PLANNING COMMISSION
February 26, 2020

Meeting Minutes

The Planning Commission of Monroe County conducted a meeting on **Wednesday, February 26, 2020,** beginning at 10:00 a.m. at the Marathon Government Center, 2798 Overseas Highway, Marathon, Florida.

CALL TO ORDER by Chair Coward

PLEDGE OF ALLEGIANCE

ANNOUNCEMENT
Chair Coward welcomed Commissioner Ron Demes to the Planning Commission. Commissioner Demes stated he was looking forward to serving on the Commission.

ROLL CALL by Debra Roberts

PLANNING COMMISSION MEMBERS

Tom Coward, Chair	Present
Bill Wiatt, Vice Chair	Present
Ron Demes	Present
Ron Miller	Present
Joe Scarpelli	Present

STAFF
Emily Schemper, Senior Director of Planning and Environmental Resources
Cheryl Cioffari, Assistant Director of Planning
Steve Williams, Assistant County Attorney
Peter Morris, Assistant County Attorney
Tom Wright, Planning Commission Counsel
Mike Roberts, Senior Administrator, Environmental Resources
Bradley Stein, Development Review Manager
Devin Rains, Planning and Development Permit Services Manager
Tiffiany Stankiewicz, Development Administrator
Matt Restaino, Planner
Kestride Estille, Planner
Debra Roberts, Senior Coordinator Planning Commission

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

SUBMISSION OF PROPERTY POSTING AFFIDAVITS AND PHOTOGRAPHS
Ms. Debra Roberts confirmed receipt of all necessary paperwork.

SWEARING OF COUNTY STAFF
County staff was sworn in by Mr. Wright.

CHANGES TO THE AGENDA
Ms. Emily Schemper stated that Item 3 was withdrawn and Item 4 had requested a continuance to the April 29, 2020 meeting. Staff requested that Item 5 be heard first.

APPROVAL OF MINUTES
Motion: Commissioner Scarpelli made a motion to approve the January 29, 2020 meeting minutes. Commissioner Wiatt seconded the motion. There was no opposition. The motion passed unanimously.

MEETING

NEW ITEMS:

5. A PUBLIC HEARING TO CONSIDER AND FINALIZE THE RANKING OF APPLICATIONS IN THE DWELLING UNIT ALLOCATION SYSTEM FOR OCTOBER 16, 2019, THROUGH JANUARY 13, 2020, ROGO (Quarter 2, Year 28). ALLOCATION AWARDS WILL BE ALLOCATED FOR ALL UNINCORPORATED MONROE COUNTY. (File 2019-135)

(10:05 a.m.) Ms. Tiffiany Stankiewicz presented the staff report for Residential Dwelling Unit Allocations. The Planning Department is recommending approval of allocation awards for the Lower Keys sub area, applicants Ranked 1 through 14; Big Pine and No Name Key applicants ranked 1 and 2, subject to mitigation availability at the time of permitting; and, Upper Keys applicants ranked 1 through 10. There were no affordable housing applicants. Recommend approval.

Chair Coward asked for public comment. There was none. Public comment was closed. Commissioner Scarpelli stated that he needed to abstain from the vote. Chair Coward asked the Board for comments or concerns.

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

CONTINUED ITEMS:

1.EDWIN AND ELLEN HANDTE, 103365 OVERSEAS HWY, KEY LARGO, FLORIDA, MILE MARKER 103.5 OCEAN SIDE: A PUBLIC HEARING CONCERNING AN APPEAL, PURSUANT TO SECTION 102-185 OF THE MONROE COUNTY LAND DEVELOPMENT CODE, BY THE PROPERTY OWNER TO THE PLANNING COMMISSION CONCERNING A LETTER OF UNDERSTANDING TO ESTABLISH THE LAWFULNESS OF A NONCONFORMING USE DATED JUNE 20, 2019 BY THE ACTING SENIOR DIRECTOR OF PLANNING & ENVIRONMENTAL RESOURCES. THE SUBJECT PROPERTY IS LEGALLY DESCRIBED AS LOT 15, BLOCK 11, LARGO PARK SOUND, PLAT BOOK 3, PAGE 111, KEY LARGO, MONROE COUNTY, FLORIDA, HAVING

PARCEL ID NUMBER 00472510-000000. (FILE 2019-139) Continued from October 30, 2019

(10:07 a.m.) Mr. Devin Rains, Planning and Development Permit Services Manager presented the staff report. This administrative appeal is related to a letter of understanding. That letter of understanding recognized commercial square footage of 936 square feet, as well as three apartments as being exempt from ROGO. The application was not recognized for vacation rental use. The vacation rental use aspect being appealed. Mr. Rains presented the images of the property currently in the IS-M Zoning District. Pre-1986, the property was located in the BU-1 Land Use District. The building permit was issued November 6th, 1985, for commercial square footage on the main level, and three apartments on the upper level. That aspect of the letter of understanding is not being appealed. The original building permit recognized the apartments as accessory to the principal use. The zoning district did not allow for transient use. In 1986, the LDRs and Zoning Maps changed to the IS land use district. The certificate of occupancy was issued June 17th, 1987. The Improved Subdivision land use district did not allow for transient occupancies at that time. In 1997, the first vacation rental ordinance was adopted which acknowledged the prohibition of vacation rentals in certain land use districts. Until that time, the term "vacation rental" was not codified and would have been reviewed as transient use, and nonconforming vacation rental type uses were no longer lawful. Those that were able to be established in certain land use districts that allowed it would have had to have obtained permits from Monroe County for that use. Staff recommends the Commission uphold the decision of the Acting Director of Planning and Environmental Resources in the decision to issue the June 20, 2019 letter of understanding that recognized the commercial square footage and the three apartments as accessory to the dwelling.

Commissioner Miller asked what year vacation rental was codified. Mr. Rains responded that it was in 1997. Prior to that, some zoning districts would have allowed for certain permitted or conditional uses but not under the BU-1 district, rather in districts that allowed for things such as motels. Mr. Rains added that no evidence of an application for vested rights related to the map amendment had been found. Commissioner Wiatt asked if back in 1985 it was usual to identify a transient use on building permits. Mr. Rains responded that he was correct, and that the BU-1 zoning district actually prohibited dwelling units other than those that were accessory to a business on site, which this permit clearly reflects. Chair Coward clarified that had a building permit had been applied for asking for a vacation rental use, it would have been denied. Mr. Rains confirmed that to be correct, though the terminology at that time would have been transient use and could not have been approved. Commissioner Scarpelli indicated that had been his question as well.

Chair Coward then asked for public comment. Mr. Williams noted that it wasn't generally done in an appeal hearing but Mr. Rohe waived any objection.

Ms. Joyce Newman of Big Pine Key, after being sworn in by Mr. Tom Wright, stated that she was in support of the denial by staff and could see no compelling need for the requested change as every unit removed from long-term rental availability to the workforce and converted to vacation rental exacerbates the affordable housing crisis.

Mr. Peter Morris, Assistant County Attorney for the Appellee, Monroe County, then conducted direct examination of Mr. Rains, inquiring about his education, professional certifications and work experience, and requested the Commission accept Mr. Rains as an expert witness in the field of planning, which the Commission did. Mr. Morris then questioned Mr. Rains in detail on his staff report, confirming these units had been permitted as market rate and not transient, and that staff was recommending the Planning Commission uphold the Planning Director's decision under appeal. Mr. Morris questioned Mr. Rains in detail about the various sections of the code, how it had applied prior to 1986, after the map and text amendment changes in 1986 when rezoned from BU to IS, and after then after the vacation rental ordinance in 1997, and had Mr. Rains read definitions from the Code into the record. Mr. Rains confirmed that at no time throughout were vacation rental uses or transient uses allowed, and that vacation rental as a term wasn't established until 1997. Mr. Rains stated he had found no records indicating the appellant had ever applied for rezoning or for a vested rights determination. Mr. Morris noted that the term "grandfathered" had been used by the appellant and asked Mr. Morris if that term had ever been recognized under any edition of the Monroe County Code. Mr. Rains responded that it had not ever been codified specifically. Mr. Morris pointed out that the appellant had referred to the units as vacation rental efficiency apartments, and Mr. Rains responded that the letter of understanding acknowledged them as lawfully-established dwelling units, and that there is no such term "vacation rental efficiency apartment" in the Code. Mr. Morris asked whether the County Attorney was ever authorized to render official administrative interpretations of the code. Mr. Rains explained that those official determinations would only be made by the Planning Director. Mr. Morris spoke about the comparisons that had been made of this property to a bed and breakfast on Big Pine Key and the 1547 Narcissus Avenue property, and asked Mr. Rains if those were valid comparisons. Mr. Rains explained that each individual property would have been permitted under its own criteria and have its own building permit history and lawfully established use under that building permit history. The buildings being compared had different permit history and zoning districts at time of permitting, and were also different with regards to how the dwelling units were established. Mr. Morris asked what the appellants had submitted with the application for the letter of understanding. Mr. Rains responded that the applicant had provided the traditional application form with some documentation and a summary court document with no backup information related to the conclusions which related to a different property on Big Pine Key. Mr. Morris asked Mr. Rains, as the planner if record, if the appellant had provided the Planning Commission more information than the Planning Director. Mr. Rains indicated they had provided no information that would lead him to a different conclusion. Mr. Rains then explained the different types of letters of understanding, and the availability of a pre-application conference to meet with the Planning Director which had not been requested by the appellant. Mr. Rains had reviewed the appellants' reply brief and disagreed with the most significant factual allegations.

Mr. Morris then discussed an appeal entitled Edwin Handte vs. Division of Growth Management held before the Monroe County Planning Commission regarding the issuance of a building permit on October 25th, 2007, to Forrer Ventures Capital, LLC, for the interior and exterior renovation of commercial property located at 103375 Overseas Highway, Key Largo, a neighboring parcel, where Mr. Handte had not represented that he owned a vacation rental use,

but rather a residential and commercial property adjacent to the Forrer property. Mr. Morris also noted that Mr. Handte's appeal in this case stated, "Possession of a building permit does not create a vested right," and it cited to 7 Florida Judiciary 2d Building Zoning and Land Control Section 47. Mr. Morris had no further questions for Mr. Rains.

Commissioner Miller confirmed with Mr. Rains that the Handte property was originally zoned BU-1, that under the old code the word "transient" was used, and that the term "transient" would today refer to "vacation rental."

Mr. Lee Rohe, Esquire, representing Edwin Handte, conducted cross-examination of Mr. Rains, pointing out the high-intensity uses of the surrounding properties. Chair Coward asked about the relevance. Questioning continued regarding the 1985 building plans approved by the Building Department, the number of and square footage of the apartments versus the commercial office space, and the number of apartments approved. Mr. Morris objected to the broad questioning with respect to the building code. Mr. Rains stated that the appellants' brief had stated there were five apartments but the correct number was three. Mr. Rohe asked if the brief was considered evidence and asked why Mr. Rains was testifying about the brief. Mr. Morris objected, stating that Mr. Rains was not an attorney. Mr. Rohe continued inquiring whether the Handte property was considered a tourist court, a tourist cottage, hotel, motel or transient building, to which Mr. Rains replied it was not, but that the word transient could be found in definitions of hotel, motel and similar uses. Mr. Rohe asked if the problem had been that people renting out their homes in residential zoning districts when there was no classification to fit the short-term rental of a home, which had resulted in the vacation rental ordinance. Mr. Rains responded that he was not with the County in 1997 but that he had read the ordinance. Mr. Rohe pointed out the language in the ordinance and the fact that it contained the term "grandfathering," which recognized existing grandfathered uses. Mr. Rains disagreed, stating that it recognized the process for establishing uses that preexisted that are later in the document such as vested rights or rezoning. Vacation rental use was not a permitted use at the time of building permit, at the time of the zoning change in 1986, and through the ordinance in 1997 which established the ability or opportunity to have vacation rental use in certain zoning districts. Lawful nonconforming structures and use, compared to nonconforming that is not lawful, was discussed. Mr. Rains explained that the apartments were considered as accessory uses and the permitted use of accessory apartment fell within the definition of dwelling unit. The legality of a landowner leasing property was discussed. Mr. Rains stated he had found no evidence of any lawfully established transient or vacation rental use at all on the Handte property, that the vacation rental permit process had come about in 1997 and would have required a permit. No permit had been applied for or issued for the Handte property. The Randy Ludaker letter from June 25th, 1993 was then discussed. Mr. Rains believed the letter was issued to make residents aware of upcoming code language related to vacation rental use. Judge Koenig's court decision as to the 1547 Narcissus, Big Pine Key property and finding it to be a lawful nonconforming use and structure was discussed. Mr. Rains stated that this was a different property on a different island with different permitting history. Judge Payne's decision involving bed and breakfasts on Big Pine Key was discussed. Mr. Rains testified that the Handte property was dissimilar to those

properties as well. Mr. Rohe then made a distinction between the terms vacation rental and transient rental. The definition of vested rights was discussed.

Commissioner Miller asked Mr. Rains what the process to address this situation would be. Mr. Rains stated that property owners with a lawful nonconforming use that has been lawfully established can pursue a map amendment to establish a land use district that allows for different uses than those currently allowed under their current zoning district.

Mr. Morris conducted redirect examination of Mr. Rains, asking if in his expert opinion and based on his knowledge and review of the Monroe County Code, if renting for fewer than thirty days or twenty-eight days throughout the year would have been considered a transient use. Mr. Rains indicated that was his opinion. Mr. Morris rested his case.

Mr. Rohe called Mr. Edwin Handte on direct examination. Mr. Handte described the commercial property at 103365 Overseas Highway, adding that his residence was the closest home to that property. Mr. Handte is a property manager residing in the County since 1982. This property was purchased in 1980 as income-producing property and was zoned BU-1 at that time. His understanding of BU-1 zoning allowed light business with adjacent apartments if you had an office. The surrounding high-intensity uses were discussed. Mr. Handte had received his building permit for the Key Largo property in 1985, and certificate of occupancy in April of 1987 which had been lost, and a new certificate of occupancy had been issued in June 1987. All three of his properties were first cited in 1999 but those cases were dismissed by Mr. Shillinger. Mr. Handte then explained that the original plat for the property had allowed boarding houses, that there were deed restrictions prior to zoning. Mr. Wright cautioned the Commission that private deed restrictions are not something that the County has the ability or the standing to enforce and is not a relevant consideration. Mr. Handte stated that the requirement for vacation renting in Key Largo was a County occupational license, a state license and a tax ID number. Mr. Morris then conducted cross-examination on Mr. Handte, asking if he had ever worked in the field of federal, state or local government review. Mr. Handte responded that in 1984, County Commissioner John Stormont had appointed him to the Monroe County Board of Adjustment. Mr. Morris then pointed to permitting paperwork from the Florida DOH which indicated a maximum of three employees and a maximum of three apartments, one bedroom each, and asked whether that jived with vacation renting of the apartments. Mr. Rohe objected to questions regarding a Department of Health requirement. Mr. Handte responded that he didn't think it had any relevance. Mr. Rohe rested. The Commission had no questions. Mr. Wright stated the attorneys could have closing statements.

Mr. Morris stated the County would rest on its briefs and the testimony elicited. Opinions and hearsay offered by the appellant should not be conferred substantial weight as the appellant is not qualified to render expert opinions on specific uses. The County produced a witness that is amply capable and qualified to render expert opinions in those fields. Code Enforcement prosecutions that result in a dismissal are not adjudications on the merits, and only mean the case was dismissed and not resolved. An occupational license is not a regulatory license like a business tax receipt. The adjacent properties are not relevant as this is not a proceeding to determine whether something is reasonable as compared to other properties. This is an appellate

forum in which the Commission is sitting in review of the Planning Director to decide if she committed a mistake that should be corrected. The County has amply sustained the legal and evidentiary grounds to uphold the decision. To the extent that the appellants are relying upon the letter from Mr. Ludaker, there was no testimony that Mr. Handte actually received or relied upon such letter. Only the Director of Planning is legally authorized to issue official interpretations. Mr. Morris reiterated that the County would rest upon its brief filed and the oral testimony of Mr. Rains.

Mr. Rohe stated that the letter of understanding had been sought after Judge Koenig ruled upon Mr. Handte's property on Big Pine Key which held that under the old code, vacation renting was neither allowed nor disallowed. The County did not appeal that decision and if they had disagreed with it they could have appealed it. Mr. Rohe had thought the County would follow Judge Koenig's ruling that said that it was not illegal to vacation rent back then when Mr. Handte established his properties and uses, and the letters of understanding would be obtained. This affects the marketability of the properties when there is a cloud hanging over them and he wanted to dispel that cloud. The County instead decided to parse or split hairs with Judge Koenig's decision and say, one property is on a different island or has a different zoning. The principle underlying Judge Koenig's decision is that it was not illegal to vacation rent at the time that these properties were established, and that is the very definition of grandfathering and having a nonconforming use or structure. Grandfathered properties need to be phased out. Many codes by local governments allow an amortization period where they say the life of this property or this building is forty years or fifty years, and then they phase out the grandfathered property before requiring conformance to the present zoning. The County instead said that if Mr. Handte wants to maintain his grandfathered status, he now you has to get this permit, when the permit requirement arose out of the same ordinance that was enacted in 1997 that Judge Koenig had made a ruling about. The property in Key Largo did not have a judicial declaration that it was grandfathered per se, but the same principle applies. If this were to go to a court, the court would follow what's called *stare decisis* and see the Big Pine Key property as precedent.

By showing the intensity of the uses around Mr. Handte's property, the Commission can see that there's no harm to the public being done by this small business in the midst of much heavier uses. Property owners have always been allowed to rent their property. The conundrum occurred when the County encountered people renting their homes or parts of their homes as vacation rentals. The question was at what point does renting a home become a commercial operation, and the County decided on less than twenty-eight days, in 1997 when the ordinance was passed. Up until then, there were no definitions, strict prohibitions or express prohibitions against vacation renting. Mr. Rohe asked the Planning Commission to bear in mind that the County was trying to rewrite history and split hairs with Judge Koenig's decision.

Commissioner Miller stated that philosophically, he was on Mr. Handte's side. However, being sworn to uphold the law he would have to deny this appeal. Commissioner Demes agreed with Commissioner Miller, did not find any misconduct by the County staff or retaliatory motives, disagreed that there was any violation of the ancient properties of law dating back to the Magna Carta in 1215, and did not see the tie of the two properties to Judge Koenig's decision.

Commissioner Demes agreed with the County staff's belief and findings on this particular case. Commissioner Wiatt stated that the appropriateness of IS Zoning was not the issue here. This property was never lawfully established in any way, shape or form for transient use. Given that, and given an IS Zoning, the County has a requirement that the properties such as these not be short-term rented for less than twenty-eight days and he sees no wiggle room in that. Commissioner Scarpelli stated though unfortunate, it is the law, and he found no evidence throughout the plans and documents that mentioned anything about a transient use. Judge Koenig's decision about 1547 Narcissus is a different island, a different zoning district, and different everything relative to this property. The residential units on this property are tied directly to a commercial use, which is how they ended up being built per the 1970 Code and are not a primary use, whereas with 1547, the residential use was a primary use.

Motion: Commissioner Scarpelli made a motion to uphold the Planning Director's decision. Commissioner Demes seconded the motion.

Roll Call: Commissioner Wiatt, Yes; Commissioner Miller, Yes; Commissioner Miller, Yes; Commissioner Scarpelli, Yes; Commissioner Demes, Yes; Chair Coward, Yes. The motion passed unanimously.

2. ROCKLAND OPERATIONS, LLC, QUARRY PHASE III, ROCKLAND KEY, MILE MARKER 9.4: A PUBLIC HEARING CONCERNING A REQUEST FOR A MAJOR CONDITIONAL USE PERMIT FOR THE DEVELOPMENT 57 MULTIFAMILY AFFORDABLE HOUSING DWELLING UNITS AND STORAGE FACILITY. THE SUBJECT PROPERTY IS LEGALLY DESCRIBED AS PARCELS OF LAND IN SECTION 21, TOWNSHIP 67 SOUTH, RANGE 26 EAST, ROCKLAND KEY, MONROE COUNTY, FLORIDA, HAVING PARCEL ID NUMBERS 00122081-000300, 00122081-000400, 00122070-000100, 00121980-000500, 00122070-000103, 00122070-000109, 00122040-000000, 00122040-000100, 00122081-000500, AND 00121980-000600. (FILE 2019-205) Continued from January 29, 2020

(12:34 p.m.) Mr. Bradley Stein, Planning and Development Review Manager, presented the staff report. This is a request for a Major Conditional Use Permit for 57 multi-family affordable dwelling units and a 40,000 square foot storage building on Rockland Key. The owner is Rockland Operations, LLC. The agent for the owner is Bart Smith. A community meeting was held on December 4, 2019. Three members of the public were in attendance. Relevant prior County actions were pointed out on page six of the staff report. This property has a resolution by the BOCC reserving the 57 multi-family units. Mr. Stein presented the entire site plan aggregated to get the density on the eastern portion of the property. There are two residential buildings with parking area between, and the storage building is to the south. The property is in compliance with the Land Development Code, with a condition that the County biologist will review the landscape plan prior to the resolution being signed. The proposed project does meet the County's traffic concurrency but based on additional projects that have been reviewed but not yet permitted there is a potential deficit of traffic on Segment 3 within the County's arterial travel time delay study areas. Segment 3 is the portion directly related to this project. The owner acknowledges and agrees that any traffic level-of-service condition is preliminary and

only represents a conditional concurrency determination. The final concurrency review shall be completed during the building permit review to ensure adequate roadway capacity is confirmed and the adopted level of service is maintained. At that time, there may be mitigation requirements.

Commissioner Miller asked when review would take place if there were potential problems with traffic congestion and lowering of service level. Mr. Stein responded that other developments previously approved, if building permits were issued for those, there may be a conflict at that time. Commissioner Miller asked who would be responsible for the mitigation. Mr. Stein responded that it would be whoever was doing the development at that time. The system is first come, first served. Commissioner Miller asked if the development could then potentially be limited, and Mr. Stein indicated that was correct. Approval was being recommended at this time. Mr. Stein mentioned that five additional public comments had been received.

Commissioner Wiatt asked about page seven of sixteen, item three, the policy regarding employee housing or commercial apartments, and asked whether the employee housing was specific to workers in the industrial area or any employees in the County and if there was any concern with complying with that, depending on how employee housing is being defined. The definition of employee housing was read verbatim by Mr. Stein.

Chair Coward thought the biggest sticking point on this project was traffic. The report previously had 416 daily trips and today's report is down to 312 daily trips, and he asked where these numbers were coming from. Ms. Schemper explained that staff had confirmed this with the traffic consultant. There was an issue between total trips and segments. The updated version of the traffic study changed the numbers slightly, and there was an arterial travel time and delay study of 2017 which was being used. Since the time that study was conducted other projects have come in for review and some have approved building permits so the reserve capacity needs to have the number of trips already permitted subtracted from it, and the previous version of the staff report was looking at a calculation that included a number of projects that had not actually been permitted. However, this is preliminary concurrency review and at the time of building permit, if there is a deficit at that point, then traffic mitigation will be required.

Commissioner Demes thought there wasn't a NIMBY attitude but concerns about traffic. His concern was that at the time this was done in August, if this had been a statistical analysis or done with traffic counts. If it was done with traffic counts, knowing the permitted projects aren't fully occupied, there are concerns about how the area will be impacted. Commissioner Demes read from page five of sixteen of the staff report, paragraph (e)(1)(e) "An appropriate shared contribution or construction as sufficient to accomplish one or more mobility improvements that will benefit a regionally significant transportation facility," and asked if that would mean that if the residents in the area go along with this and expect the traffic to be adequately addressed and it doesn't work, whether somebody could fall back on (e) as an alternative mitigation to only build bus stops up and down the County and not address the problem at hand at that intersection. Ms. Schemper stated that (e) means if there is insufficient capacity for this project to move forward according to the level of service standards, then contribution could be made to a larger roadway improvement project that would increase the level of service. There is not a list of

roadway improvements to increase the level of service right now, so the applicant would need to work with FDOT, the County's traffic consultant and their own traffic consultant to come up with options for that. The work plan for FDOT may identify certain projects and in March, the BOCC will be looking at the scope of work for the Transportation Master Plan Study that may also identify some future improvements. Commissioner Demes asked if it would relate to the actual segment of road that's impacted. Ms. Schemper responded that it would have to relate to the specific deficiency based on segments and overall highway. The potential issue at the moment is about the segment. Commissioner Demes asked about the accepted level of service and the decrease in percentage, and asked what the level of service actually is. Ms. Schemper responded that it is Level of Service C for U.S. 1.

Mr. Wright asked if Commissioner Demes had had conversations with individuals in the neighbourhood regarding this application. Commissioner Demes indicated that was correct. Mr. Wright explained that under Florida Law, when any member of this panel has an *ex parte* communication, the nature of the communication and who it was with must be disclosed on the record, and he must state whether it would affect his vote. Commissioner Demes stated that nothing would affect his vote, and asked if that included emails. Mr. Wright stated that it did. Mr. Williams cited Section 286.0115, regarding disclosing contact with members of the public outside of this hearing which includes emails, telephone calls or in-person meetings. There is nothing unlawful about doing so but it must be disclosed on the record. Major Conditional Uses are considered quasi-judicial.

Commissioner Miller stated he had not spoken with anyone on this item. Commissioner Demes stated he had received emails. Chair Coward and Commissioner Scarpelli stated they had each received six emails from the public after six o'clock. Commissioner Miller stated he had not read his emails. Commissioner Demes stated that Mr. Saunders had called him yesterday afternoon, Commissioner Cates had called him, and he had spoken to Lee Murray's wife, and he believes that was everyone other than the emails, but these communications would not affect his vote today. Chair Coward stated he'd had two phone calls, one from Mr. Saunders and one from Mr. Barrios, along with the six emails referenced earlier, and it would not impact his vote. Commissioner Wiatt stated he'd had no contacts. Commissioner Scarpelli mentioned the six emails and a text conversation with Commissioner Coldiron, but it would not impact his vote.

Commissioner Demes stated he had looked yesterday and saw a fence between Calle Dos and the project and noticed screening on it, and had noticed that the proposal had mentioned buffers between residential and industrial areas; however, there would be no fencing on this project. Mr. Stein stated that no fencing had been approved. Commissioner Demes then asked about page eleven of sixteen and the required parking spaces calculations, and how many spaces were associated with the mini self-storage. Mr. Stein stated it was a total calculation because the site was aggregated and was a total of 189. Commissioner Demes then commented that the earliest reference he saw in the staff report was a 2000 letter that started the planning for this area. Ms. Schemper stated that was under prior County action with a letter of understanding and she believed that was correct. Commissioner Demes stated that realizing the location of this project and the 2000 date, he believes there was a project submitted for 86 units of housing in this area

and the County let the applicant move on it to the point that the applicant had expended quite a bit of money before the Navy found out about it. The Navy was going to come to a Commission meeting, but one of the planning members marked on the sign on site that the meeting was cancelled, and then the meeting was held anyways, but at the time the Commission for that area said the Navy didn't have a problem with the project. The project went forward and the Navy was forced into making a decision to either contest the actual procedure or go after the issue of compliance. This went to an administrative law judge and the project was unfortunately denied. It is now twenty years later and he sees no reference to this being in the military installation area of impact. It would not have an impact on density and intensity because it's in the maximum allowable, and one of the things that the Navy did as part of the military compatibility criteria was guarantee that an applicant could have maximum density and intensity in exchange for consideration as part of the MIAI, and this project does that. Commissioner Demes was surprised there was not a Navy representative present as lighting is a concern for the project under the MIAI. Commissioner Demes asked why the MIAI wasn't an item listed in the staff reports that used to be there.

Commissioner Miller asked if Commissioner Demes was talking about the same site where a project was denied. Mr. Stein stated he was unaware of that and it was not included in his review. Commissioner Demes added that that criterion does not exist today. Ms. Schemper stated that a project had not been denied on this property in the last two years. Mr. Williams added that that is all that is supposed to be considered. Commissioner Miller wanted to know what happened in 2000. Commissioner Demes stated that his point was that the staff report contained nothing about the military availability criteria.

Mr. Bart Smith stated that he knew what Commissioner Demes was talking about and that the requirements under the military installation area of impact were required and were complied with. That is why this is the last part of Rockland that can be developed. Commissioner Miller was interested in why the prior project had been denied. Mr. Smith stated it was actually approved in 2000, and then the ALJ threw the proceeding. This was reversed and never went forward due to notice. Commissioner Demes added that he didn't want to derail this and wanted to move on, but he had been one of the witnesses in the administrative proceedings. His point was to keep the MIAI in the staff report. Mr. Williams then wanted to explore the concept of a conflict and asked what Commissioner Demes' involvement was with this prior project and whether there would be a continuing conflict. Commissioner Demes stated there was no conflict, that he was the one that had looked at the military criteria to get to the point that approved this level of development. He is still employed with the Navy, but has had the conflict of interest determination indicating there is no conflict. He was only requesting the County have the MIAI consideration in the staff report. Ms. Schemper apologized for the omission and indicated that it was an oversight. Mr. Bart Smith stated that he was in contact with Ms. Monnier, the liaison from the Navy. Commissioner Miller asked about Mr. Smith testifying to conversations with the Navy. Mr. Wright wanted to make it clear that Mr. Smith wasn't testifying, he was representing the applicant. Mr. Smith stated that a copy of the plans had been provided to the Navy for feedback asking for any conditions they wanted to place on it. The conditions for approval are

included in the resolution for approval. Ms. Schemper stated staff had spoken to the military and they had no comments to submit on this project.

Mr. Smith, on behalf of Rockland Operations, presented the project for Quarry Phase III. This is multi-family affordable housing but because of the industrial use category it is entirely employee housing. This is a tax-credit funding project. The goal is to break ground in April-May. The income levels are broken down; 5 units that are 25 percent of AMI, 23 units low income restricted at 60 percent AMI, the remainder are moderate which has the economic drive. This is the only industrial area left with density. There is no density remaining on Rockland Key compliant with the MIAI. Mr. Smith discussed the sound attenuation areas, having being situated in the 65 to 69 DNL and the other half is 70 to 74 DNL, which is in compliance. The 189 parking spaces is for the entire project. The first level of service for traffic is U.S. 1 which is a Level of Service C. Every two years there is an arterial study. A reserve trip capacity is determined to maintain that level. The trips from the project cannot decrease it below that level. If it does reduce it to a Level of Service D, within five percent of C, it can be mitigated. That is reviewed at the time of permitting. The intersection is a separate County road and the Level of Service is D, and if it drops below five percent it must be mitigated. They are two separate and distinct items. The project is compliant with levels of service for both U.S. 1 and the County road intersection.

Commissioner Scarpelli asked if the traffic study included the Quarry being finished. Mr. Smith said that it was not included in the actual traffic counts at this juncture. However, it will not below a Level of Service D adding in the Quarry trips and is code compliant. Mr. Smith continued with the entire site plan showing the employee housing being two stories over parking. Parking is outside and inside, trash facilities are on the far side. The road is going to be conveyed to the County. There is vegetation in place on one side of the road and a buffer yard on the other side of the roadway. There's another buffer from the pit side and they all connect onto the bottom of Calle Dos which goes out to U.S. 1 through an existing roadway already in place. Mr. Smith presented the floor plans and square footages of the units. The project is designed for employees of Monroe County. Open and dark sky lighting could be put in as a condition and there is no desire to do more than that. The applicant is requesting approval.

Chair Coward asked for public comment.

Eduardo Herrera, a 35-year resident at Calle Uno stated that the Toppinos had done a great service to the County with the affordable housing project. The biggest impact is the traffic. Although it's a great community project, this is a business to make money. The Toppinos have received extensive tax credits and building permit credits from the County, so the residents have contributed a financial stake in this development. Currently, there are 50-55 homes on Calle Uno and Calle Dos that have been the only actual use to access U.S. 1 from this entranceway. The already-constructed development is 208 units with 474 parking spaces, with the new Quarry site being 57 units and 189 parking spots. The reality of those numbers is hundreds upon hundreds of real daily car trips during peak times for workforce housing. The impact has already been felt. From the beginning of the project, the main discussions have been traffic and the residents are asking that the developer use the existing land that they have to provide a

dedicated access way out onto U.S. 1 where there are already two lanes. There is already a single-lane bridge where people are accelerating into the 55 zone, school bus traffic, and a very small turn lane to enter Calle Uno. Once that's filled up, it starts backing out into U.S. 1, and this existed before these projects. Mr. Herrera stated he had read the original traffic study in detail and the times that some of the counts were actually taken were at very opportune times for low traffic. This has already created a safety issue. Mr. Herrera believes it is irresponsible to not consider how this can impact the safety of residents and traffic. There was a land development use agreement submitted in 2017 for a partnership with the Dickerson Group for a marina expansion and they already have a road use agreement. The fact that the Toppinos are experts in roadway development and it is their primary business, they could easily develop a roadway. The residents are asking that the development be approved with a condition of the development of an alternative exit onto the U.S. 1 area in the two-lane zone.

Mr. Wright swore in all public speakers at one time. There was objection to speakers being put under oath and Mr. Wright explained that this is a quasi-judicial proceeding and it is required.

Mr. Trace Finney, discussed the impossible task the Commission has had due to Hurricane Irma to approve housing projects and maintain the safety and quality of life of the residents, and thanked them for that monumental undertaking. Under pressures at the time, this Board and the BOCC did not want undue delays with the previous phase of this project and both boards allowed the applicant leniency by only stating that they should make every best effort to obtain a separate entrance. Since this new phase of the process has been proposed, multiple BOCC members have made clear that it should be contingent on a separate ingress and egress, and this has been stated on record in County meetings and through correspondence. The residents have waited patiently in good faith for that a separate entrance to be obtained. It is not pertinent whether this is due to an unsatisfactory offer on the part of the applicant or the inability for members of the various lines of business of the neighbouring property to come to agreement on where on their own property this ingress and egress should be. Mr. Finney asks that the applicant fully commit to using their own property to keep everyone safe. At the Planning Commission meeting in 2017, many residents spoke in support of the project and have provided financial support in the form of subsidies for application fees and road construction funding. Mr. Finney asks that the applicant uphold their end of the deal and if unable to for any reason that the Planning Commission and BOCC deny the application until it satisfies the original intent of the separate ingress and egress. The map that was used, the entire area with the blue diagonal slashes on the site plan shows the entire area being considered for the multi-use portion factored into that density, and then the applicant has claimed that because there are various different lines of business comprised of different people on that neighbouring property that they can never agree to it. Mr. Finney supports what is trying to be done by the applicant but not at the expense of some of the dangers and safety issues that the Commission will hear about from other speakers.

Ms. Joyce Newman of Big Pine Key stated her concern is traffic congestion. The applicant's attorney spoke about level of service, which are numbers. Ms. Newman is speaking of people and the residents' quality of life. The August 2019 traffic study is of concern. There are fewer

people in the Keys in August and the times of day were not during the peak periods. Already 208 new units have been constructed all using the access on U.S. 1. The neighbours objected to this very loudly until they ran out of money to fight it. Given the amount of Toppino-owned property, an alternate ingress and egress route should be required. If this means giving up a little bit of density for the sake of the community's quality of life and for the sake of safety on U.S. 1, totally separate from level of service on Stock Island, an alternate route ought to be required.

Mr. John Toppino stated he has lived on Calle Uno for thirteen years. The Toppino family has multiple family members who live in the neighbourhood and it's their quality of life too. The only thing impacted is the bus stop every morning, as there may be five more kids going to school there. The number one thing he hears is that the Quarry is at full capacity, there are no units left, and are more being built. To say anything else is a detriment to the community.

Mr. J.W. Magee spoke from the perspective of a 32-year law enforcement veteran, retired two years, with 26 years with the Monroe County Sheriff's Office as a traffic enforcement specialist and education. This did not include his time in Iraq. The last nine years of his career were as a motorcycle officer in the Lower Keys. At that time, his career had been primarily as a traffic enforcement officer and public safety career professional, also as a qualified expert witness in traffic enforcement issues. Mr. Magee has also received state wide recognition by the law enforcement liaison, a project of FDOT, for crash damage and injury reduction in his areas of patrol. He is now the safety director of Charlie Toppino and Sons, Inc., and Monroe Concrete, involved in increasing their levels of safety and was involved in the traffic survey using FDOT guidelines in the Calle Uno-U.S. 1 intersection. During the high peak times there has so far been a minimal impact regarding the quantity of traffic exiting from Calle Uno onto U.S. 1 with the major backups occurring when the parents leave the bus stop between the hours of 7:05 and 7:15 in the morning. This morning there were about five cars backed up. Mr. Magee's observations of traffic using the FDOT guidelines show a minimum impact. There are a lot of military people going to NAS from the Quarry which go to work earlier than most and get off at different hours, and are not in the high impact time. There has been less than a five-percent increase in the quantity of traffic using that intersection, especially in the mornings. Mr. Magee enters the highway from Key Haven and every once in a while he has to wait about 70 to 75 seconds to go north from Key Haven in the morning. It gets backed up but that pales in comparison to the Gulf side of Big Coppitt, and trying to get onto the highway on Big Coppitt. There has been an increase in traffic everywhere due to the efforts of the TDC attracting more money to the Keys. Mr. Magee offered his condolences to those who have been inconvenienced and stated that Charlie Toppino and Sons would continue to be good partners with the community.

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

Commissioner Miller asked when the separate ingress and egress would be addressed. Ms. Schemper clarified that what was being referred to was the development agreement for the earlier phases of the Quarry which did not say separate ingress and egress shall be provided. It says, "The Quarry shall use commercially reasonable efforts to obtain an easement to access U.S. 1 directly pursuant to a non-exclusive ingress and egress easement agreement as shown on page C-10.2B entitled Easement to U.S. 1," which showed a potential connection to U.S. 1.

Commissioner Miller asked how that was coming along. Ms. Schemper reiterated that the language does not say it must be done, rather that the Quarry must use reasonable efforts to make that happen. Commissioner Miller asked if that had sweetened the pot as far as saying yes to the development. Ms. Schemper again reiterated what had actually been agreed to in the legal development agreement. Commissioner Miller asked about the first phase of the project and whether the affordable units came from Key West. Ms. Schemper stated that a portion had come from Key West and a portion from Monroe County, which had to do with an agreement between DEO, the municipalities and the County regarding certain unused allocations in Key West and how some of those came back to the County. Commissioner Miller stated that it came about because there is a prohibition against moving any units into areas like this. Ms. Schemper did not know what he was referring to. Mr. Williams asked Commissioner Miller to be more specific. Commissioner Miller stated that there is a prohibition against moving affordable housing units into low-lying areas. The affordable housing units that were used came from Key West which circumvented that prohibition. Now there are 57 affordable housing units that are coming from the County. Commissioner Miller wanted to make sure they were not being used in a Velocity Zone. Commissioner Scarpelli added that no units could be built in Velocity Zones. Commissioner Miller thought the way this was circumvented was because Monroe County affordable housing allocations were not being used.

Ms. Schemper clarified that the site being discussed today is 100 percent within an AE10 flood zone. Right now, there is no discussion about allocating ROGOs. Commissioner Miller stated that he understood, but is concerned about the ingress and egress that the public is concerned about. Commissioner Wiatt also expressed concerns about the traffic. Having been on the Planning Commission for almost nine years, he has never before seen a whole page committed to the traffic study and that gives him pause. Having said that, the project seems to be in compliance and he is not sure what can be required if it's in conformance. Commissioner Scarpelli pointed out the diagrams with the number of trips turning onto U.S. 1 at peak hours. The overall numbers seems large, but when it's spread out throughout the day, it's not out of hand when you consider how many cars get on U.S. 1 throughout the Keys all day long. Commissioner Scarpelli agreed with Mr. Magee that it's dangerous watching people turn onto the highway on Big Coppitt since the roads have no shoulder for a driveable turn lane as this one does. Commissioner Demes stated appreciation for the applicant's consideration of the MIAI and knows that traffic is a huge issue and the studies can only be based on best information available at the time. As the project develops and more units are occupied we will see what's going to happen. Upon issuance of the permit the level of service will be evaluated at that time. The Toppino family is an honourable family and they live in the neighbourhood. That's all the Commission can do. Chair Coward stated that the Quarry was at one-third capacity and at 7:30 this morning there was traffic backed up, bumper to bumper, from mile marker 12.5 to 9. Someone from the audience stated the Quarry was at 70 percent capacity. Chair Coward continued that this adds at least another 100 units coming online from that property, with a funky turn from Calle Dos to Calle Uno and then onto Route 1 and he feels someone will get hurt if a better way cannot be found to get people onto Route 1 from there. The project is fantastic but he is concerned about traffic safety.

Mr. Stein stated that he had discussed this project today with Sheriff Ramsay who had assured him there are no additional safety hazards. Commissioner Miller asked about added congestion and quality of life in these neighbourhoods, aside from the safety factor, adding that he was not comfortable knowingly permitting a traffic mess. Chair Coward asked about what had been discussed at the prior meeting. Commissioner Wiatt recalled that the applicant was going to look for other opportunities to add egress and/or access. There had not been something that said A, B and C must be done, it was more A, B and C must be looked at with the idea that, if possible, it would happen. That's the problem with not putting specific requirements that it had to be done by a specific date. This is one of the reasons he shares the public's concerns. Having said all that, Commissioner Wiatt was not sure the Commission was in a very good position to deny the application based solely on that. If the Commission had said back in 2017 that an additional egress access would have to be done, then they would be on firm footing. Commissioner Miller stated that it was the carrot that was held out. Commissioner Wiatt agreed, but that hard, well-defined language did not make it into that stage of the development.

Mr. Williams interjected that these were terms that had been reached with the BOCC and voted upon at that level so it was no failure or misunderstanding of the Planning Commission. Commissioner Wiatt agreed that that had been the Planning Commission's recommendation, and it still is. Commissioner Miller thought that maybe the BOCC should vote on the Major Conditional Use instead of the Planning Commission. Commissioner Scarpelli added that in his opinion, the numbers for parking spaces relative to the unit sizes is skewed. Most large-scaled developments have an over-abundance of parking that is not used, which is why it may not have looked as though the Quarry was at 70 percent capacity. A lot of these people don't have as many cars as the studies say they do. The amount of cars does not equate to the number of parking spots. Commissioner Wiatt asked if any parking variances had been given on the initial project, and Commissioner Scarpelli responded that they had not, which was part of the problem, and it is unfortunate that green space is wasted with blacktop. Commissioner Miller asked if development would be created without the infrastructure to sustain it, and that's what it looks like is being done here. Ms. Schemper responded that the staff report states that there is the infrastructure to support this development. Commissioner Miller asked if the County has the roads to support this development. Ms. Schemper responded that as of today and according to the adopted level of service standards for both County roads and U.S. 1, it does. Commissioner Miller asked why another ingress and egress had been discussed if it was not needed, and why was it held up as a carrot if it was not needed. Commissioner Wiatt thought it had mainly been due to public concern. Commissioner Demes asked if he was missing something and if this could be a mitigation measure. Ms. Schemper responded that there is no mitigation required at this time. Commissioner Demes suggested waiting to see how the permits progress and if at such point in time there's a deficit, then something would have to be done. As it sits right now, there will not be a deficit and it will meet the level of service requirements. The next project may have a deficit and would have to address the issue. Commissioner Wiatt asked if a line item should be added to allow for this to be readdressed as the project develops. Commissioners Scarpelli and Demes both thought it was already there. Commissioner Miller added that it was something that was already in the previous project that still hasn't happened, and at the end of this it won't happen because it hasn't been made a condition.

Commissioner Wiatt added that the traffic studies have to indicate certain things to move forward, and he sees no evidence that the project is not meeting the standard. Though he shares the public's frustrations the applicant is meeting the standard. Commissioner Miller stated that according to the County, the level of service on U.S. 1 has not decreased over the last twenty years. Ms. Schemper responded that she would have to look at the reports over the last twenty years. Commissioner Wiatt added that according to the newspaper at least, it's certainly been impacted. Commissioner Miller added that in reality, it has, but on paper everything is still okay. The methodology was changed as far as calculating the level of service on U.S. 1 because it got to a point where developments could be shut down looking at just one segment. Ms. Schemper responded that the current Code and Comp Plan requires evaluating by segment and by U.S. 1. There had been discussion about changing the methodology to be just by segment, but that was rejected. Commissioner Miller stated that everything is fine on U.S. 1. He was hoping for a compromise to take care of this neighbourhood at the same time as building affordable housing, to show the neighbourhood that the Commission cares about the congestion in their neighbourhood. It was held out and the vote was based on the fact that that was put in front of the people who were voting for approval. Commissioner Miller wanted to know why it was off the table and something for maybe in the future. Chair Coward asked if that could be put in place or if it was not a possibility. Ms. Schemper stated the Commission could add the condition to the Conditional Use Permit. Mr. Williams added that the Commission may add a condition but it must be correlated lawfully to what the Commission is doing

Commission Miller stated that without this, his vote would be no. He would like to see the project go through but would err on the side of the people who already built their homes and have rights. Commissioner Miller offered a motion for approval based on an egress and ingress that was alluded to in the previous reports by the developer. Mr. Wright assisted with wording asking for the Commission to be very clear. Commissioner Wiatt asked if the Commission could first give the applicant a chance to respond.

Mr. Smith stated that he could not offer a separate roadway, and went through what had been done as part of the best efforts, which had involved him getting poisonwood on his head. The prior project met the level of service, but any time additional ingress and egress can be provided, it's great. If the County is willing to pay for that additional ingress and egress, there is always the ability to do it because then there is no cost burden to the developer. This is an employee housing project. The margins are incredibly thin. Putting in an ingress and egress through an area not owned by the applicant does not get financed. The entire property to the south is owned by Rockland Commercial Center and is 400 feet away from Calle Uno. There is a standard in the County code and in the FDOT requirements where access to U.S. 1 cannot be within 400 feet of another access. Rockland Commercial Center had been asked to provide an easement and they were receptive at first, but then had a potential sale or leasing to some developed properties for different uses and ultimately informed them that it could not occur, so that one was off the table. Commissioner Miller asked when Mr. Smith was made aware of that. Mr. Smith stated it was after the County Commission meeting. Commissioner Miller added that it was after he had talked about using this. It was doable before the vote, and after the vote it is not doable anymore. Mr. Smith stated that the applicant had agreed to use reasonable efforts. It's doable if you get an

easement. It was also attempted with the property owner next door owned by Joe Walsh. Both of these properties had other issues come up due to a wetland in between them which can't be filled. A biologist had been hired to go through these properties to determine the feasibility of filling it to utilize it for this roadway. Designs were put in to see if the FDOT could approve another entrance that was less than the 400 feet, however in that area a large portion of the neighbouring property would be needed which the property owner would not agree to. Reasonable efforts were utilized over and over again to satisfy that condition. At this juncture, the condition cannot be satisfied, which would mean if required, the project would not proceed. The project meets the level of service to be approved and is in conformity. Mr. Smith asked for Sheriff Ramsay to be allowed to speak to the intersections of concern, which reopened public comment.

Sheriff Rick Ramsay stated that he had been asked what the sheriff's office was experiencing in the area. He stated he has received no complaints on traffic, no issues, no questions, and no concerns. He drives past that road multiple times in the course of a day. There have been no issues with congestion of traffic trying to get off or onto U.S. 1. The only two complaints received were speeding complaints from Mr. Toppino and a second complaint from a neighbour for speeding. Additional traffic enforcement was done out there. There was one crash on the corner of Calle Uno and Besty Rose. In the Sheriff's opinion, the MCSO has seen no adverse impact on traffic. Commissioner Miller asked if he had ever received calls telling him that traffic was moving very slowly anywhere on U.S. 1. Sheriff Ramsay indicated that he had, that half the people in the County have his cell number and he gets texts and emails constantly, particular from Islamorada. Putting more cars on the highway affects traffic. The TDC brings more and more tourism down here and it affects the flow. When they're not here, everyone wants them; when they're here, everyone wants them to go. Commissioner Miller explained that the neighbours are praising the project and asking for something in return.

Mr. Bart Smith added that at this time, there are 144 units online. The vehicles leave all day long through a 24-hour cycle, and every traffic study that's done covers 24 hours a day. Adding a requirement for an alternative access now kills the project. He has worked at it and barring eminent domain from the County in the correct place, it will be a very difficult task, and puts it outside of the developer's control.

Commissioner Miller thought that it is now or never, if this isn't done now it will never happen. This project got as far as it got based on certain statements that were made and the developer realized this would be a problem because that's why he said they would try to change the ingress and egress, otherwise that would never have been put forward for the public. The developer now says it can't be done but still wants it approved. Commissioner Miller feels a condition is necessary. Commissioner Scarpelli asked when the new traffic study would be coming out. Ms. Schemper responded that the draft from 2019 goes to the BOCC this month for discussion and direction. There are capacity issues on U.S. 1 overall. The County would begin using that study when and if the BOCC approves it and adopts it as part of the Public Facilities Capacity Report. The earliest staff could potentially begin using that study would be perhaps May, but there is no guarantee. Mr. Smith stated that it probably would be looked at during the permit stage but he

couldn't say for sure. Commissioner Scarpelli asked if it would be too much to ask for another traffic study done with the new traffic numbers. Mr. Smith stated he would not want to rely on something he hasn't seen, but he could do the intersection itself because that's what was being talked about, and it could be done before time of permit. Commissioner Scarpelli noted that at least it would be taking into account the current residents of the Quarry Phase I and II. Mr. Smith added that the last two buildings were being turned over to be leased up in the next 30 days and there is a waiting list. Mr. Smith was fine with providing an updated traffic count for the intersection of Calle Uno. Commissioner Scarpelli thought that would help with the concerns of the neighbourhood. Chair Coward stated that the issue was both Calle Uno and Route 1. Commissioner Wiatt asked if language could be added during development agreement that this new study would be taken into consideration. Ms. Schemper responded that a development agreement was not being proposed for this project. This would be a separate numbered condition, and asked for Commissioner Scarpelli to clarify his condition.

Commissioner Scarpelli clarified that as part of this Major Conditional Use, require an updated traffic study for the Calle Uno intersection accounting for the current residential capacity of the Quarry. Mr. Smith suggested adding it under staff's recommendation of approval dealing with traffic, under (1) (a) and to add an (f) that for purposes of providing confirmation that the level of service for the Calle Uno intersection, the property owner shall update its traffic study prior to building permit issuance to show compliance. Ms. Schemper asked if this was a condition to request the update regardless of final concurrency review results. Mr. Smith stated it would be required as part of the concurrency review before the building permit issuance. Commissioner Scarpelli added that if at that point it does not meet the County standard, the applicant would be forced to come up with mitigation. Ms. Schemper suggested adding this at page 14, line 5 of the staff report where it states, "A final concurrency review shall be completed during building permit review," comma, and after that phrase add, "including an update to the Calle Uno intersection analysis to ensure adequate roadway capacity is confirmed."

Commissioner Scarpelli stated that this would include additional travel for all of the recent development done in the area. He explained that these rules are in place for a reason and it is unfair to change the requirements. Traffic is everywhere. Sometimes he waits fifteen minutes to get onto U.S. 1 in Big Pine and sometimes he doesn't wait at all. Chair Coward indicated concern that it still would not take into effect the final occupancy of the Quarry. Mr. Smith stated he could provide the figures. The last two buildings were being turned over this week and there are only 16 units without a certificate of occupancy.

Mr. Wright asked if the Commission was closing further comments from the applicant. Chair Coward allowed the public to speak again.

Mr. Eduardo Herrera stated that amount of land owned by this developer within this area is a significant portion of the entire map. There are some other owners which operate their own businesses and at least one has an entrance onto U.S. 1 into the double-lane portion. This could be of significant cost to the developer and he believes that that is the major influence at this point but it's important to the community. If this panel fails to put a restriction in place now that the

developer is forced to do this, then the cat is out of the bag and it will never get done. When impacts begin to happen it will be too late.

Mr. Trace Finney asked for the color overlay with the blue diagonal lines to be put up on the screen and pointed out that there is a large industrial area with family businesses and not everyone is involved in every part of that, but this is the reason the applicant is stating they can't put the access onto their own road. Mr. Finney believes there are two entrances, one to Toppino's and one to Monroe Concrete at the four-lane. It could be difficult to coming to an agreement with granting the access but this is the conditional items that the Commission has the ability to look at and he requests the Commission fully commit to it and do so.

Chair Coward stated that public comment was now officially closed.

Commissioner Scarpelli commented that the additional entrance owned by the Toppino's has heavy traffic with concrete trucks and dump trucks. Introducing non-commercial traffic to those entrances is asking for an accident. Commissioner Demes stated that he could not imagine residential traffic going through Monroe Concrete.

Ms. Schemper read the final wording of the condition. "A final concurrency review shall be completed during building permit review, including an update to Calle Uno intersection analysis to ensure adequate roadway capacity is confirmed and the adopted level of service is maintained," and then the rest of the condition.

Commissioner Miller commented that it appears the expectation that the developer would do this on his own had been given up on, and the Commission was not going to force him to do what he said he was going to do in order to get a vote of approval. There would be one more study, no road, and no agreement from the developer. His vote would be no.

Motion: Commissioner Scarpelli made a motion to approve with the added language from the Planning Director. Commissioner Wiatt seconded the motion.

Roll Call: Commissioner Wiatt, Yes; Commissioner Miller, No; Commissioner Scarpelli, Yes; Commissioner Deems, Yes; Chair Coward, No. The motion passed 3 to 2.

6. A RESOLUTION BY THE MONROE COUNTY PLANNING COMMISSION ADOPTING RULES AND PROCEDURES FOR THE ADMINISTRATION AND CONDUCT OF PROCEEDINGS AND HEARINGS; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL OF CONFLICTING PROVISIONS AND PRIOR RESOLUTIONS ESTABLISHING RULES OF PROCEDURE; PROVIDING FOR AN EFFECTIVE DATE.

(2:48 p.m.) Mr. Peter Morris, Assistant County Attorney, presented the staff report. These are rules of procedure which the Planning Commission hasn't updated. It was either 2007 or 2013, the rules of procedure had been updated for a few quasi-adjudicative bodies. One reason for updating is that there have been a few code re-codifications so some of the code references in the current rules reference 9.5 and there's been a lot of water under the bridge since the code contained a Section 9.5. Over time, some informally understood policies have been developed but not recognized in any written instrument. Eventually, one party will try to rely on an

informal policy that has never been reduced to writing and there will be nothing to point to, to sustain that policy so this is to bring things up to date. A few comments from the public have been received, but this is basically to clean up and give some structure to these proceedings moving forward. For policies such as one free continuance and conduct in the gallery, it is nice to have something to point to. Mr. Williams stated that if the Commission has not had a chance to go through these, there would be no problem in continuing this to next month because there are some significant things contained in these. Commissioner Wiatt stated he had no problem continuing it and wanted to discuss the timing for appeals. The briefs are received a couple of days prior and it's complicated so having a little extra time on those would be nice. Additionally, public comment is not normally taken for appeals and perhaps the ten days wouldn't apply. Mr. Morris stated he could carve out the appeals so that it is a distinctly recognizable category, adding that there is a lot of gamesmanship with appellants submitting briefs at the last moment. Mr. Wright mentioned that *ex parte* communications had also been dealt with quite comprehensively.

Chair Coward allowed public comment since people had already waited to speak on this item. Mr. Williams added that the public could comment now, or then, or both, or neither.

Mr. Stuart Schaffer representing Sugarloaf Shores Property Association stated he had sent an email and would be brief. His principle comments were regarding changes to the deadlines. Applicants had complained that they needed a little more time and were being given more time, but the public was being given less time. The applicant's deadline is later but the public's deadline was moved earlier. The deadlines are now the same. From the public standpoint, it is nice to have time to review the staff report. The public sees an agenda that is published in the paper and that's how they know there is a legislative item coming. The staff report generally hits the website way less than a week before the meeting. Though staff is helpful if the report is asked for, it's a process that is difficult for the public to navigate. The applicants are dealing with the staff all the time. The public needs enough time to digest a proposal or an application and provide meaningful comments.

Ms. Joyce Newman spoke on her own behalf, but mentioned that she is a Last Stand Board Member. Her concerns and Last Stand's concerns are the ability to have citizen input and she echoed Mr. Schaffer's comments. Most of the time agendas, additions, changes and staff reports are online in a timely fashion and for that, she is grateful. There are exceptions to the rule and some of the proposed changes appear not very workable in light of her personal experience dealing with what's online and when. Having another month to work through the weeds is a good idea.

Commissioner Demes stated he had read Mr. Schaffer's email three or four times trying to understand it. He questioned the balance of the days and what is meant by ten calendar days when the day falls on a Saturday, and saying things like "the application is generally in compliance with technical requirements of Monroe County Codes and the Comprehensive Plan" which means that part of it isn't in compliance. Mr. Williams added that working in Monroe County, the staff, Board direction and Planning Commission direction is always to work with and be lenient to the applicant and to assist them in any way possible. So as long as they've tried very hard to have a full application to the County, that's where staff is coming from, but there is

room for that to be interpreted or cleaned up. Commissioner Demes added that he understands the intent of using "generally," and he would like to discuss this further with Mr. Morris. Mr. Williams added that there's the way things have been done, and now there will be rules behind it. Commissioner Miller stated that he had just seen Mr. Hunter's comments and he would like to hear this next time.

Motion: Commissioner Wiatt made a motion to continue this item. Commissioner Demes seconded the motion. The motion passed unanimously.

BOARD DISCUSSION

Commissioner Miller stated that he would like to investigate the 4,000 square foot rule concerning shoreline setbacks and look at modifying it or looking at the equitability of the rule. Mr. Mike Roberts asked for a little more detail on what he was asking for. Commissioner Miller stated that back in 2005, the 4,000 square foot rule said that if you lived on a canal or improved shoreline, not talking about open water, that the setback was twenty feet; but if you had a piece of property with 4,000 square feet or less then you could build within ten feet of the canal. It excluded his personal property which has 4,500 square feet. Commissioner Miller wanted to discuss the equitability of this rule and he has some ideas, though he clarified that the issue on his property had already been resolved.

Commissioner Demes commented that the first thing he noticed when walking into this room was the American Flag which is displayed correctly, but the eagle has his back turned on this dais, so he would ask to have the eagle turned around to face the people.

ADJOURNMENT

The Monroe County Planning Commission meeting was adjourned at 3:06 p.m.