

PLANNING COMMISSION  
December 14, 2022

Meeting Minutes

The Planning Commission of Monroe County conducted a hybrid virtual and in-person meeting on **Wednesday, December 14, 2022**, beginning at 10:00 a.m.

**CALL TO ORDER** by Chair Scarpelli

**PLEDGE OF ALLEGIANCE**

**ROLL CALL** by Ilze Aguila

**PLANNING COMMISSION MEMBERS**

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

**STAFF**

Emily Schemper, Sr. Director of Planning and Environmental Resources  
Mike Roberts, Assistant Director of Environmental Resources  
Brad Stein, Development Review Manager  
Devin Tolpin, Principal Planner  
Peter Morris, Assistant County Attorney  
John Wolfe, Planning Commission Counsel  
Ilze Aguila, Planning Commission Supervisor

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

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

**SUBMISSION OF PROPERTY POSTING AFFIDAVITS AND PHOTOGRAPHS**

Ms. Ilze Aguila confirmed receipt of all necessary paperwork.

**SWEARING OF COUNTY STAFF**

County staff was sworn in by Mr. John Wolfe.

**CHANGES TO THE AGENDA**

There were no changes to the agenda. Staff requested Items 1 and 2 to be read together but requiring separate votes.

**Motion: Commissioner Neugent made a motion to read Items 1 and 2 together. Commissioner Demes seconded the motion. There was no opposition. The motion passed unanimously.**

The Commission was required to vote on whether to accept letters received from the public within the last five days for Items 1 and 2.

**Motion: Commissioner Ritz made a motion to allow letters. Commissioner Neugent seconded the motion. There was no opposition. The motion passed unanimously.**

**DISCLOSURE OF EX PARTE COMMUNICATIONS**

None.

**APPROVAL OF MINUTES**

**Motion: Commissioner Neugent made a motion to approve the November 16, 2022 meeting minutes. Commissioners Demes and Ritz seconded the motion. There was no opposition. The motion passed unanimously.**

**MEETING**

**AGENDA ITEMS**

**1. AN ORDINANCE BY THE MONROE COUNTY BOARD OF COUNTY COMMISSIONERS APPROVING A COMPREHENSIVE PLAN AMENDMENT TO THE 2030 MONROE COUNTY COMPREHENSIVE PLAN, ESTABLISHING THE STOCK ISLAND WORKFORCE SUBAREA 2; ESTABLISHING THE BOUNDARY OF THE STOCK ISLAND WORKFORCE SUBAREA 2; LIMITING THE PERMITTED USES OF THE SUBAREA TO DEED RESTRICTED AFFORDABLE HOUSING DWELLING UNITS; ESTABLISHING THE MAXIMUM NET DENSITY FOR AFFORDABLE HOUSING, HEIGHT AND OFF-STREET PARKING REQUIREMENTS IN THE SUBAREA; ELIMINATING ALLOCATED DENSITY AND NONRESIDENTIAL FLOOR AREA RATIO; PROVIDING FOR THE CONVERSION AND TRANSFER OF MARKET RATE ROGO EXEMPTIONS TO TRANSIENT; AND PROVIDING FOR THE SETBACK REQUIREMENTS WITHIN THE STOCK ISLAND WORKFORCE SUBAREA 2 FOR PROPERTY LOCATED AT 6500 MALONEY AVE, STOCK ISLAND, CURRENTLY HAVING PARCEL IDENTIFICATION NUMBER 00126090-000000, AS PROPOSED BY ROY'S TRAILER PARK, INC.; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL OF CONFLICTING PROVISIONS; PROVIDING FOR TRANSMITTAL TO THE STATE LAND PLANNING AGENCY AND THE SECRETARY OF STATE; PROVIDING FOR INCLUSION IN THE MONROE COUNTY CODE; PROVIDING FOR AN EFFECTIVE DATE. (FILE 2022-072)**

**2. AN ORDINANCE BY THE MONROE COUNTY BOARD OF COUNTY COMMISSIONERS AMENDING THE MONROE COUNTY LAND USE DISTRICT (ZONING) MAP FROM URBAN RESIDENTIAL MOBILE HOME- LIMITED (URM-L) TO URBAN RESIDENTIAL (UR), FOR PROPERTY LOCATED AT 6500 MALONEY AVE, STOCK ISLAND, HAVING PARCEL IDENTIFICATION NUMBER 00126090-000000, AS PROPOSED BY ROY’S TRAILER PARK, INC.; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL OF CONFLICTING PROVISIONS; PROVIDING FOR TRANSMITTAL TO THE STATE LAND PLANNING AGENCY AND THE SECRETARY OF STATE; PROVIDING FOR AMENDMENT TO THE LAND USE DISTRICT (ZONING) MAP; PROVIDING FOR AN EFFECTIVE DATE. (FILE 2022-074)**

(10:04 a.m.) Ms. Devin Tolpin, Principal Planner, presented the staff report. These items are requests for an amendment to the comp plan to establish a site-specific subarea policy known as the Stock Island Workforce Subarea Two, and a request to amend the land use district map or zoning of the property. These amendments are limited to a single property known as Roy’s Trailer Park. The FLUM designation is residential high, and is currently located in the URM-L zoning district. The applicant is proposing to amend that to be UR. The property is currently used as a mobile home park having 108 lawfully-established existing permanent market rate dwelling units.

Item 1, the amendment to the comp plan to establish the site-specific subarea policy, is being proposed under Goal 111 and Objective 111.1. The goal and objective were adopted to incentivize the development of affordable housing on properties within Stock Island designated as residential high by allowing specific land use mechanisms to achieve affordable housing, including an increased density bonus of 240 dwelling units per buildable acre as well as increasing the maximum height to alternate off-street parking requirements and to facilitate the transfer of ROGO exemptions. As drafted, the proposed amendment establishes the boundary of the subarea and limits permitted uses within the subarea to deed restricted affordable housing units with a maximum net density of 40 dwelling units per buildable acre. The amendment also eliminates the density and intensity potential for market rate housing and non-residential development on the property. The applicant is proposing to convert the existing 108 market rate ROGO allocations to transient ROGO allocations and transfer them off the property to other properties within Stock Island; and, increase the maximum height of the structures to up to 40 feet with three habitable floors and an increase to 44 feet for mechanical equipment to be located on the roof of the structures. The applicant is also requesting language be included in the subarea policy that would allow for alternate parking and setback requirements.

Staff is recommending minor edits for internal consistency to the text as proposed along with some additional changes. Staff recommends removal of the language that would reduce the required setbacks within the subarea because Goal 111 and Objective 111.1 are specific in the site-specific land use mechanisms that can be used to incentivize development of affordable housing. The County development code does have a process to reduce setbacks based on a specific site plan through various variance procedures. Staff is not recommending approval of the transient conversion of the 108 existing market rate dwelling units to transient units. This is not internally consistent with the land development code, with the comprehensive plan, nor with Board direction. Both the LDC and comp plan have provisions that do not allow for an increase in transient ROGO allocations within Monroe County. Staff does not have a problem with the

language proposed to allow for the transfer of ROGO exemptions within Stock Island to any property within Stock Island, but it should be noted that the LDC has a requirement that market rate ROGO exemptions be to platted lots within the IS and URM zoning districts. Staff recommends adding that provision within this proposed subarea policy text so as not to limit the transfer to only properties within Stock Island to give the applicant the ability to transfer the market rate allocations to other platted lots within the Lower Keys subarea that are in IS or URM zoning. Staff also recommends removal of the language in the proposal that states 238 ROGO allocations will be reserved for this property from the 300 that were received from the State following Hurricane Irma. The future of these allocations is unknown and the language should not be included. The County has an insufficient amount of affordable ROGO allocations to facilitate the maximum development potential of this site if this subarea policy is approved. Item 1 of the proposed comp plan amendment does provide for distribution of income categories in the event that less than the 238 dwelling units are constructed.

Finally, staff is recommending a language change requiring detached or attached dwelling units designated as employee housing involving more than 18 units be approved through a major conditional use process so these large-scale developments would come before the Planning Commission for final site plan approval. Otherwise, the UR zoning district, which is the proposed new zoning district, would allow any number of detached units as of right, and any number of attached units as a minor conditional use. Staff is recommending approval with the edits discussed and shown on pages 12 through 15 of the staff report.

The applicant is also proposing to amend the zoning district from URM-L to UR. The primary change with this amendment concurrent with the site-specific subarea policy would be the allowance to build attached dwelling units versus detached dwelling units. Because the density increase is already proposed through the subarea policy it is not tied to the change in zoning. Staff is recommending approval of the amendment to the zoning change. However, if the subarea policy is not approved, staff recommends that this item be referred back to the DRC and Planning Commission to evaluate the change in development potential of the property.

Mr. Bart Smith, on behalf of the applicant, first addressed the letter received on Friday which he had only seen this morning. Roy's is involved in litigation with the people named in that letter along with the County, and he hopes to resolve this, but it is part of ongoing litigation. This is an older trailer park all ground built or on FEMA planks below base flood that has been in existence for some time. Similar to the Wrecker's property that was Water's Edge, Thompson's and Snead's Trailer Parks, it is not of the nature of modern design and safety for hurricanes above base flood. The owners of the property have recognized that for the future of the workforce and residents of Stock Island it would be good to build sustainable housing above base flood at hurricane impact standards, with sound attenuation to Navy standards, and he is more than happy to add in the no drone flying. The way to assist this is to go vertical and provide density. This is a similar type plan as what happened at Wrecker's. To do this, transferring some of the market rate units is needed to offset some of the construction costs, and have the increased density and same incentives that Wrecker's had. The County does not have sufficient ROGOs at this time, but it is anticipated the ROGOs would be received from the City of Key West.

Mr. Smith stated that he is in agreement with staff's minor edits, the elimination of the reservation of ROGO language, and the conditional use approval requirement. As to reduced

setbacks from 15 feet to 10 feet, right now there are probably negative setbacks on a lot of the properties so even 10 feet would be a dramatic improvement, though he would be more comfortable addressing that when the site plan is in. That leaves only the proposed transfer of the 108 market rate dwelling units to transient units.

Mr. Smith is first requesting the approval of the site specific policy with all of staff's recommendations, and then to have a separate vote on the 108 market rate dwelling units being converted to transient. Alternatively, if the Commission goes with the staff's recommendation of the 108 being transferred anywhere on Stock Island and IS, that is a reasonable fallback. Mr. Smith presented slides of the first stage of this multifaceted project including a site map. He is fine with setbacks for today but wanted to discuss the conversion. The idea is to amend to UR because that's how the site policy was set up that was created for Wrecker's Cay, and to then utilize the density bonus. To make these projects work, part of the construction costs must be offset by selling transients or the market rate units to someone willing to buy them, which pays down the cost of the entire project. In this case, the identified recipient is Roger Bernstein Safe Harbor Enterprises. In 2012, the City of Marathon requested 300 transients from the state and the state allocated immediately 100 transients. Then the City of Marathon requested a hundred more and the state said they didn't want to give another 100 transients but that 100 market rates could be converted to transients, and the City adopted the comp plan amendment that would allow that into the code. This is the precedent he looked at as to why it would be permissible to do the conversion. The transfer of these units to Safe Harbor was approved for up to a 122-unit hotel which uses transient units. That was similar to what happened at Stock Island Harbor Yacht Club which was first rezoned to Destination Resort so they could accept the market rate units and use them as vacation rentals.. That thought process is if they're going to be used as vacation rentals anyways, why not convert them to transient so they are always short-term rentals, it doesn't affect the permanent population number, and it can then immediately transfer to Safe Harbor. The alternative is reasonable if the Commission does not want to do that. He understands staff's statement of no new transient units, but he will give the same explanation to the BOCC.

Mr. Smith then presented slides of the Bernstein property indicating this was the underlying objective for the transference of units and why he prefers they be converted as it causes several procedural steps to be eliminated, puts them into phase one evacuation, and provides the impetus to allow for redevelopment of up to 238 units. Mr. Smith requests approval with all of staff's recommended changes, leaving out the conversation of the 108 market rates to transients.

Chair Scarpelli asked for Commission comments or questions. Commissioner Neugent asked for the acreage of the receiver site, and Mr. Smith responded 12.25 acres. Commissioner Neugent asked how the density of that site compared to the density of the site the affordable units are on. Mr. Smith responded that the current site is zoned URM-L which has a density of five units per acre or one unit per lot, which far exceeds the density under the URM as is. Commissioner Neugent stated that Roy's Trailer Park is pretty dense. Mr. Smith agreed, adding that the population exceeds what could be held in 108 units. At 238 units, it may be about the same population, maybe lower, but very similar to the population density existing today. Commissioner Ritz asked if going to the receiver site would result in less density. Mr. Smith responded that that would be correct. Ms. Schemper interjected that the site the ROGOs would be going to would be less dense than the Roy's site where the ROGOs currently are, but the

Roy's site would be redeveloped at a much higher density than it currently is. The permanent residential ROGO allocations currently on the Roy's property which currently provide permanent housing for Keys residents would move to a different site and would no longer be a part of the permanent housing pool of limited ROGO allocations, and would become transient rentals. So those 108 ROGOs would no longer be available for permanent housing. Understanding Mr. Smith is proposing an alternative pathway which would do essentially the same thing he wants, taking market rate ROGO allocations which are still part of the ROGO housing pool, but using them as vacation rentals rented out short term. Ms. Schemper's opinion is if the applicant wants to pursue the alternative pathway, they should do so through the proper procedures, not this, hey, let's eliminate all of the administrative steps, the public hearings and public input on things like a zoning change on the other property. Even if the end result appears to be the same, it's not the same. And there is a process to it, which is why staff is not recommending this conversion. It is not contemplated in the comp plan and the very long-time policies of the BOCC, updated this year and extended, is to not create additional transient ROGO units within Monroe County.

Commissioner Thomas asked what would happen to all of the people in the middle of this that need a place to live. Mr. Smith responded that he understands that needs to be addressed. Commissioner Thomas stated that it needs to be addressed first. Commissioner Neugent asked what the present lot rent is for residents in Roy's Trailer Park. Mr. Smith knew it exceeded \$2,000 per lot, but was not aware of the exact number. Commissioner Neugent added that the urban report attached to this item provided good information but he guesses that people living in Roy's Trailer Park can't afford \$3,000 to \$5,000 monthly rent and relocation. Commissioner Neugent then asked about the 2037 long-term lease agreement and how that would be dealt with. Mr. John Wolfe noted that that was a civil matter and though it is fair game to ask about it, the fact that this may or may not violate a lease is not part of this process. Commissioner Ritz confirmed that the letter received was not in the Commission's bailiwick. Mr. Smith added that it is being addressed in the litigation with Roy's and the residents and Monroe County. Everyone sitting here understands there is going to be some responsibility on Roy's part to assist in relocation. But in order to appropriately do this, one of the key factors is being able to compensate owners to do so. Part of that is to sell these market rates off to provide some funding.

Roy's position is that Roy's is not the proper party to the code compliance because the individual trailer owners have all of the code issues. There are a lot of moving components. Mr. Smith understands Ms. Schemper's statements about the procedural aspects, but he is trying to reduce costs and time lines. It is reasonable and other jurisdictions have done this. Should the Planning Commission say, keep the market rate, transfer anywhere on Stock Island or to IS or URM lots elsewhere, and come back later and deal with Bernstein, he is fine with that, to go with staff's recommendations. But there is no one going into this with their eyes closed, half open, or understanding there's been seven years of litigation already over the problems currently at Roy's. The logical solution is to bring this property up to current codes, above base flood, and put it where it's sustainable long term, still keeping it for the workforce for a similar population density, and be able to assist residents to the greatest extent possible with relocation, all of which has to come together.

Mr. Smith then gave examples from Wrecker's, adding that barring something crazy happening at the state or BOCC turnover, they could then start to quantify how to deal with these other issues. He is trying to address these things when it's not after a storm.

Chair Scarpelli then asked for public comment, indicating that everyone would be limited to three minutes. Mr. Wolfe would swear in the speakers as they spoke.

Mr. Gethro Jolimeau, a resident of Roy's, stated that he understands the zoning issue is trying to be separated from everything else that is going on. This shouldn't be allowed because everyone signed a contract with the owner of the trailer park through 2037. To say this is a civil matter and the Commission shouldn't be involved in that, he believes the Commission is their first line of defense. If the zoning is allowed to be changed then there's nothing to say they will take care of the residents going forward. Roy's Trailer Park doesn't want to say what they will do, they just want to come in and take the land and build on it. He is not against building something better, but these people need to be taken care of. This is where they've lived for the past 20 to 30 years. As to the violations at the park, a lot of those trailers were bought with the violations when everyone was signing the contract. If Roy's want to change this, they need to state how they will take care of the residents. Once they get everything to redevelop the trailer park, there's nothing to say they will take care of the residents, and they are silent when asked. The Commission has to force them to say how the residents will be treated once everything is changed. Letting them go without stating what they're going to do going forward is unrealistic and a lot of people are going to suffer.

Ms. Mary Kennedy, attorney with Hoffman Larin and Agnetti and representing the residents in civil litigation submitted the objection to the proposed amendment on the basis of, first, the fact that the residents had signed a lease that specifically states that it would continue through December 31 of 2037 unless certain conditions occur, and these conditions have not occurred. Approving this amendment will encourage and facilitate the ability of Roy's to break the lease. Many of these residents have relied upon the long-term nature of the lease as part of the reason why they reside in Roy's because many working-class persons with financial constraints look for the longevity of a lease that would proceed until December 31, 2037. These are families, often with young children, maybe with elderly people. It is not easy for them to relocate. Relocating a trailer costs several thousand dollars. The residents of Roy's have recently received a notice of rental increase that will put their monthly rent close to \$2,500 a month. This is something that many of them cannot afford and is certainly not something in the neighborhood of \$3,000 to \$5,000 per month as indicated in the housing study attached to the memorandum. There are other issues with the housing study in that it includes as available housing complexes units that have not yet been constructed. They admit in the housing study that they attempted to find how many units were available at Wrecker's Cay but they couldn't get anyone to answer their questions, nor get in contact with any person at Wrecker's Cay to even mention how many units would be available. Ms. Kennedy also tried to contact them and was sent from one number to another number, and at no time ever spoke to any person able to answer that question. The study indicates that, in conclusion, 12 mobile home units were available for rent ranging from \$2,500 to \$5,000 per month. There are over 100 residents of this park. To say there are 12 mobile home units available for rent and that somehow constitutes an adequate supply of housing is not really reasonable. The study also references that there are 15 conventional housing units available with rents between \$1,900 and \$2,000. This is too few a number to be available. Additionally, the

study looked at the entirety of Monroe County and many of the residents of Roy's cannot afford a lengthy daily commute that might take them to the Upper Keys. They need to work in proximity to their home. While there may be affordable units in other sections of Monroe County that does not assist these residents. The study reaches a conclusion that there is ample affordable housing, despite the fact that several of the complexes are still under construction, including Wrecker's Cay and Garden View Apartments which are mentioned as having many units available. The study's authors included Wrecker's Cay's 280 units as being part of the ample housing, but they were unable to confirm availability. The authors also identified 52 conventional units for sale with prices ranging from \$234,000 up to \$600,000. Few if any residents of Roy's could afford a home at the low end of this scale. A more recent review of Zillow indicates the average home in Monroe County goes for over a million dollars. Conventional homes are out of reach of residents of Roy's. This study's conclusions are questionable. The residents have a long-term lease up to December 31, 2037, and she believes these amendments should not be approved.

Commissioner Ritz noted that Ms. Kennedy was reading from the document handed out earlier today, and asked if both sections one and two were being addressed in the courts. Ms. Kennedy responded that she is in the process of filing an amended complaint, but the case has been stayed for 60 days to allow for mediation to take place. However, many residents have stated they have received notices that they need to vacate their property by various dates, some as early as December 10 to the first or second week of January based on violations of the housing code issued in 2015. When the residents purchased their units, they were in the condition they are in now, and the fact that an agreed order was entered staying the civil case, it is Ms. Kennedy's position that the order is not being upheld by Roy's because they are continuing to issue these notices to vacate. Commissioner Ritz again asked if he could assume that everything he received today is being addressed in the court. Ms. Kennedy stated that the issue of rent and long-term lease continuing to 2037 will be, and she anticipates the second part will be as well.

Mr. Peter Morris, Assistant County Attorney, interjected that in order to keep this from potentially dilapidating into something of a Jackson Pollock discussion of different political merits, it's a litigation matter not really directly implicated by this development application, and reiterated Mr. Wolfe's advice to the Commission that the only saline considerations for this application are the provisions of the comp plan, the liveable communiKeys plan and the land development code, which have been addressed quite competently by staff at Roman numeral IV(a)(b) and (c), where staff has determined the proposal is consistent subject to the staff revisions recommended, with the goals and objectives of those plans, and are compliant with the relevant sections of the land development code. He would like the Commission to keep their eye on the ball. Because there has been some irrelevant mention of different aspects of litigation that is ongoing, in Section U of the agreement cited by Mr. Agnetti, it states that the park owner may terminate any of the 30 consecutive lot agreements established by this agreement upon the homeowner's failure to comply with the agreement or the rules and regulations subject to the termination provisions of Chapter 723 Florida Statutes. This agreement may be terminated only as permitted by applicable Florida law. Mr. Morris understands that the tenants violated the rules and regulations as well as their statutory obligations under Chapter 23 by unlawfully modifying and adding to the mobile homes and creating the unsafe conditions identified by the building official and the County Code Compliance Department. The county is in litigation with the tenants as well as the owner, but the focus should hone in on just the application.



Ms. Kennedy responded to the point about how the alleged violations are serving as a basis for Roy's to terminate the leases. The statute, Chapter 723.061 provides that no violation could be a basis for termination where more than one year has passed since it has been issued. These violations were initially issued in 2015. Roy's tried to get around this by saying in the letter that this was first notice, but it is very clear that this was part of the action that was commenced and noticed in 2015. Ms. Kennedy does not believe the alleged violations serve as a basis for the notice of termination of the lease. Chair Scarpelli then stated the Commission was not making any determinations on evictions.

Mr. John Wolfe, attorney for the Commission, added that the fact there is litigation over an existing lease agreement is something the Commission cannot consider as the basis of any of their decisions. There is no implication here that the Commission is saying the residents may or may not have a valid legal argument.

Commissioner Ritz agreed that they should not get involved in the pros and cons of the legal case and is prepared to address the items before the Commission. Mr. Bart Smith wanted to add for Commissioner Thomas that he recognizes the issues of the residents. Though many of them are represented by counsel, he is happy to have anyone contact him directly and he will get folks with the people that can assist them. Chair Scarpelli made an exception and allowed Mr. Gethro Jolimeau to speak again.

Mr. Gethro Jolimeau added that if the Commission shouldn't take something into consideration, then don't mention that the residents are in violation of a rental agreement without considering that the trailers were bought like this from the trailer park. We can't separate the zoning issue with the issue of the contract we have signed until 2037. If a decision is made on the zoning issue, that may nullify the 2037 contract. Once Roy's has that, there's nothing that can say that they can be sitting with us. Every time we ask them to sit with us, they don't want to say anything. Both issues are related. The decision here is very important to everything that is going on. Once they have access to change the land use for Roy's trailer park, the residents no longer matter because it will basically be in illegal zoning. Commissioner Neugent asked if he had heard correctly, that he had purchased his trailer as is. Mr. Jolimeau stated that that was correct, and that multiple people purchased the trailers the way they are right now, and Roy's Trailer Park as a management group was present for every signature that was done. So they can't take themselves out of the question once that's already done. They have a legal obligation to talk to the residents first as the tenant and then after that, if they want to do a zoning issue, they want to change the land use, go ahead. The residents are happy to let them. But first they have to come and talk to us because we have a written contract until 2037. The issue of the change of the land use has to be addressed first. They have the right to put in an application in front of the Commission, but at the same time, with the contract, the Commission is obligated to protect a contract that was signed.

Chair Scarpelli stated that he understands what Mr. Jolimeau is saying, but the Commission has no bearing on the contract that was signed and cannot weigh in on that, but noted that the applicant is far away from being able to do what they want to do on this land. Mr. Jolimeau stated that he understands, but it would give Roy's a win today that they can use, because they are using a lot of things to get the residents out of the trailer park. He believes the Commission

cannot make a decision until the litigation is over. Chair Scarpelli asked Mr. Morris and Mr. Wolfe with the property under litigation, if the Commission is still allowed to do these things.

Mr. Morris responded that he believes there is no kind of litigation hold on consideration of an application. There is no rule of law that empowers that kind of theory. Mr. Jolimeau asked the Commission to take the litigation into consideration. Chair Scarpelli indicated he could also speak to that before the BOCC. Ms. Devin Tolpin clarified that the decision being made today does not ultimately approve or deny these applications. It is a recommendation by the Planning Commission to the BOCC who will be the decision-making body to approve or deny these applications.

Mr. Civilus Jau-Renald stated that he has lived there since 2014. Most people buy a trailer there and all of them have an issue on it. He pays every month \$2,203, and next month is going to be \$2,500. When he pays on his lease, he sees on everything his lease termination is going to be 2027 [sic], and they still increase the money. They send a lot of repairs and say they're going to kick them out this month, and next month, and everybody has a different letter. Talking about additional five feet, something like that. Everything was finished and he did his five feet, everyone did five feet. The court and the manager came in and each person, each owner, they find out a measurement of everything and everything was okay. Mr. Jau-Renald stated that most people have additional, the manager knows, and he thinks they took money from somebody over there and made addition. He does not know why now they try to be like, okay, people have additional have to be thrown out. That's a large issue going on over there now. Nobody knows what's going on, so nobody waiting to move over there because nobody can afford \$2,000 for some different place. Now, \$2,500 to pay, every year it increases, every year they already increase more money. Where are these people going to go? If each person now have family members, like I say, the one bought by the Tom Thumb, they have three bedrooms and two baths, they ask like, \$4,000. They see what's going on. We have a lawyer, everything, try to fight for us. Nobody wants to go over there because they try to take our trailer for free and our lease going to be empty. They've got to take our lease out, like, okay, we have 2027, if everybody say, okay, we give them the title for the trailer, and then now we say, okay, we go to the new place, now the people pay \$4,000 for the new place they have over there. When they see nobody want to go, they put it down for three-thousand-something. Not everybody have the money to pay that money. Nobody have. Every place wasn't like that. Every place had addition. And then the manager took money for somebody over there, they put addition, and now they come to us to give us problem. It's not fair. Clearly, he knows they took money. Commissioner Neugent asked how much his rent was prior to this increase. Mr. Jau-Renald responded \$2,203 for this month. Next month is going to be \$2,500. His lease is still open to 2027. He pays on his phone. He sees 2027 on his account. Each month on your phone you pay your lease on your account. Imagine, people bought a trailer for \$7,000, \$6,000, because there's no place to live, nobody can force us to buy a place. The manager is the one he signed the lease to 2027. He doesn't know what he is going to do because he doesn't have money to buy new lease, and his lease is 2027.

Public comment was then closed. Commissioner Demes asked about ex parte communications. Mr. Wolfe stated because this is legislative, disclosure wasn't necessary.

Ms. Gardner stated she had no further comment since attenuation had been addressed. The Navy would be curious about a traffic impact study. Chair Scarpelli thought that would be under the major conditional use if it gets that far. Chair Scarpelli clarified that the Commission is only looking at a subarea policy and changing the zoning from URM-L to UR, which UR does not allow trailers. Chair Scarpelli asked if the zoning is changed and the trailers were not moved, would they then have a zoning violation. Ms. Schemper stated a zoning amendment cannot be done if the existing use does not comply with the zoning category. Chair Scarpelli asked how that would be handled. Mr. Smith stated he had dealt with this before where it was added into the subarea policy that existing mobile homes, unless damaged or destroyed over 50 percent, are allowed to remain. Chair Scarpelli stated that that language would need to be added. Commissioner Neugent confirmed the Planning Commission is strictly in an advisory position to the BOCC. Commissioner Demes remembered putting the MIAI together with Ms. Christine Hurley and Ms. Mayte Santamaria, and recollects the AICUZ was defined as 65 DNL and higher, and asked Ms. Schemper if that was verified in the MIAI language when saying AICUZ. The reason he brings it up is the intent was that there will be no increase in density and intensity over the maximum allowable at the time the MIAI was implemented, and that's huge. His recollection has always been that the Navy would not object to maximum density and intensity and start from that point. 60 DNL was more of a buffer in his day so this is outside the 65 DNL. Therefore, it's not an issue. Ms. Tolpin responded that he was correct, between 60 and 65 was the buffer, so the code would allow it. Commissioner Demes added that he doesn't like what's going on. He hopes the applicant is going to be working towards a resolution for the residents, though unfortunately that's beyond today's scope. He is all about the County staff recommendation and using the process in place.

Chair Scarpelli explained to the public that the Commission is adding a contingency allowing the mobile home park to stay unless it's damaged beyond 50 percent. Ms. Schemper clarified that she was not positive on what the exact wording would be, but it would be worked on, for existing mobile homes to remain until the time it would be redeveloped. However, that does not mean the owner is obligated to allow the trailers to stay.

**Motion: Commissioner Ritz made a motion to approve Item 1 with staff recommendations. Commissioner Demes seconded the motion.**

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

**Motion: Commissioner Demes made a motion to approve Item 2 also with staff recommendations. Commissioner Neugent seconded the motion.**

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

**3. AN ORDINANCE BY MONROE COUNTY BOARD OF COUNTY COMMISSIONERS ADOPTING AMENDMENTS TO THE MONROE COUNTY 2030 COMPREHENSIVE PLAN TO AMEND POLICY 501.1.1, POLICY 501.1.2, POLICY 501.2.2, POLICY 501.2.3, POLICY 501.3.1, POLICY 501.3.3 TO ALLOW AIRPORT IMPROVEMENTS, WHICH MAY IMPACT HAMMOCK AREAS WHEN THERE IS NO**

OTHER VIABLE ALTERNATIVE AVAILABLE, AT THE KEY WEST INTERNATIONAL AIRPORT AND THE FLORIDA KEYS MARATHON INTERNATIONAL AIRPORT, CONSISTENT WITH THE AIRPORT MASTER PLAN (AMP) AND AIRPORT LAYOUT PLAN (ALP) FOR EACH PUBLIC AIRPORT AND CONSISTENT WITH ALL APPLICABLE FEDERAL AND STATE PERMIT/AUTHORIZATION REQUIREMENTS, INCLUDING MITIGATION FOR ENVIRONMENTAL IMPACTS; 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 COMPREHENSIVE PLAN; PROVIDING FOR AN EFFECTIVE DATE. (FILE 2022-105)

(11:32 a.m.) Ms. Emily Schemper, Senior Director of Planning and Environmental Resources presented the staff report. This is a proposal from the County Airport Department. Something similar was adopted a year and-a-half ago regarding wetlands. The airports have a layout plan and master plan approved by the FAA and BOCC, and adopted into the comp plan. When working on those improvements, occasionally an obstacle arises that does not fit within the comp plan or code, or there's not a clear procedure on how to go about analyzing and reviewing it. The wetlands were addressed a year or so ago. This set of amendments addresses other types of native vegetation when there is no viable alternative than to impact that vegetation. In general, the focus is to remain consistent with the adopted master plan and layout plan, and then to be as code compliant as possible, but also reasonable given the objectives and goals of the airports. This applies to both airports, though the focus is more on the Marathon airport. The goal is to accomplish operational safety, conform to the current FAA standards, and to meet forecasts for operational growth over the planning period for the airports.

The improvements proposed that need amendments are essential for a variety of things. The airports are essential to the operation of the County and the County and municipalities have set certain goals for what they want those airports to be. Ms. Schemper presented slides from the layout plans for the Key West and Marathon Airports. The law is clear that this falls under County policies, regulations and codes, though there is a coordination process with the municipalities. Additional language has been added that talks about the continued coordination with the Cities of Key West and Marathon. Ms. Schemper presented the proposed amendments and reviewed the added language in detail. Ms. Schemper then got into the native vegetation issues. Policy 501.2.3 talks about the environmentally sensitive wetland areas and if there is no viable alternative, then mitigation and restoration shall be required and approved according to federal and state permitting requirements. This is the policy that was updated recently regarding wetlands. A paragraph is proposed to be added regarding other environmentally sensitive native vegetation. If there is no viable alternative and the development activities are going to affect that, they must be reviewed pursuant to regular procedure, the permit referral process, and that's for areas designated as species focus areas or species buffer areas. This is the process that was set up per the biological opinion and the outcome of the negotiation with the feds regarding endangered species law.

This is done for every development proposal, including single-family permits. Removal of qualifying native vegetation will require payment into the County's Environmental Land Management and Restoration Fund in an amount sufficient to replace each removed plant or tree on a two-to-one basis, consistent with the current requirement. Policy 501.3.1 is specific to the

Marathon Airport, which currently says the County shall maintain the existing hammock along Aviation Boulevard as a buffer between the Marathon Airport and residences to the north. This strip is approximately 240 feet wide, consisting of hammock, some mangroves and invasive exotic vegetation that has been creeping in and growing. This is the area in need of this amendment. The policy change proposed is that the County will maintain that hammock buffer which is not located within the FAA required runway obstacle-free area. The proposal is to shift the runway a bit north, and then it has to come into compliance with the 250 foot runway centerline clearance area, which it doesn't currently meet.

Staff is recommending that if removal of a portion of that buffer is required because no other viable alternative is available, this is per current policy, that all invasive exotic vegetation needs to be removed from the remaining buffer so it can remain intact and healthy hammock. It's getting smaller, but staff wants it to be full and healthy. And then, the areas where the invasive species are removed, they need to be replaced with appropriate vegetation to maintain the habitat and the buffer. Monroe County shall maintain coordination mechanisms with the City of Marathon and inform the City on the removal of hammock along Aviation Boulevard required to ensure safe operations at the Florida Keys Marathon International Airport. The City's request was that the mitigation for this be at a three-to-one ratio as that is Marathon's current requirement and include the replanting. However, there is nowhere on the airport property to replant three times what was removed. The City was asking to replant only within the buffer in the areas compromised by invasive species. So staff recommendation is the normal two-to-one mitigation would go into the restoration fund, plus the replanting within the remaining buffer, which may almost come out to a three-to-one ratio anyway. Staff recommends approval with those edits. Out of the 240-foot width, the proposal is to take out between 30 and 40 feet all along the edge, depending on how wide it is at each individual location. Mr. Richard Strickland and Mr. Christopher Bowker were available for questions.

Mr. Richard Strickland stated that he appreciates working with the planning staff. The only challenge he has with this is what he has funding for and going after permitting for is only the area in which the hammock will be impacted, which is a very small area compared to the overall total size of the hammock. They will clear the 40-foot area and remove the vegetation to be consistent with what the airport needs to operate. He has grants and funding for that amount. He does not agree with the language in red being asked for by Marathon. They are putting the burden on the airport for an unknown significant amount of work and funding to go in and identify the invasive species in the remaining hammock area which in the past, the language in the code has been to maintain the buffer. That has been done with limited trimming of it over the years. To go in and remove all invasive species could have significant impact to what's left of the buffer, and that has not been reviewed as part of the scope of the project. He wanted the Planning Commission to hear both sides of the story.

Chair Scarpelli asked where the two-to-one replacement planting would go. Ms. Schemper clarified that both the comp plan and the code have existing policy regulations that say all invasives must be removed from a development parcel before completion of permitting. This is a unique situation and she does not know what the answer is. Not knowing what percentage of invasives is in the buffer, if it's 50 percent and that is taken out, there is only half the buffer left. That's better for the hammock overall, and the hammock will re-grow. The two-to-one requirement is payment into the Land Restoration Fund, and then the land steward uses that

money to replant in areas that they manage. The most successful replanting and reestablishment of habitat is done by the land steward. The City's mitigation may only include replanting, but they are the ones asking for a replanting requirement in terms of mitigation. Staff is recommending two-to-one for payment into the restoration fund, and the additional that could almost become the three-to-one requirement in the end would be replanting where invasives were removed. Ms. Schemper would like the biological staff to at go out there and at least eyeball it. There may be some compromise or negotiation that the Board can decide on, as she understands this is a very extreme example. However, over the years, those invasives could have been taken out as part of the maintenance, so it is a bit of a dilemma.

Commissioner Ritz, being a prior airport manager, understands the need for operational safety and complying with all of the federal and state permitting requirements. However, the County needs to look at this as if it was a private developer coming in and how a private developer would be treated. Airports are extremely important to the community and he is a huge fan, but the County should be fair. If a private developer is treated a certain way, then the airport should be treated a certain way. If there are lots of invasives then why haven't they been maintaining it like they were supposed to.

Commissioner Demes stated he had plenty to say. He has over 30 years of experience at Naval Air Station Key West. Commissioner Demes asked Mr. Strickland how this got to the point that we don't have the primary surface of 250 feet and don't meet the criteria at Marathon Airport. Mr. Strickland responded that the airfield is currently a designation of a Type 1 Airfield, which means the separation between the runway and the taxiway is at its minimum. They are now being required by the FAA to change it to a Class 2 facility which moves and shifts the entire runway over 40 feet closer to the hammock, which is causing this whole issue to come to light. This has been something that has been brewing for some time where the FAA has put that requirement language into their documents and if you don't move the runway to be consistent with the Type 2, then all federal funding will be lost into the future. This is being done for safety's sake. That is what is bringing about this issue with the hammock. Commissioner Demes stated he has a lot of experience with NEPA and he is taken back when he reads the FAA document dated March 30, 2020, where they speak to issuing a FONSI record of decision. Those terms are mutually exclusive, are very legal terms, and the finding of no significant impact relates to an EA. The record of decision and looking at the CFR site they used is under the paragraph of environmental impact statement. This has nothing to do with an environmental impact statement. The very nature of getting a finding of no significant impact is so you do not have to go to an EIS and you don't have to do a ROD. You do a FONSI. He sees the letter as flawed unless the FAA looks at NEPA differently. If he had seen this, he would have questioned the FAA. What is this FONSI ROD? It's either one or the other. In this case, it would be a finding of no significant impact and a ROD has nothing to do with it. It questions whether the office, the people and the person that signed that document, knew what they were talking about. Also, the number one thing he thinks of with an airport is safety. He's seen other consultants that don't talk to each other and they do something like he's seen happen on page two of thirty. The very last thing, nine things down the list, is safety. Intrinsic in managing these documents and the goals of our airports is that safety is number one, not buried as an afterthought. When doing reports and paying consultants money, keep focus on what the most important things are, that being safety in this case. When these things get passed at the Planning Commission, are we giving away the farm to the subjective nature of no viable alternative? What person or entity

says that when the Commission just says, yeah, you can go do this if there's no viable alternative, but it never comes back to the Commission to say, we agree there's no viable alternative. The alternative here was do either what we're going to propose before us, split the difference between moving the taxiway and the actual runway, and the other was do nothing. One may be a lot more money, and this one rolls into the condition survey of the airfield.

Commissioner Demes then asked if this airfield is at a comfortable elevation toward the future or is this something that may be an issue thirty, forty years from now. Ms. Schemper stated she did not know what the elevations are there. Mr. Strickland stated he did not know the exact elevation offhand, but the elevations they deal with, with the runways, is they typically add back in inches, more pavement each time, in order to deal with making them more resilient into the future, but they don't go back in and spend millions of dollars that they don't have to build them up in terms of feet each time, but they are built back in terms of inches. They are growing in overall height. When building back the runway for resiliency in that way, the other airfield pavements also have to be raised. So it is done within the overall planning horizon of the airfield and hopefully that is the answer he was looking for.

Commissioner Demes asked about Policy 501.1.2 at page nine of thirty, and if one of Mr. Strickland's concerns was for lights. As development goes on, he proposes lighting be added as one of the issues to be managed, especially off-site lighting that creates problems. It is a huge issue. He also noticed there is construction going on around the right-hand side of the approach to Runway 07, and his thought was, in looking out years at expansion possibilities, what was being built because it looks kind of high in elevation inside the airport perimeter. Commissioner Neugent responded it is a \$30 million emergency operation center. Commissioner Demes asked if the approach to the threshold to runways was fifty-to-one, and whether that is a wise location to put something like that in what appears to be an approach. Chair Scarpelli interjected that this was getting a little off topic. Commissioner Demes continued, this is talking about safety and managing this runway and this raised concerns whether it's clearly outside the transitional surface to the runway. Mr. Strickland responded that it is, and was all fully reviewed over the last couple of years with the FAA.

Commissioner Demes then asked about the Type 2 runway and if there was no lateral slope considered in the vegetation buffer that had to be cleared. Mr. Strickland responded that all of those elements are looked at in the master planning process and all of the development indicated on the AOP. Yes, there are different slopes that need to be evaluated on an annual basis. Anything that penetrates those are removed or trimmed back. This is going more in depth than he thought today's review would be. Commissioner Demes responded that it's a good thing he only had a couple of days to look at it. Ms. Schemper asked if beyond the 250 feet, if there was an area that needed to be trimmed at an angle, and wasn't sure she wanted to know this. Commissioner Demes stated she needs to because on day one there will be compliance but a year from now there won't. It will be instantly out of compliance if it only meets the seven-to-one slope because things grow. Commissioner Demes stated he knows it's expensive because at Boca Chica for reestablishing the airport safety criteria mostly from vegetation was \$50 million and \$25 of it was mitigation. Mr. Strickland responded that for this exact reason, he is only clearing what is within the 250, and the FAA is waiving the seven-to-one slope requirement relative to the vegetation for the exact reason pointed out by Commissioner Demes, because the FAA did not want to get into the vegetation because of the expense and that on day one, it would

be compliant but then immediately would have the growth going in. So this is not an issue for Ms. Schemper to have a headache about today. Commissioner Demes noted that all of a sudden the FAA is worried about waiving the safety criteria of the airplanes because of money somewhere in there. Commissioner Ritz commented that they've done that before, that they make you do your best efforts once you get things into that slope.

Commissioner Demes then asked about Policy 501.3.3 on page thirteen, where it says Monroe County shall prioritize safety in evaluating public airport structures. So that point relates back to what he said that it's high on the priority list and make safety number one on a list because that's where it belongs. Commissioner Demes stated that he would cut his comments short because there are so many. Chair Scarpelli stated that he is fully educated on airports now. Commissioner Demes added that his biggest comment would be that this is mostly about Marathon Airport and he does not feel comfortable having Key West in this as well because there was not the in depth look at the plans for Key West Airport. Buried in this package is a tower for the future with a reference code on it that isn't in the actual diagrams, but then he realized there is language in there loosely that the determination is that it's needed. Commissioner Demes is curious if there's a tower located as depicted on the plan to monitor ground movements of aircraft, if that would be a reason to give justification for real time management of aircraft on the ground where the runway wouldn't need to be shifted if there were tower operations. Mr. Strickland responded, no, sir.

Chair Scarpelli asked for public comment. There was none. Public comment was closed. Commissioner Neugent reserved the balance of his time for another day.

**Motion: Commissioner Ritz made a motion to approve with staff's recommended edits, and to treat the airport's landscaping issues the same as any other landscape issues. Commissioner Thomas seconded the motion.**

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

### **BOARD DISCUSSION**

None.

### **GROWTH MANAGEMENT COMMENTS**

None.

### **ADJOURNMENT**

The Monroe County Planning Commission meeting was adjourned at 12:14 p.m.