should not be a minor deviation. It needs to be an amendment, and it needs to go through the proper process. It's clear that this administrative variance was very much a condition on which the development order was based.

The County wrote in their staff report that this is severable. There is Florida case law that says that when the valid and void parts of the statute are mutually connected and dependent upon each other as conditions, considerations or compensations for each other, then the severance of the good from the bad would affect a result not contemplated by the legislature. In this situation, a severability clause is not compatible with the legislative intent and cannot be applied to save the balance of the statute. Ms. Graham then cited case law. The bottom line is this was very much a requirement of the development order and based on this section of the Code, and it cannot be a minor deviation. That's the first argument.

The second argument is that the conditional use regulation was not actually included in the application for minor deviation. If you look at the requirements checklist, it is required. By virtue of not following the strict requirements for submission, we would posit that it failed to comply with the essential requirements of law. That's argument number two.

Argument number three gets to the specifics of reading of the Code, which is the minor deviation, and it should not have been a minor deviation. It was represented by the Planning staff that this really was a reduction of landscape and buffer. That's not what the application says. The application clearly and only says the deviation would allow the addition of six boat trailer parking spaces. In the staff report it says, to change the site plan keeping the six required boat trailer parking spots. But then it says that it's by putting in six boat trailer parking spots. Allowing the addition is clearly an increase of parking on the site. Those parking spaces are not currently on the site, they are being added to the site. This is, by plain language, an increase. There's no way that this can be construed as a decrease, and this is exactly what the applicant is requesting. Ms. Graham presented the revised site plan and stated that the highlighted spaces was area omitted in the presentation just now that talks about the landscaping adjustment and buffer yard modification, but the parking lot modification is an addition of 4,120 square feet. That is an addition of 6.2 percent. The application for the proposed deviation is to add six boat trailer spaces. This is a question of keep versus add. The judge didn't say how to do it, just what can be done.

Looking at Section 110-73(c), it talks about any adjustment that is not a minor or major deviation shall be processed as an amendment. In 110-73(c)(2)(a) there is no increase for parking in these requirements for a minor deviation. They are simply not there. There is a decrease in off street parking. There is a decrease in loading and landscaping, modification increase in non-residential floor, decrease in the amount of open space. There is not an increase in parking. Little Palm argues that it applies to landscaping and open space, but it doesn't line up with the application and the materials. It has always been her client's position that the County needs to require applicants to follow the law and the procedure in the development approvals. It wasn't followed for the variance and that's why it was quashed. This is another example where it's not being followed. To sum it up, you have a development order with a threshold that was contingent on this variance, and by virtue of the fact that it was contingent on it you can't have a minor deviation. The application was incomplete for the minor deviation and doesn't include a copy of the conditional use ordinance or application. It clearly is an addition of six parking spots and does not fall under anything in the code for a minor deviation.

There were no questions for Ms. Graham by the Commission. Chair Scarpelli asked for the Intervenor's presentation. Ms. Graham agreed that Mr. Clark could present next.

Mr. Christopher Clark, counsel for Intervenor Little Palm Island, stated the first thing everyone should look at is the rest of 110-73(c)(2) that discusses adjusting conditions of the major conditional use permit. The rest of the code says if a development requires a minor deviation and meets the requirements, the Planning Director may attach new conditions or adjust the original conditions as necessary to carry out the purposes of the Comprehensive Plan and Land Development Code, and to prevent or minimize adverse effects of other properties in the neighborhood. Here a minor deviation was submitted to reduce open space and reduce landscaping. This allowed the design choice of adding the six parking spaces that are code required, or are keeping in with code requirements. The Planning Director was welcome to adjust the changes in the original site plan and conditions to remove the requirement of the variance. That entirely disposes the appellant's argument. The appellant omitted the rest of the

code to make you believe that the Planning Director does not have the authority to adjust the conditions.

Mr. Clark does not object to the appellant's standing. The Circuit Court said they had standing. As part of the standing argument they said they were adversely harmed by the application's request for a variance, which was to not have parking spaces. So they were harmed by us having no parking, now they're harmed by the six spaces being required. He does not understand the contradiction and believes they are judicially estopped from making that argument now. Argument one is completely undermined by the fact that a minor deviation was submitted allowing changes to the design and to keep with the code-required six spaces. It appears the 1.5 percent mathematical calculations for the deviation was not contested for landscaping and open space. To ensure the Planning Commission has all of the evidence before it, he will have the applicant's agents and landscaper briefly testify to those things and be available for questions. The fact that a copy of the ordinance was not submitted as a part of the application for the minor deviation is a miniscule problem that the Planning Commission could have raised if they had a problem with a mere reference to the resolution as opposed to having the copy. They can assert no prejudice and they know what the resolution is so there's no prejudice there that warrants undermining the minor deviation approval.

The Circuit Court was very direct on what was allowed to be done; provide the parking or fill in the boat ramp. We're providing the parking. That's what the Court ordered and we have done that using the appropriate Monroe County Code. Now it's just argument for argument's sake. They have filed multiple appeals. There was an Ethics Commission complaint filed at one point. Everything was to just oppose this development since 2023. That largely dispenses with the appeal and arguments that were raised. Mr. Clark asked for Mr. Donald Craig to testify as the agent about the submission of the application, and Mr. Ladd Roberts to present his calculations for the deviation and have them on the record in case those are later challenged.

Mr. Donald Craig, agent for the applicant, stated that the attorney for Little Palm had summarized the approach quite well. The judge said that we could keep the six code-required parking spaces in the site plan. The revised site plan was submitted. As a result of the revision to add the six spaces required by Code and directed by the judge, deviations to the parking lot landscaping and open space were required. Those changes were made by the landscape architect for the project, and calculations done by him were a part of the submittal to the site plan which had previously been approved by the Commission. The figures were checked by the landscape architect, by Mr. Craig, and a third time by the landscape architect. Mr. Craig had prepared the calculations in the submittal. The submittal identified those changes in landscape and open space in order to provide the required parking. That was submitted, reviewed by staff, staff agreed with the calculations and approach as a minor deviation, and ultimately approved the deviation. Very short, very straightforward, they did what they were told to do by the judge, amended the site plan, submitted it for staff approval, and staff approval was forthcoming according to the code requirements for a minor deviation.

Mr. Clark asked Mr. Craig to go over his credentials so he could be recognized as an expert for appellate purposes. Mr. Craig recited his credentials and was recognized as an expert by the

Commission. Mr. Morris stated that the County would stipulate to recognition of Mr. Craig as an expert in the field of planning.

Mr. Ladd Roberts, landscape architect for Little Palm, recited his credentials so that he could be recognized as an expert for appellate purposes. Mr. Roberts reiterated that six parking spaces were asked to be incorporated into the plan to accommodate boat trailers and cars. The spaces are 14 by 55 each. The creation of those six spaces, along with adjustments to the vehicle use area created a net increase of VUA parking area of 4,120 square feet, which equals 6.2 percent net increase. That net increase impacted 1.5 percent of the landscape area and the open space area on the site. It is his understanding that that is below the minor deviation threshold of 10 percent. That's where the calculations stand. Mr. Craig then tendered Mr. Roberts as an expert in the field of landscape architecture. He was accepted by the Commission, and Mr. Morris stated that the County would stipulate to recognition of Mr. Roberts as an expert in the field of landscape architecture.

Mr. Christopher Clarke closed his presentation with 110-73(c)(2) allows the Planning Director to amend those conditions which dispenses with this entire appeal. Pirates Saving Paradise had mentioned severability. The key principle missing in discussing severability is first, you are required to read the whole section together. Reading it the appellant's way would rule out the ability to modify conditions. For severability, the Circuit Court severed that provision initially by saying there could not be the variance made to provide the parking, so there are two avenues to remove that condition that allows application for the minor deviation. Finally, open space and landscaping were decreased to provide the code-required parking by modifying the design elements. All minimum requirements were met and Mr. Clark recommends the Commission uphold and affirm the Planning Director's approval of the minor deviation.

Ms. Graham elected to hear public comment prior to responding. Chair Scarpelli then asked for public comment.

Ms. Stephanie Brown of 165 Lafitte Road, Little Torch Key, had filed a power point and due to limited time for public comment requested rebuttal. After leaving the October 25, 2024, Planning Commission hearing regarding Resolution No. 41-23, the fact that one dissenting Commissioner felt the homesteaded residents' concerns had merit demonstrated the validity of the concerns that the scale of the development does not fit into the neighborhood was affirming. Memorializing the Planning Commission's approval and issuance of the instant request for the MCUP is and shall be contingent upon compliance with the Department's professional staff recommendation. That was definitively stated. Staff recommended a variance and fourth-fifths of the Commission accepted and adopted staff's findings. One Commissioner's dissent was met affirmatively with the Circuit Court's quashed order. The applicant's request for a minor deviation to the MCUP is flawed by the lack of the required MCUP, a specific consequence of failing to meet the variance conditions outlined in the MCUP 41-23, and material admission in LDC 110-73, rendering the application insufficient. Ms. Brown presented a chart showing the lack of completion of data that should be included. The Senior Director sent the applicant the letter that obviated the minor deviation in order to keep the boat trailer parking code requirement that is not supported by competent substantial evidence. Staff has taken the liberty of excerpting a sentence fragment from within the Court's decision that is not a standalone written text, nor is

it within the conclusion. Ms. Brown then provided a previous Planning Commission hearing clip of Mr. Morris speaking to demonstrate that staff could not take one sentence embedded within the entirety of language out of context. The Court ordered Section 3 discussion includes that the development order was not prohibiting boat trailer parking, but rather was an issue created by the applicant's unilateral failure to account for the LDC boat trailer parking. The Court order further states the applicant nonetheless developed a site plan that does not account for the LDC required boat trailer parking, and then requested a variance after the fact. Time was called by Ms. McKinney. Ms. Brown continued, the variance needed to redesign the elements and thereby lessen the value of the property was quashed. Ms. Brown then provided a previous Planning Commission hearing clip of Commissioner Demes speaking about the County's ability to manage these regulations and actually rewarding people for non-compliance. Ms. Brown continued, echoing non-compliance when it comes to the credibility and the intent of the County's ability to manage regulation with reference to staff's actual rewarding people for non-compliance. The Circuit Court overturned the variance recommended due to the errors in findings of fact and conclusions of law. Today, staff's minor deviation recommendation lacks competent substantial evidence and contains similar errors in findings of fact. Ms. Brown then provided another previous Planning Commission hearing clip of both Mr. Morris speaking and of Commissioner Demes speaking, to which Mr. Morris objected and Mr. Smits interjected a point of order. Chair Scarpelli stated that these clips had nothing to do with this meeting. Mr. Smits asked for Mr. Morris to put his objection on the record.

Mr. Morris stated that he was attempting to notify IT that there appeared to be random clips of previous Planning Commission meetings that don't pertain here. The threshold issue is he doesn't know what's going on. Number two, the County would object to the speaker's testimony to the extent it aspires to offer an expert view. A lay person can offer their own fact testimony, but to the extent they are providing legal or expert opinions the County generally objects. Chair Scarpelli stated that had been giving Ms. Brown a little leeway due to this being an emotional topic for this neighborhood, until he realized these previous meetings had nothing to do with this item. Ms. Brown responded that she had timely submitted this power point with all of the videos, so all of the objections could have been done prior to this. Chair Scarpelli explained to Ms. Brown that she is a public speaker, not a presenter. Technically, since she is not on the appeal, she doesn't have standing as a party. Mr. Morris confirmed that to be correct, and he objected to the extent that these were being offered as some kind of evidence. Ms. Brown added that these were all from the same day the variance was approved.

Mr. Smits asked that the objections be stated for the record. Mr. Morris stated the objection would be relevance. He is not sure how any of these clips are relevant to the minor deviation before the Commission today that was approved at least a year after these meetings. Chair Scarpelli stated that it was very hard to follow the point. Ms. Brown explained that it was the plain language of the text was not to be interpreted or wished upon what you wanted it to say. Her excerpt was from the Circuit Court order, one sentence or a fragment of a sentence that was written within the discussion that is not restated in the conclusion is deemed to have somehow obviated the quashing. Chair Scarpelli suggested providing a transcript in the future so the Commission can have that information ahead of time rather than video clips. Chair Scarpelli allowed Ms. Brown to reiterate her argument.

Ms. Brown continued, this has all been unsettling, the attempt to not even allow public comment. The white elephant in the room is we would not even be here today if the boat trailer parking had been squeezed into the site plan. There would be no need for a variance. The fact that this happened indicates otherwise, and that is what she is using to demonstrate, for example, Commissioner Demes stating that he didn't have confidence in staff's ability rewarding on compliance, or that Mr. Morris has said that to telegraph that no amount of creating lawyering can alter the language of the text that exists today, are the points she is making. Chair Scarpelli reiterated that there is no reference, that the video is a clip of a small portion of a whole video. Ms. Brown responded that that is exactly what has been done by staff today by taking out that one fragment of sentence in the order. Chair Scarpelli responded that the difference is he had the whole order in front of him to look at and he was able to read the whole order and get the context. Here he doesn't have the whole video. Ms. Brown added that the context in the order is not even taken in full context, that it is referring to the whole issue which is that the hardship was self created, et cetera. Mr. Morris withdrew the County's objection. Chair Scarpelli called for the next public speaker.

Ms. Julee Marzella, asked to see Ms. Tolpin's second-to-last slide from her presentation. This is Section 110-73 showing what a minor deviation can be approved for. It can only be approved for a decrease in the amount of off-street parking, not an increase. In the application you can see where it says they are requesting an increase. The matter has been convoluted by talking about decrease in open space and landscaping, and nobody wants to address that they are asking for an increase in parking when a minor deviation can only be allowed for a decrease in parking. Same with the major deviation, they can only be approved for a decrease in parking. To get an increase in parking, there is another avenue that must be taken by the developer and that's an amendment. That's how this should have gone, through the amendment process. Ms. Graham did a good job describing why the development order is not in effect. Plain language states that the application was incomplete, being called a harmless error, but when Pirates submitted something on the same development order we were told that because our submission was thirty-six seconds late that it was irremediably and irrevocably untimely and would not be accepted. That set a precedent on this project for strict compliance with submittal procedure. This application for the minor deviation was incomplete because the MCUP tied to it was not submitted with it. It is unfair to Paradise for the rules to be bent for them and not for us. One last thing about the development order not being effective, Ms. Graham has some pictures on her presentation showing that photos taken as recently as Monday show there are no bollards placed on the boat ramp which was something that Commissioner Demes conditioned his approval of the variance on. They have not been installed. There are still boat trailers parked on the site that are not supposed to be parked there. They swore to it that there were none parked there. She had turned them over to Code Compliance who sent the complaint to Planning, and nothing was ever done. Bollards weren't put in, boat trailers are still parked on the site, and that is the Planning Department admitting that this development order is not effective, otherwise they would have made Little Palm comply with that development order. Chair Scarpelli added that there is no variance in place right now so it's not effective until today's proceeding, and then there are still thirty days after that, and forty-five after that. Ms. Marzella asked if that means the development order is not in effect right now.

Mr. Morris interjected that he believes what the speaker is referring to was part of the variance. The bollards were part of the variance. The variance was quashed. Therefore, the variance doesn't exist as a matter of law. The failure to comply with an approval that doesn't have any legal vitality because it was quashed is why he is struggling to see the prejudice or violation of law.

Ms. Marzella wanted to boil it down to one issue for the Commission to look at. Ms. McKinney called time. Ms. Marzella continued, a minor deviation can only be approved for a decrease in parking. They have clearly asked for an increase. They didn't eliminate parking that they already planned on putting in, in order to fit the boat trailer parking spaces in. They eliminated some of the open space and landscaping to put them in. Therefore, they added parking to the site. You cannot use a minor deviation to add parking. Even in the request in Mr. Craig's letter that went along with their application, he asked for an increase in parking. You cannot add parking using a minor deviation, it has to go through the amendment process. Chair Scarpelli thought that there was never an objection to a developer adding parking.

Ms. Devin Tolpin clarified that the need for deviation was for reduction in open space. You can't simply reduce open space on a site. You are going to be constructing or adding something that is leading to the reduction of open space. The same for reduction of landscaping, you are going to be doing something like adding a paver driveway, a deck, or parking spaces. Further, as Mr. Clark had stated and she believes was partially quoted in the staff report, land development Code Section 110-73(c)(1) provides for deviations that do not result in additional impact. This is work that can be done to a site that has an approved conditional use permit that can be approved as of right, just as a building permit. It does not require a deviation and review by the Director or by the Commission it would just go through a building permit. Deviations that do not result in additional impact that can be approved as of right involve normal maintenance or repair to permit continuation of an approved use and/or structure. Construction and/or installation of an accessory structure, like parking spaces that does not reduce the approved amount of open space for the site, does not alter any aspect of an approved structure and/or required landscaping, and meets all requirements of this Land Development Code. In this circumstance, construction and/or installation of an accessory structure, six boat trailer parking spaces were proposed. They were reducing open space, they were reducing landscaping, which then bumped them down to the next category which is (2) the need for the minor deviation because it reduced open space and landscaping by 1.5 percent. If there was no reduction in open space or landscaping, then the Land Development Code could permit that work to be done, the increase in parking spaces, as of right through just a building permit. This is how the code has consistently been applied and is meant to be applied. Chair Scarpelli asked if the intent was to protect the green space, open air and landscaping and if that's why the Director needs to review it. Ms. Tolpin confirmed that to be correct. Accessory structures can be permitted and allowed, provided they don't trigger one of the seven criteria, and provided the overall intent of the original CUP and development order is maintained. If an accessory structure were proposed that was inconsistent with the overall intent and development order approved by the Commission, then an amendment would be needed. Simply adding six boat trailer parking spaces for an existing boat ramp does not deviate from the overall intent of the development order and therefore was able to be approved through that minor deviation process due to the reduction of open space and landscaping.

Mr. Morris asked for Ms. Tolpin to recite her credentials so that she could be recognized as an expert in the Land Development Code, Comprehensive Plan and Planning. Mr. Clark for Little Palm stipulated to Ms. Tolpin's expertise. Ms. Graham stipulated to her experience but not the substance of her testimony. The Commission recognized Ms. Tolpin as an expert. Mr. Clark then asked to confirm that both Mr. Roberts and Mr. Craig had been sworn in. Both confirmed that they had been sworn in.

Ms. Julee Marzella requested to respond to what Ms. Tolpin had said. Chair Scarpelli stated that he would give her some leeway, but typically rebuttal to staff testimony is not allowed. Ms. Graham interrupted to confirm that her rebuttal was not being waived. Ms. Marzella wanted to draw attention to the application where it says this deviation would allow the addition of six boat trailer parking spaces. Nowhere in application did it talk about accessory structures or reduction in open space or landscaping. The developer asked simply for the addition of six boat trailer parking spaces, and in the staff report Ms. Tolpin agreed that they were asking for an increase, and an increase was proposed. You cannot increase parking with a minor deviation.

There was no further public comment. Public comment was closed. Chair Scarpelli asked for Ms. Graham to present rebuttal.

Ms. Graham shared the Monroe County Municode on her screen, Section 110-73(c)(1), the deviations that do not result in additional impact, and walked the Commission through that section. Ms. Graham stated she loves the statutes of construction and was happy to hear Mr. Clark mention in pari material which means he has to read a statute in looking at all of the words together which will be helpful for this one. For deviations that do not result in additional impact, after development approved by a conditional use permit is complete, improvements that do not result in additional impact may be approved as of right through the building permit application process. Such modifications are limited to the following: In looking at the modifications below, Ms. Tolpin referred to (b) which is construction or installation of an accessory structure that does not reduce the approved amount of open space for the site, does not alter any aspects, et cetera. In a universe where parking was a structure, it does reduce the open space so that doesn't work. But if you look at the definition of a structure under 101-1, it says structure means anything constructed, installed or portable removal or not moveable, temporary or permanent, which requires a location on a parcel of land included but not limited to buildings, roads, walkways. It doesn't talk about parking anywhere. Going back to 110-73(c), the deviations that do not result in impact, there's nothing that shows that parking is an accessory structure and it's certainly not roads. If you keep reading, it says the preceding improvement may not be permitted as of right if their approval would result in a substantial change in the overall impact or intent of the development order, or violate a provision or condition of the development order as determined by the Planning Director. So, if you read this in pari material, you read it all together, you see that it doesn't actually work because the addition of the parking spaces doesn't comply because the development order required there would be a variance. So this is trying to cram a puzzle piece into a puzzle that simply doesn't fit.

Pirates Saving Paradise has never, in their standing, said that they took the position about parking spots or not parking spots. Their standing is based on the fact that they are composed of land owners who are impacted by, and special injuries by the property and what goes through it.

By virtue of that, they have the expectation that the process and procedures need to be complied with. So as was the case when they challenged the variance where the procedure isn't followed because they allowed a self-created hardship, that was a failure in the process. The same issue is here that there's a failure in the process by allowing a minor deviation for something that simply is not listed as a minor deviation and cannot be a minor deviation by virtue of the fact that the development order doesn't allow it as a threshold issue. Ms. Graham wants to be clear that there's nothing inconsistent about requiring Little Palm or the County to follow the law like everyone else is required to. What is inconsistent, is Little Palm's continued practices of failing to comply with the requirements of the code and then backing into it from the back. To say that parking is a structure and, mind you, none of this was in any of the documents for the application, if this were really the case that should have been very clear. This is like the Planning Director speaking about it now because she sees it, but it's a really, really hard stretch. The Planning Commission's job is to uphold the plain language of the law and not make these approvals more delayed because they aren't following the right procedure. Bottom line, this was the wrong process. An amendment would be needed to the MCUP to allow this addition of parking. It doesn't follow the minor deviation requirements.

Another statutory interpretation, *inclusio unius est exclusio alterius*, which means the mention of one thing implied but exclusion of another. Ms. Graham then cited case law. You can't just look at the code and restate things that are not there. Because of that, we would ask you to uphold the law and repeal this approval of minor deviation and require that it goes through the required process. The judge said that the six parking spots could be put back in, but he used the word "keep." Obviously, he didn't mean "keep" because they weren't there to begin with. The question isn't if, it's a question and how. The how is wrong here and that needs to be rectified.

Mr. Morris stated that he had some responses, but asked Mr. Clark if he preferred to go first. Ms. Graham interjected that she does not understand why the applicant gets a rebuttal to her rebuttal. This never happens. Mr. Clark stated that he was not going to reply to her rebuttal. He understands her complaint, this is her hearing, and he is not going to respond to the rebuttal. Mr. Clark only wanted to correct two things for the record that were said that he did not say. He did not raise 110-73(c)(1), he raised 110-73(c)(2). That's it. He has no additional rebuttal. Nothing new was raised that he is worried about so he has no additional comments. Mr. Morris stated that that was precisely what the County was going to assert which is that Ms. Graham is entitled to her view but it suffers from the notable disadvantage of being completely wrong. She cited subsection (1). Subsection (2) is the legal authority upon which this decision was predicated. That's the County's only contribution for purposes of clarity. Ms. Graham added that for purposes of clarity, Ms. Tolpin had just quoted the section that she quoted. Chair Scarpelli noted that Ms. Tolpin mentioned (1) earlier. Mr. Morris responded that Ms. Tolpin had mentioned (1) as a lead up to indicate why the request was bumped down analytically to (2). The request did not fit into (1), therefore that's why it was bumped down to Section (2).

Commissioner Anderson stated that when he reads Section (2) it says any one or more of the following requirements. Looking at number (1), decrease the amount of off street parking, that isn't happening, it is increasing. Number (2) isn't happening. Number (3) is. (4), (5) and (6) are not, (7) is. So we've got two when we only need one. As Ms. Tolpin said, if you take something away, if you decrease any other thing, something has to go in its place. Chair Scarpelli agreed.

Commissioner Anderson asked what was on the property right now. Ms. Tolpin responded that she did not believe there were permitted trailer parking spaces on the site right now.

Commissioner Demes stated that there are things parked all over the place right now. He is honored that two people actually thought enough of him to repeat something he said, and he wishes his wife had heard that. One of the things he would say to the speakers is that virtual presentations are not as effective as in person for a couple of reasons, one of which is communications are sometimes muffled. Attorneys speaking legalese to lay people, they know what they're talking about and tend to speak rather rapidly. There is no time limit for them so he would encourage attorneys speaking law to slow down. Another thing, for presentations, some look like microfiche on the screen. Be sensitive to the Commission to be able to enlarge the presentation, especially the text, so they can read and follow it. Another thing in this last presentation, there were various speakers including a public commenter, and there were other official parties that broke in, one in particular, to say something to that person. As a courtesy, in virtual communications when we have multiple parties and print that we're looking at, identify yourself. If you are going to break into a conversation do me the courtesy of letting me know who is speaking when multiple people are breaking in on a virtual conversation. Effective communication sometimes gets lost as it was today at some points.

Commissioner Demes then stated that he appreciates Mr. Morris keeping him focused, that he doesn't like this project and has said that from the start, but he understands the legal obligation and job of the Commission. As much as he doesn't like certain things, the judge gave the options to go forward, and the applicant has chosen which of those to go in. He doesn't agree with that and would have opted as before to say let's do away with the boat parking and filling in the ramp to whatever degree would be required. The bollards would have worked, or going to high sea level with filling it in, a little wall would have done the same job. He believes the environmental of harm to fill in a boat ramp to whatever degree is overstated. Over time, the maintenance of the boat ramp, if it was ever going to be used, would have to be cleaned out to function. Commissioner Demes honors Mr. Craig's expertise, but the boat spaces take up a huge amount of space. For the efficiency of the site and realistic development, those boat parking spots are not to be used by the residents of the units for recreation. He believes it is wasted space and is unfortunate. He understands the sacrifices on the site. The applicant chose that way, the Court side that's an option, so there's no alternative. He doesn't like the project or appreciate the choice the developer made, but he will accept it and his job is complete, and he is ready to vote.

Commissioner Neugent stated that he agrees with Commissioner Demes that a certain amount of quality is lost talking from a Zoom standpoint, especially with attorneys. A lot of the stuff gets lost from the microphones. It is inconvenient to drive to this meeting but if he was paying an attorney to represent him, they would be at this meeting. Commissioner Thomas stated that she is ready to make a motion.

Chair Scarpelli was concerned with the application submission and asked if that was really a problem. Mr. Morris responded that in his view, it's a somewhat quixotic argument to claim that an application from someone else was insufficient for purposes of internal department processing at this juncture. That far in the rearview mirror, and the applicant has not expressed any question regarding the way that the application was interpreted and read, so he believes the only party

with standing to dispute whether or not the Department's completeness review was sufficient, which is a separate determination not before the Commission, would be the applicant, and he finds it irrelevant. Chair Scarpelli noted that the Department reviews each individual application independently of any other application, and from his understanding everything would filter through the Planning Department and be reviewed on its own merit. Ms. Tolpin added that in this circumstance, the document that was not submitted by the applicant that is being questioned is the development order from the approved MCUP which staff had access to and was able to add in the file as an attachment. It is the Department's regular practice that if they have easy access to a document when reviewing it or if it is in the file such as a very recent approval or development order, staff will add it. There was no unfairness or irregular treatment of this file. Chair Scarpelli then asked about Section 110-73(c) where it says intent of development order. He believes that this deviation follows what the intent of the development order was; the variance for the boat trailer parking. The County has recognized that boat trailer parking was required, that's why they were allowing the variance. The variance was quashed. The fallback is the requirement of the boat trailer parking so that would be the intent of the development order. Mr. Morris added the intent of the development or the intent of the land development code. That's the default prescription of six trailer spaces which the property owner sought to put in. Chair Scarpelli hoped every developer moving forward would try to increase parking but also keep those trees.

Motion: Commissioner Demes made a motion approve. Commissioner Thomas seconded the motion.

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

(Recess from 11:57 a.m. to 12:05 p.m.)

5. ANGLERS CLUB MEMBERS ASSOCIATION, INC., 50 CLUBHOUSE ROAD, KEY LARGO, FL 33037, OFF CR 905 PUBLIC HEARING CONCERNING THE REQUEST FOR A TIME EXTENSION TO A MAJOR DEVELOPMENT ORDER MEMORIALIZED BY THE ZONING BOARD RESOLUTION MD NO. 32-86, FOR ANGLERS CLUB, INC., AND BAYSIDE PROPERTIES, INC., THE PROPERTY IS LEGALLY DESCRIBED AS PART OF GOVERNMENT LOTS 1 AND 2, SECTION 13, TOWNSHIP 59 SOUTH, RANGE 40 EAST, KEY LARGO, FLORIDA AND HAVING PARCEL IDENTIFICATION NUMBERS 00080020.000300, 00080020.000272, 00080020.000275, 00080020.000277, 00080020.000278, 00080020.000280, 00080020.000282, 00080020.000285, 00080020.000287, 00080020.000290, AND 00080020.000296. (FILE NO. 2025-084)

(12:05 p.m.) Mr. Jay Berenzweig, Principal Environmental Planner, presented the staff report and the Anglers Club overall site plan. This is the fourth time extension request by Angler's Club. The agents Mr. Horton and Mr. Lupino are present. The last Resolution P26-15 extended the development order to expire July 30, 2026. The current request will extend this to July 30, 2036. The request is being done for multiple reasons including hurricanes, the Covid pandemic and certain financial resources over the years. Mr. Berenzweig presented slides of the

development. Over the years they have had multiple capital improvement projects as listed in the staff report. There are a number of capital improvement developments that are planned, including but not limited to the list presented. There are three ROGO-exempt parcels left for residential development within Angler's Club that may or may not be developed with single-family residences in the future. At this time, staff recommends approval of ten-year time extension to July 30, 2036.

Commissioner Demes confirmed this would be the fourth ten-year period. Chair Scarpelli noted that typically we only approve extensions to not exceed two years unless otherwise specified, and confirmed the "otherwise specified" was what they were hanging hat on due to the history with this particular applicant. Ms. Tolpin confirmed that to be correct. Chair Scarpelli asked if the applicant wished to speak.

Mr. James Lupino, attorney for the applicant, with Mr. Don Horton and Mr. Alfredo Yara on behalf of the club, stated that Mr. Berenzweig and staff had done a great job with the report and thanked them for doing so. This is a self-contained club that really has no neighbors other than Ocean Reef Club. They just need more time to complete the project and would ask the Commission to approve. Chair Scarpelli then asked for public comment. There was none. Public comment was closed. There were no further questions or comments from the Commission.

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

6. AN ORDINANCE BY THE MONROE COUNTY BOARD OF COUNTY COMMISSIONERS AMENDING CHAPTER 122 FLOODPLAIN MANAGEMENT, OF THE MONROE COUNTY LAND DEVELOPMENT CODE TO ELIMINATE THE 299 SQUARE FOOT SIZE RESTRICTION OF ENCLOSED AREAS BELOW ELEVATED BUILDINGS, ELIMINATE THE REQUIRED INSPECTIONS OF ENCLOSED AREAS BELOW ELEVATED RESIDENTIAL STRUCTURES PRIOR TO THE TRANSFER OF OWNERSHIP, AND ELIMINATE THE FLOODPLAIN CERTIFICATE OF COMPLIANCE PROGRAM, AS REQUESTED BY THE BOCC AT THEIR APRIL 16, 2025, REGULAR COMMISSION MEETING; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL OF CONFLICTING PROVISIONS; PROVIDING FOR TRANSMITTAL TO THE STATE LAND PLANNING AGENCY AND THE SECRETARY OF STATE; PROVIDING FOR AMENDMENT TO AND INCORPORATION IN THE MONROE COUNTY LAND DEVELOPMENT CODE; PROVIDING FOR AN EFFECTIVE DATE. (FILE NO. 2025-072)

(12:14 p.m.) Ms. Barbara Powell, Planning Policy Advisor, presented the staff report beginning with a brief history. January 2002, the NFIP notified Monroe County that effective May 31, 2002, the unincorporated areas of Monroe County would be placed on probationary status unless Monroe County addressed sufficiency in the Floodplain Management Program. The BOCC took the notice seriously and the next month, February 13, 2022, adopted a resolution committing to implement the Inspection Procedure Program and all that comes with it. March 20, 2022, the BOCC adopted a resolution adopting the first iteration of the implementation plan for Monroe County flood insurance inspection compliance program, also referred to as the remedial plan.

This satisfied the warning and notice from the NFIP for putting the County on probation. There were subsequent amendments to the implementation plan that occurred by resolution in 2002, 2003, 2011 and 2014. 2014 is the most recent, so the implementation plan is often referred to as the 2014 Implementation Plan. In 2022, Monroe County amended the land development code to require a non-conversion agreement for enclosed areas below elevated buildings. The definition based on the land development code on a non-conversion agreement is a form provided by the Floodplain Administrator to be signed by the owner and recorded on the property deed in official records of the Monroe County Circuit Court for the owner to agree not to convert or modify in any manner that is inconsistent with the terms of the building permit and these regulations, enclosures below elevated buildings or crawl or under floor spaces, detached accessory structures and garages.

March 26, 2025, County Administrator Christine Hurley along with other County staff met with FEMA District IV Regional Administrator Robert Samaan to discuss the non-conversion agreement requirement and its relationship of the previous requirement of the 2014 Implementation Plan. During that meeting the Regional Administrator agreed that the intent of the implementation plan had been met, and there were portions of LDC that implemented the plan that could be removed. On March 28, 2025, the County received a letter confirming in writing that it approved the elimination of the 2014 Implementation Plan. It is worth noting that FEMA acknowledged Monroe County's dedication to not only meeting the minimum NFIP standards but also those higher standards by which the County had achieved a Class 3 Community Rating System score.

At the April 16, 2025 BOCC meeting, the Board adopted Resolution 166-2025 supporting the elimination of the implementation plan within the LDC and directed staff to move forward with an amendments. The resolution points to three sections or three main components of the Land Development Code that can be eliminated which are the required inspections of enclosed areas below elevated residential structures prior to the transfer of ownership, the floodplain certificate of compliance program, and the 299 size restriction of enclosed areas below elevated buildings. Ms. Powell reviewed the specific code sections with re-lettering, cross-reference changes and renumbering where appropriate because of the revisions. It is important to note that this does not allow for any habitable space to be built in excess of 299, or any habitable space below flood. This does not change the standard with regard to habitable space.

The tentative schedule for now is the BOCC meeting on October 15, 2025, and it will stand for 30-day local review, followed by submission to Florida Commerce for a 60-day time frame to post the notice on the Florida Administrative Register, and then a 21-day appeal period for the final order issued by Florida Commerce. There are two different appeal opportunities. Staff expects it to be in effect probably in late January.

Commissioner Thomas asked if this is for storage space and not to make a guest room. Ms. Powell confirmed that nothing with regard to habitable space is changing. Commissioner Neugent also confirmed no kitchens or bathrooms. Chair Scarpelli then asked for public comment. There was none. Public comment was closed.

Commissioner Thomas stated that this opens the door to do anything you want. Understanding you can't live down there, but to Commissioner Neugent's point, you can put bathrooms down there and there's no inspection process. It's hard enough after a hurricane to clean up the mess, but if all of these illegal enclosures aren't inspected and are full of trash, and there may be in some cases people living in those facilities, it's just that much more cleanup. She does not understand why they want to do this. Commissioner Neugent added that they need to hire two or three more Code Compliance employees, and he has those same concerns. However, he thought that 299 square feet was a bit small for storage. Commissioner Thomas noted that an apartment in New York City is 300 square feet, and there are trailers that have been converted and there's ten people living in a trailer.

Mr. Morris clarified to make it as clear as possible and broadcasting on all channels so everyone keeps their expectations earthbound, that this is not intended to be a return to the before times, and does not create an opportunity to start establishing habitable space in downstairs enclosures that may eclipse requirements that would otherwise be imposed by the FEMA Implementation Plan. Mr. Morris wants to make sure it's on the record that the non-conversion agreements, assuming this continues to process, will be required and recorded in the chain of title. Chair Scarpelli stated that the non-conversion agreement is the big issue because if you get caught, it is not going to be a slap on wrist and just rip it out. It's very serious. Mr. Morris added that it's a very serious violation not to be trifled with for sure. Commissioner Thomas asked if hope was the strategy. Mr. Morris said he wouldn't couch it that way. He would say that we will be on the same footing as other jurisdictions in Keys that don't have the implementation plan requirements. We will have to react by utilizing Code Enforcement, a limited resource, but it's the same in the context of vacation rentals, land clearing, and professional staff does what they can with the resources they have. This is the posture of the other jurisdictions in the County. He is not advocating as a matter of policy, just remarking on that as a fact.

Chair Scarpelli added that you can't govern for the bad acts. Commissioner Neugent noted how long it took to clean this up. It was put in place in 2002, and it will probably be 2026 when implemented, but he went through this with removing downstairs enclosures. It's a temptation for any red-blooded American who wants to use as much space as they can get. Code Enforcement needs to keep an eye on this but at a point of sale, more than likely it will be found out that you have violated the rules of the non-conversion agreement. Chair Scarpelli added that now you have a real estate person and another person finding out that you are breaking the law that is attached to your deed. With 299 fully enclosed, people will do what they want until they get caught. The fact that there is this non-conversion agreement and that you have to permit your enclosure and have this deed restriction makes it a lot more serious.

Mr. Morris added that because this is a common thing, as an advocate for the professional staff, if you hear things regarding a non-conversion agreement in the future that the County is taking an overly punitive stance on trying to enforce this or it's an ambush, he has observed, whether it's conservation easements or land clearing or many of the legal instruments that are required by law and have been for a long time in the LDC or Comp Plan, he often suspects for result-oriented motivations, many land owners have attacked staff quite severely because they didn't note something in the chain of title or their attorney didn't. He empathizes strongly with staff because they kind of have to sit there and take it. So if it ever arises in the future and this item continues

to be legislatively processed, he tries to evangelize to the public at large as much as he can within his mirror of remit that if you hear a story out on the street that the staff are coming at someone and ambushing him, he has observed many tall tales in that regard and the staff are usually scapegoats for private mistakes.

Motion: Commissioner Neugent made a motion approve. Commissioner Anderson seconded the motion.

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

BOARD DISCUSSION

None.

GROWTH MANAGEMENT COMMENTS

None.

RESOLUTIONS FOR SIGNATURE

None.

ADJOURNMENT

The Monroe County Planning Commission meeting was adjourned at 12:33 p.m.