

PLANNING COMMISSION  
**August 31, 2012**  
Meeting Minutes

The Planning Commission of Monroe County conducted a special meeting on **Friday, August 31, 2012**, beginning at 10:07 a.m. at the Murray Nelson Government Center, 102050 Overseas Highway, Key Largo, Florida.

**CALL TO ORDER**

**PLEDGE OF ALLEGIANCE**

**ROLL CALL** by Gail Creech

**PLANNING COMMISSION MEMBERS**

Denise Werling, Chair	Present
Randy Wall, Vice Chair	Present
Jeb Hale	Present
Elizabeth Lustberg	Present
William Wiatt	Present

**STAFF**

Townsley Schwab, Senior Director of Planning and Environmental Resources	Present
Susan Grimsley, Assistant County Attorney	Present
Steve Williams, Assistant County Attorney	Present
John Wolfe, Planning Commission Counsel	Present
Joe Haberman, Planning & Development Review Manager	Present
Gail Creech, Planning Commission Coordinator	Present

**COUNTY RESOLUTION 131-91 APPELLANT TO PROVIDE RECORD FOR APPEAL**

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

**SWEARING OF COUNTY STAFF**

All staff members intending to speak were sworn in by John Wolfe.

**SUBMISSION OF PROPERTY POSTING AFFIDAVITS AND PHOTOGRAPHS**

Gail Creech confirmed receipt of all necessary paperwork.

**CHANGES TO THE AGENDA**

There were no changes to the agenda.

Mr. Wolfe asked all members of the public who might be speaking to stand and be sworn. Mr. Wolfe then swore in those members of the public.

## SPECIAL MEETING

### New Item:

**1.Hoover Property Islamorada LLC Property, 91605 Overseas Highway, Tavernier, Mile Marker 91.6:** An appeal to the Planning Commission concerning an administrative decision of the Senior Director of Planning Commission concerning an administrative decision of the Senior Director of Planning & Environmental Resources dated April 24, 2012 denying a building permit application. The subject property is legally described as Lots 1-6, less the northwesterly 36 feet of Lots 1, 2 and 3, Tavernier Cove (PB1-103) and Lots 35-43, Singleton's Addition to Tavernier Cove (PB1-135), Key Largo, Monroe County, Florida, having real estate numbers 00506940.000000, 00506890.000000 and 00506860.000000.  
(File 2012-078)

Chair Werling reviewed some procedural issues before the staff report. Chair Werling explained that due to the large number of people who wish to speak, the three-minute rule will be adhered to, and those speaking for a group will be allowed five minutes. Attorneys representing groups or individuals will be heard after the applicant's presentation and prior to the public comments. Chair Werling asked for public speakers to not repeat what may previously have been stated, but to just indicate agreement with a particular speaker.

Mr. Wolfe described the procedure to be followed. Mr. Wolfe stated that this is an appeal of a decision by the Planning Department. County staff will give their presentation first of why the application was denied. Then the appellant will put on their presentation. Attorneys representing individuals or groups will be given the opportunity to put on their presentation, and then it will be open to public comment. Mr. Wolfe instructed members of the public to state their name for the record and to speak into the microphone. Mr. Wolfe explained that the tenant is a Federal Government tenant and there is a General Services administrative order which prohibits disclosure of inside floor plans of government buildings. Mr. Wolfe asked Mr. Williams to explain that order.

Mr. Williams explained that Federal buildings have come under different rules dating back to the Oklahoma City bombing. These rules limit the ability of the public or anyone else to review certain portions of federal documents. This facility has been labeled by the government as a sensitive, but unclassified (SBU) facility. Regulations for SBU facilities include that building information must be disseminated only after it is determined that the recipient is authorized to receive it. The criterion to determine whether a recipient is authorized to receive SBU building information is "need to know." Among those people who are listed as "need to know" are federal, state and local government entities and utilities. Monroe County staff has reviewed the plans. The Planning Commission has reviewed them as well. A copy of the building plans have been submitted to the clerk in a sealed manila envelope.

Mr. Williams further explained that the Planning Commission hearing today is concerned only with whether this building complies with Monroe County's Land Development Regulations (LDRs). The federal employees who will be using the building cannot be the subject of the

meeting. Representatives of the government agency are here today, but their identity will not be publicly disclosed.

Mr. Wolfe pointed out the site plan displayed on an easel, as well as a rendering of the outside of the building. The interior portion is the part that is prohibited from being displayed. Mr. Wolfe explained that since the Planning Commissioners need to have the interior floor plan in order to make a decision, and in consideration of the Sunshine Law, ex parte meetings with each Commissioner were had with a representative of the applicant and their counsel, County staff, County Attorneys and Mr. Wolfe.

Mr. Wolfe asked each Commissioner to state whether they had an ex parte meeting and who they met with and what they reviewed. Commissioner Wiatt stated he participated in an ex parte meeting with representatives of the appellant on Wednesday after the regularly scheduled monthly Commission meeting, as well as their counsel, representatives of County staff and County Attorneys, and reviewed both the external and internal site plans of the proposed facility. Commissioner Lustberg stated she had ex parte discussions exactly the same as what Commissioner Wiatt stated, except that meeting occurred this morning. Chair Werling stated she had an ex parte meeting last Wednesday after the regular Planning Commission meeting, exactly the same as Commissioner Wiatt. Vice Chair Wall stated that he had a meeting on Wednesday, the same as Chair Werling. Commissioner Hale stated that he also participated in an ex parte meeting Wednesday after the Planning Commission meeting with County staff, attorneys and representatives of the applicant, and had the opportunity to review the site plan, as well as the internal building plan.

Vice Chair Wall pointed out that Mr. Wolfe may have misread an RE number when reading the agenda item. Mr. Wolfe clarified the correct RE numbers.

Mr. Haberman presented the staff report. Mr. Haberman reported that the appellant is appealing the decision made by the Planning Director in relation to two building permit applications. The first reason that staff opted to fail the building permit applications is the property is located within a suburban commercial land use district and the purpose of the SC district is to establish areas for commercial uses designed and intended primarily to serve the needs of the immediate planning area in which they are located. Based on the plans submitted, the proposed facility does not fulfill this purpose, as the proposed facility is not intended primarily to serve the needs of the immediate planning area of Lower Key Largo/Tavernier. The second reason for staff to fail the building permits is that even though public buildings may be permitted in the SC district, the definition of public buildings states they must be compatible with or provide services to the immediate vicinity in which the building is located, and staff does not believe the proposed facility is compatible with the immediate vicinity. Staff is not arguing that this is not a public building, but that in this context it is not consistent with the definition of a public building.

In addition to these reasons, upon further review, staff found that there are issues with the future land use category. The building was built in the 1960s as a building for a public utility, Florida Keys Electric Cooperative (FKEC). In 1996-1997 the future land use category of public facilities was assigned to the property. Staff has looked at the site and had meetings with the applicant about the site plan. Mr. Haberman asked the Commissioners, if the decision of the

Planning Director is overturned, to keep in mind that the exterior improvements would still have to be reviewed by the Historic Preservation Commission. Staff recommended upholding the decision of the Planning Director to fail the building permit applications for the reasons stated in the staff report.

Commissioner Wiatt asked if anyone from the local community has commented on this to staff prior to today. Mr. Haberman responded that several letters have been received related to the appeal and should be part of the Planning Commission package. At the Historic Preservation Commission there was a great deal of public comment with concerns about the project. There have also been a couple of meetings of the community where they discussed issues with the project.

Mr. Williams asked Mr. Haberman to state his position with the County, his education and background and training. Mr. Haberman stated that he is the Planning and Development Review Manager for the County, has been with the County for seven years, he is an ASP certified planner with a Bachelor and Master's degree in urban planning.

Frank Greenman, Esq. was present on behalf of Hoover Properties. Mr. Greenman explained that he will address the legal issues first and a representative for Hoover Properties will then discuss the building and its use insofar as the use can be discussed. Mr. Greenman stated that the staff report tries to confine the planning area in which this property is located into a smaller area than Monroe County's Comprehensive Plan, which defines the planning areas in Monroe County as the Lower Keys, the Middle Keys and the Upper Keys. Mr. Greenman believes the Commission must decide that the planning area the applicant is to serve is the Upper Keys.

The definition of "public building" was reviewed. Mr. Greenman stressed that this is not a jail, nor a detention facility, but an office and service building as defined in "public building." Mr. Greenman added that what he is saying and what the representative of the applicant says has been vetted by a number of government agencies, some of whom are present in the audience today. Those government agents will not identify themselves because they do not wish their families to be put at risk by losing the anonymity that goes with the operation and mission they do. Mr. Greenman again stated that this is not a detention facility. The detention facility nearest to our area and the one that will be used by this building is Krome Detention in Homestead.

Mr. Greenman believes that this development is compatible with the immediate vicinity, both in design, appearance, use, function and intensity, and also provides services to the immediate vicinity. Mr. Greenman stated that the sentence in the staff report that states any facility which involves the detention of individuals would not be compatible with the single-family area is correct, but that this building does not detain individuals. It will interview criminals under investigation. It is not an immigration facility. Government regulations controlling this building do not allow people to be held overnight. As a general rule, no one is held more than three or four hours, which only happens three or four times a month. The policy of the U.S. Government is that when those people who are not legally eligible to come into the United States are intercepted at sea, they never come into the United States, but are delivered to either Guantanamo or their country of origin. If they are eligible to remain in the United States, they go to Krome, where they are continually processed and perhaps released. If there is any

indication of suspicion that they are criminals, they may be interviewed in this building, but they will go to another holding facility to be detained.

Mr. Greenman then discussed the FLUM issue. The future land use is public facilities, which is utilities and services. Mr. Greenman thinks that a more favorable interpretation would be that the services provided by the agencies that are going to be using this building absolutely meets with that FLUM regulation and will not require a FLUM amendment. The use of this building is intended to be anonymous. Mr. Greenman informed the public that some of the agents who will be in this new larger building have been in the Venetian Shores Plaza for 26 years. An existing operation is moving from a building that is inadequate and does not meet the mission and efficiency that Homeland Security requires to a new and better location. Mr. Greenman believes that this building adds safety specifically to the Upper Keys. Mr. Greenman then introduced the representative of the appellant.

Tob Trickey, Chief Financial Officer and part owner of Hoover Properties, was present. Mr. Trickey explained that Hoover Properties is developing the property at 91605 Overseas Highway that is leased to the General Services Administration. Hoover has developed seven properties in the past for the GSA in the last four years. Those properties were then listed. The proposed facility will be leased to the GSA and used by two tenants: Customs and Border Protection (CBP) and Immigration and Customs Service (ICE). These agencies primarily serve the Upper Keys. Mr. Trickey recited the mission of ICE, as well as their strategic plan. None of ICE's detention centers are in Monroe County. The proposed facility is not a detention facility. The two agencies have been in the Tavernier area since 1976 and have been located on Plantation Key since 1986. The agencies' other offices located in Monroe County were listed.

Mr. Trickey further explained that CBP's primary area of influence is the Upper Keys. They have high-speed boats that are moored in the Tavernier area and they have a limited range. ICE's primary area of responsibility is the Upper Keys. Mr. Trickey described CBP as the local cop on the street and ICE as the detectives. Because of that, it is conducive and efficient that the two agencies be co-located and work together. Mr. Trickey stated that there has never been one complaint made with respect to the agencies being located in Venetian Shores, nor in Key West, where they are located adjoining a neighborhood.

Mr. Trickey said that Hoover met with County staff to discuss this project and received staff's suggestions and recommendations on the project based upon the community comments that they had heard. The entrance to the property was moved. The fence line was changed to a steel white picket fence. The existing wall that surrounds the property along the back perimeter will be raised to a six-foot height. The exterior lighting was revised to adopt the dark sky approach, as well as the covers will all be pointed down to reduce bleedover lighting. Native landscaping will be used and an additional buffer landscaping was added. The generator pad was relocated so that it will be much quieter and hidden away. A more residential approach was adopted in the design of the building to make it look more appealing and fit into a residential neighborhood area.

Mr. Trickey explained that this is a public building used entirely by the U.S. Government agencies with their primary focus in the Upper Keys. The office has normal business hours.

Normal hours do not include weekends or federal holidays. There is an increase in the rental rate if they do work overtime. The facility is not visited by the public. Less than 25 employees are anticipated to work in the facility. The anonymity concept was discussed. There will be no U.S. flag or large exterior signage in front of the building. There will be no truck deliveries coming to the facility other than the normal office supplies. The parking lot will be used primarily for government employees. The building will meet the security standards to protect the government employees working at the facility.

Mr. Trickey reiterated that this is not a detention facility, but is an investigative agency. A suspect may be interviewed for three to five hours, after which the suspect will be taken to another facility. No suspect is held overnight or longer than 24 hours. It would not be unusual if less than five suspects will be brought to this building in a month. Mr. Trickey concluded by stating that this facility would allow these two agencies to do the jobs that they are trying to do that help the community, help the neighborhood, make us safer, and that they are good neighbors.

Commissioner Wiatt asked Mr. Trickey how many of the similar facilities that Hoover has constructed were located immediately adjacent to a residential area. Mr. Trickey responded that only a Social Security office was located by a neighborhood. Mr. Greenman further answered that the ICE building in Marathon is right across from the community park and immediately adjacent to a mobile home residential area. One of the offices in Key West is in a mixed business and residential area and the other one is in a historic building in Old Town.

Mr. Greenman stressed that this is nothing more than a police station offices, not a detention facility. The only things that will be there overnight are government vehicles. There will be no weapons kept in the building. There is no immigration processing, only criminal investigations. Mr. Greenman quoted from the federal guidelines on this security level building that all holding rooms must be empty at the conclusion of daily operations. No one is held overnight. It was clarified that the only people coming into this building other than regular employees and agents are those that are subject to an active investigation. Only 271 square feet of the 10,000-square-foot building is dedicated to interview rooms. Mr. Greenman again stated that there has never been a complaint about any of these agencies' operations anywhere in the Keys.

Mr. Greenman reminded the Commission that the two prongs to be met are compatibility with or providing services to the immediate area. The compatibility is established by the fact that this office blends in very well with the neighborhood. These agencies wish to be invisible, which makes them extremely compatible with the area that they are in. Mr. Greenman explained that the range of a fast boat is the area that this agency serves. When getting out of the area that the Upper Keys boats serve, responsibility falls to the facility in Marathon or to the Miami River section. Mr. Greenman pointed out that the alternative to this proposal is to let that building sit there, which has been the victim of vandalism and is an eyesore, and asked what effect that would have on property values as opposed to this proposed facility.

Mr. Greenman asked the Commission to consider the 20 educated and well-paid government employees who will live in this area and will be contributors to this community, as they have been for the last 26 years. Mr. Greenman believes the lack of an Upper Keys office would create

a gap in service which could create a magnet for people who wish to come into the United States illegally. The strategic plan for Homeland Security is to construct an efficient and effective agency, which this facility would provide.

Mr. Greenman summarized that this office provides specific protection to the residents and visitors of this planning area, and this office has continually served the people of Tavernier and the Upper Keys for a quarter of a century without complaint. The building is designed to be innocuous, with attractive design features that enhance the immediate area and preserve property values. Mr. Greenman stated that government employees make good neighbors and Tavernier will be benefited by these employees. Mr. Greenman suggested that we all owe a duty to our county to allow it to carry out its mission and this facility is in the community's best interest. Mr. Greenman requested the Commissioners to overturn the decision of the Planning Director and allow this building plan to be approved.

Commissioner Hale asked how this facility would fit into the commercial uses designation. Mr. Greenman explained that it is a separate definition found in suburban commercial that specifically allows public buildings and that the County has already agreed that it is a public building. Mr. Greenman distributed a copy of the commercial zoning to the Commission and to the clerk for the record. Mr. Greenman presented a copy of the August 24<sup>th</sup> "Reporter," which featured an article of a man smuggling 400 pounds of marijuana and three Jamaicans into a Key Largo marina, and stated that this smuggler was caught by the agents who will be using this building.

Public comment began with Nicholas Mulick, Esq., who was representing a number of the neighbors. The Commissioners agreed to allow Mr. Mulick to call and question someone he considers to be an expert in planning. Mr. Mulick then stated that he represents the Residents for the Protection of Community Character (RPCC). The position maintained by RPCC is that this application should be denied. RPCC concurs with the findings in the staff report. Mr. Mulick explained that the planning issues will be addressed by Jeff Stuncard, who is a planner.

Mr. Mulick stated that what Marathon and Key West decided with regard to allowing facilities such as the one being proposed here has nothing to do with the County's regulations, which is what the Planning Commission is tasked with enforcing. Mr. Mulick explained that the CommuniKeys Plan was specifically created to address the unique needs of the area over which it has jurisdiction, and the CommuniKeys Plan describes this area as a low-key residential community. Mr. Mulick asked the Commissioners to consider what the Board of County Commissioners (BOCC) intended when it adopted these regulations.

Mr. Mulick clarified that the facility has to be both compatible with and serve the immediate planning area, not either/or. Although no one is challenging the role of Homeland Security protecting this country, the issue is this operation center does not fit in this location. Even though this has been described as an administrative office, the description defies that because operations will take place out of there. Although referred to as a "cop shop," a "cop shop" by definition serves the immediate area and somebody can walk into a police station at any time. Mr. Mulick pointed out that the federal public facilities located in the Upper Keys include the post office and a Veterans Administration facility, which both provide services to the immediate

area. The small businesses that exist in this area want people to come in, as opposed to this facility. Only one category of individuals can get a service in that facility, and that is somebody suspected of a crime. That is not what the BOCC intended when it adopted these regulations.

Even though the FLUM designation allows a public facility, Mr. Mulick believes that means the public can receive a service at the facility. Mr. Mulick asked the Commissioners to consider if this facility fits within the confines of the County's ordinances and comprehensive plan. Mr. Mulick again clarified that the RPCC does not challenge the purposes for the Homeland Security, but believes that the planning principles do not allow for high-security buildings in this location. Mr. Mulick asked the Commissioners to use common sense when determining whether it makes sense to allow this facility in this location. Mr. Mulick stressed that the CommuniKeys Plan was intended to reflect the unique nature of the community encompassed within it. The RPCC would like to see this building occupied, but occupied with a use that is compatible with the community. Mr. Mulick asked the Commissioners if they would want this facility in their community. Mr. Mulick pointed out that the utility that occupied this building prior actually served the community.

Mr. Mulick called Jeff Stuncard up, a professional planner, to talk about the planning and regulatory issues. Upon questioning by Mr. Mulick, Mr. Stuncard stated that he has been a professional planner over the last 20 years, and then listed the areas in which he has worked. Mr. Stuncard has overseen the Livable CommuniKeys Plan, Historic Guidelines, Land Development Regulation rewrites, and other land use issues in Tavernier. Mr. Stuncard explained that planning is the art of balancing land uses, ensuring copasetic uses between neighbors, and that is what he has been doing for 20 years. Mr. Stuncard has been qualified as an expert before the Planning Commission previously in the area of planning, specifically interpretation and application of the Monroe County Comprehensive Plan and Land Development Regulations.

Mr. Mulick proffered that Mr. Stuncard is an expert in the matters of interpretation of the Monroe County Comprehensive Plan and Land Development Regulations and as a professional planner on planning standards. Mr. Wolfe explained that the Planning Commission does not take a position whether someone is an expert or not, but it can be stated for the record.

Mr. Stuncard stated that the land use map designation for this parcel is public facility, which permits public utilities and service providers. The purpose for the LDRs is to ensure the different uses that can go into different zonings. They implement the policies and goals of the comprehensive plan. The land use designation under the LDRs is suburban commercial (SC) zoning, which provides for uses that provide a service to a public. SC zoning does not provide for high-security facilities to which the surrounding area is not allowed access and receives no services. This proposed facility is not something that anyone could go in and obtain any kind of service whatsoever.

Mr. Stuncard explained that the Tavernier CommuniKeys Plan was developed as a result of the desire to preserve the low density, low impact, laid back, small town character that is seen in Tavernier. It was felt that the ability to protect and preserve the qualities of the neighborhood between Tavernier Creek and Mile Marker 97 were so important that a plan of historic guidelines was created to ensure that the community character would be preserved. Mr. Stuncard opined

that this proposed project meets no part of this plan and is not compatible with the small town residential neighborhood which begins immediately after this property line of the site in question. Mr. Stuncard agrees with the findings in the staff report.

Through questioning by Mr. Greenman, Mr. Stuncard stated that the FKEC's use of this property was compatible, but not a high-security building. Mr. Stuncard received the information that this is a high-security building from the plans because of the high fence with bars bending inward. Mr. Stuncard owns the property right next door to this site, and stated that he would not be directly affected economically by this facility.

Sue Heim, committee member of the RPCC, displayed numerous pictures of the neighborhood. Ms. Heim pointed out one photograph she felt was important because it shows that if someone stands on the wall on the back perimeter of the property they could look down on the neighbor's front porch. Ms. Heim also felt that the photograph showing the access to the water was important because of the rumors that this facility's proximity to the boat launch makes it attractive to the agencies that would occupy the facility. Having read the CommuniKeys Plan, the Historic District and the interior quarter, Ms. Heim does not believe this proposed use is compatible with the area in which it is located. Ms. Heim stated that although the rhetoric is enticing, the public should be aware that some of the people who work in the Venetian Shores building do not live here locally, and pointed out that property values are not eligible for consideration by any side. Ms. Heim clarified that the Venetian Shores location is next to a Coast Guard station and has canals, not in a neighborhood with trees and a ten-foot-wide street between the houses and the facility. Ms. Heim is concerned that once this is permitted, there will be no control over the facility and it will become whatever the appellant wants it to be.

Captain Ed Davidson, a former chairman of the Monroe County Zoning Board and the Comprehensive Plan Drafting Committee, stated that historical and community character designations are legally established and were never intended to be temporary. Captain Davidson pointed out that any condition set is binding only on the property owner, not upon the Federal Government who rents the premises. As a former Navy intelligence office, Captain Davidson believes security clearances have been abused to over-classify and overly conceal things. For all of those reasons the citizens have good justification for not relying on disclaimers which are unbinding by the developer, which raises the fundamental issue of public interest. Captain Davidson believes that there will be weapons stored at the proposed facility, such as the weapons carried by the SWAT teams, and that unsavory people will be housed in this building. Captain Davidson does not believe the facility will only be open during normal working hours since illegal activity happens at all times of the day and night. Finally, Captain Davidson stated that he finds it offensive that a federal agency well known to everybody who lives in the area is not going to be flying the American flag.

Miles Lieberman, property owner in the adjoining neighborhood, requested the Planning Commission attorney to contact the FBI and open up a criminal investigation to determine how and why residents of the community had access to the detailed plans for this high-security facility. Mr. Lieberman believes that any determination should be put on hold until the safety and security of these government employees can be assured. Mr. Lieberman gave many

examples of services that he cannot receive at this public facility. Mr. Lieberman stated that this developer did not do their due diligence on this property.

Ed Stoner, resident of Tavernier, had three points to share. One, Mr. Stoner opposes the appellant's efforts to overturn the Old Tavernier Historic District designation. Second, the U.S. Government is not a party to these proceedings and has not asked this body or any other body to set aside the Old Tavernier Historic District so that Hoover Properties can make a large profit. The third point is that the credibility of the people who have come before the Planning Commission has to be judged since what they say in the open room is contrary to what some people have seen are really in the secret documents.

Jerry Wilkinson, President of the Historical Preservation Society of the Upper Keys, Inc., asked the Commissioners to not accept this on the basis of use or compatibility or character. Mr. Wilkinson recited history of this property dating back to 1939. A brief history of the Florida Keys Electric Co-op was given. Aerial photos from 1958 were shown of the area.

Leslie Sherman, resident of Tavernier, described the community character of Tavernier as safe, friendly and like an old-fashioned neighborhood. Ms. Sherman believes that the words used in the appellant's presentation point out the difference between what Tavernier is and what this use is and shows that it is not compatible. Ms. Sherman quoted the Florida Keys Area Protection Act, which created the authority for the comprehensive plan and the Planning Commission's job, which is to conserve and promote the unique community character of the Florida Keys. Ms. Sherman believes community character is intangible. The use for the proposed facility is inconsistent, and to allow it would violate the Planning Commission's mission statement, as well as what the comprehensive plan calls for.

John Hammerstrom, president of the Tavernier Community Association, wanted to emphasize the word "community" and submitted that the character of this community is incompatible with the use of this building that is planned. Mr. Hammerstrom agreed that the appellant did not do their due diligence.

Ron Cole, member of the Tavernier Community Association, RPCC and a former naval officer with secret clearance, concurred with the comments of Captain Davidson. Mr. Cole read into the record three letters that the committee has received. The first was by Joanne McMillan. Ms. McMillan is a lifelong resident of Tavernier. Ms. McMillan's father was a builder in Tavernier and was responsible for building many of the buildings that give this community its historic charm. Ms. McMillan believes the historic designation of the community needs to be preserved at all costs and to allow any variance from the historic character would go against the dictates of those who deemed this community historic in the first place. Ms. McMillan requested that the Planning Commission act to preserve the community of Tavernier as historic and deny this appeal. The second letter was from Lois Stormont. Ms. Stormont described the Old Tavernier Association's role in preserving Tavernier's community character. The town of Tavernier contains the only collection of structures remaining in the entire 110-mile stretch of the Florida Keys where today descendants of the original settlers still live. Ms. Stormont believes that there are several more appropriate and currently available commercial sites for this proposed facility. Ms. Stormont asked the Commissioners to consider the character of the community that has been

there for over 150 years when making their decision. The third letter read was from Frank Hawkins to County Administrator Gastasi. Mr. Hawkins asked Mr. Gastasi to disallow the use of this building due to the disruption this facility would cause to the traditional atmosphere of Tavernier.

Alice Allen, resident of the adjoining neighborhood, stated she shares 10 feet of contiguous property with this site. Ms. Allen presented photographs taken 70 years ago of children, including herself, in the front yard of a property in close proximity to the subject property. Ms. Allen stated that the roads in the neighborhood are so narrow because they were built for Model A's and Model T's. More photographs of the area and residents from the late '30s were shown. Ms. Allen does not think it is a proper tribute to the women shown in the photographs to place a site of this nature in this location. Ms. Allen stated that the Planning Department was correct in making their decision the first time and asked the Planning Commission to support them.

Shirley May Albury, lifelong Tavernier resident, stated the photos shown were of her birthday party. Ms. Albury described the neighborhood when she was a child and asked the Commissioners to make sure the community character remains.

Kelly Cummings, resident of the adjoining neighborhood, read a letter from Jason King. Mr. King is a former County Senior Planner and one of the authors and facilitators of the Livable CommuniKeys Plan for Tavernier. Mr. King wrote in support of the staff report denying the permit for a high-security holding facility in the Tavernier neighborhood. Mr. King concurs with staff's finding that the proposed use is incompatible with the zoning, the future land use map and with the community creative plans. Mr. King believes that a less integrated, more highway-oriented site along US-1 could be identified by the appellant. Mr. King recommended that the County deny this application.

Ms. Cummings then spoke on her own behalf. Ms. Cummings showed a picture of ICE's Marathon facility and stated that is not what she or her neighbors want in their neighborhood. Other photos were shown of her home and the neighborhood. Ms. Cummings' home is within 300 feet of this proposed facility. Ms. Cummings opposes the proposed facility. Ms. Cummings asked the Commissioners to support the Planning staff members, thereby supporting the community. Ms. Cummings nor her neighbors will feel secure if a jail is in their neighborhood. Ms. Cummings pointed out that the Livable CommuniKeys Plan is to ensure that development or redevelopment activities will not adversely affect those areas. Ms. Cummings read from CBP's website under Social Responsibility. Ms. Cummings believes all neighbors find a severe disconnect between CBP's stated policy and the fact that they are trying to put a jail in a protected historic community. Ms. Cummings asked, as the officers who will work in this facility are protected, who will protect the neighbors?

Dottie Moses was present representing the Island of Key Largo's Federation of Homeowner Associations. Ms. Moses read into the record a letter written to John Hammerstrom from Burke Cannon, President of the Federation. Mr. Cannon informed Mr. Hammerstrom that at the general membership meeting of the Federation a resolution was unanimously approved supporting the Tavernier Community Association's efforts and position as it applies to the future use of the old FKEC office building in the Tavernier Historic District.

Maxine Enkey, Tavernier resident, asked the Commissioners to think about what kind of impact the proposed facility would have on the neighborhood and the people who live here. Ms. Enkey described the neighborhood and its residents. Ms. Enkey believes if that facility had already been in place before the residents made their decisions to move into Old Tavernier, it would have had an influence on their final decision whether to purchase in that neighborhood.

Ron Miller was present representing the Upper Keys Citizens Association. Mr. Miller referred the Commissioners to Exhibit 2 in their packets, which indicates 234 square feet will provide two holding cells for individuals detained in the surrounding area while transportation to other U.S. Customs facilities outside of the area is arranged, thereby making this a detention facility. Mr. Miller believes emergency vehicles will respond to treat detainees and other loud noises will occur at this facility. Mr. Miller also believes that the statement by GSA that their offices will operate with customary hours and will not routinely require after-hours occupation of the building has no credibility. The activities that are endemic to this type of facility would be a nightmare for the local residents and the residents will have no recourse. Mr. Miller stated that to permit a facility like this within 500 feet of any residential area is a huge disservice to the community.

Ryan Dugan, Tavernier resident, read a letter from Richard Aguilar, also a Tavernier resident. Mr. Aguilar opposes the changes to the proposed facility, as they violate the fabric of the historic district and residential character of the neighborhood. The proposed relocation of the entry to the facility will irreparably damage the quality of life for the neighborhood as a whole and the homeowners and residents abutting the Hoover property in particular. The same objection applies to the egress proposed on North Sunrise Drive. The noise and light pollution will further damage the neighborhood character. Mr. Aguilar is concerned the holding cell function of the building will grow in time. Mr. Aguilar asked the members of the Commission to fulfill their mission to maintain the quality of life of Monroe County residents and deny the application of Hoover Property.

Barry Hoffman, resident of Old Tavernier, stated that he purchased his home in Tavernier because of the tight-knit community that exists here. Mr. Hoffman does not understand how this administrative building can locally serve the community. Mr. Hoffman believes the two governmental agencies will not be hurt if they stay where they are. Mr. Hoffman questions the necessity of six-foot fencing if the proposed facility is a benign administrative building.

George McHugh, Tavernier resident, commented that even though this building can be made to look very attractive and assume the character of the building in the local community, a secret facility with secret people being put there secretly is not part of what Tavernier represents.

Vanna McDonough, resident of Tavernier, does not believe that this proposed facility complements this Tavernier community in any way, but believes it would only take away from it.

Mr. Mulick asked to submit a list of 422 petitions from residents and owners in the area in opposition to the proposal. Mr. Wolfe informed the Commissioners that because this has been

submitted later than the five-day rule, there needs to be a vote on whether this is let in. **Motion: Commissioner Wiatt made a motion to allow the submittal. Vice Chair Wall seconded the motion. There was no opposition. The motion passed unanimously.**

Chair Werling asked for further public comments. There was none. Public input was closed.

A recess was held from 12:44 p.m. to 12:55 p.m.

Mr. Greenman introduced Robert Lochrie, an attorney from Broward County who also represents Hoover.

Mr. Greenman stated that there are three major issues: One, there has been a lot of misunderstandings and misstatements of what is going on in this building; the second issue is clarifying whether the issue is about a building or about the use of a building; and the third issue is the Planning Commission's job is based on the law and the facts. Mr. Greenman clarified that, most important, this is not a high-security building. It is a Category 2 level of security out of 5. There is no SWAT team here, nor are any weapons kept here. When any drug smugglers are apprehended at night, they are sent to other facilities that are detention facilities.

Mr. Greenman stated that the service provided to the community is thwarting drug traffic, stopping human trafficking, stopping illegal immigration and protecting the individual residents of the Upper Keys. The use of this building, the number of employees in it and the activity in it is less than the FKEC's use which, according to the expert brought by Mr. Mulick, makes it compatible. There are no boats that are going to be launched at the ramp at the end of the street. Mr. Greenman pointed out that there is no effort or attempt to overturn any of the guidelines of the historic district. The appellant will go in front of the historic board, who will decide whether or not the guidelines are met. Mr. Greenman believes the changes that have been made to this building do meet the requirements of the architectural committee for the Tavernier Historic District, but today's hearing is based on the LDRs solely.

Mr. Greenman commented that due diligence was performed by the appellant and it was determined that this building meets the size requirements and the zoning requirements, and this property is lawfully entitled to have this public building on it. The proposed facility will not impact on community character because the building is going to look similar to the way it has since it was built. The increased height of the wall was recommended by the County. The white steel picket fence secures the hundreds of thousands of dollars' worth of equipment in the agents' automobiles parked at the facility.

This is an administrative office building at the end of the street that will have no impact whatsoever on the adjoining neighborhood, other than fears based on incorrect information. Mr. Greenman questioned what a neighbor would be afraid of at night when the building will be closed at night. Mr. Greenman again emphasized that this is not a detention facility, but is an administrative office, an investigative office that has regular business hours. Mr. Greenman suggested that the improvements to this building are an improvement to the quality of life of the neighborhood as opposed to what is there right now.

Mr. Greenman said, looking at the law and the facts, this is a public building and the tenant is a public government agency. The property is zoned to include publicly and privately owned utilities which are compatible with or provide services to the immediate vicinity in which the building is located, and there has been no contrary evidence whatsoever to say that the services provided does not serve the Upper Keys. The building is absolutely compatible, and what goes on inside of that building is not much different than what went on with the prior tenant, FKEC. Zoning must be decided on what the facts are and on what the law is.

Mr. Greenman concluded by stating that the evidence presented indicates that this is an appropriate use in a suburban commercial zone, it is a public building, it is an office and not a detention center, and the improvements do not take away from the community character of this building whatsoever. The appellant has consistently been willing to change the appearance insofar as it will improve the probability of acceptance in the community. Mr. Greenman believes both prongs of the law have been met by the facts and testimony presented.

Mr. Williams asked the Commissioners to look at the staff report presented by Mr. Schwab, the highest official in the area on behalf of Monroe County, as well as his letter of April 24, 2012, which lists in the most concise terms the reasons for the denial of the application. Mr. Williams read Monroe County Code, Section 140-43, and pointed out that the proposed facility is not intended primarily to serve the needs of the immediate planning area. The word “primarily” was focused on, and Mr. Williams asked the Commissioners to decide if this facility serves primarily the Upper Keys. Next Mr. Williams read Code Section 101-1, which defines public buildings. Mr. Williams stressed that because the word “or” is in the code, if the Commissioners find one of the two prongs are met, that is the way they should vote.

As to the concerns of “secrets” being kept from the public, Mr. Williams clarified that the government and the GSA has designed this public dissemination policy to prevent terrorist acts or other acts of violence. The plans were offered to the Commissioners in an ex parte situation so the Florida Sunshine Law was not violated. Mr. Williams urged the Commissioners to keep in mind as they vote the plans the Commissioners saw. Although not discussed in the meeting today, the plans are part of the basis of the Commissioners’ vote and opinion. Mr. Williams asked the Commission to support Mr. Schwab’s decision and Mr. Haberman’s decision as seen in the staff report and uphold the decision before the Commission.

Vice Chair Wall asked staff to comment on interpretation of the phrase “including privately and publicly owned utilities” within the LDRs. Mr. Haberman reads this section to mean publicly and privately owned utilities are considered a governmental agency. Vice Chair Wall then commented that he feels the real issue is to decide whether or not this government agency provides services to the local community. Mr. Haberman responded that that is one of the issues, but also to determine whether it is compatible with or provides services to the immediate vicinity, which staff determined that it is not compatible with and it does not provide services to the immediate vicinity. The other two issues that staff noted is determining the purpose issue of the SC district and the public facilities future land use category issue.

Commissioner Lustberg asked if the concern that County government is unable to enforce our regulations if the tenant is the Federal Government is a valid concern. Mr. Williams answered

that the Federal Government can be held to local zoning regulations and it is the established policy of the Federal Government that they adhere to the local zoning, building and planning regulations. The difficulty would be if a citizen is inside of that building and observes what he perceives to be violations and calls in a code enforcement action, as a hypothetical. If the Federal Government claimed there was no jurisdiction over them, there would be preemption issues and other issues that are not able to be discussed in the next three or four hours.

Mr. Schwab confirmed for Commissioner Lustberg that staff's recommendation remains the same for the same reasons. Commissioner Lustberg asked if a police station application were before the Commission, would it be considered compatible or incompatible with the three reasons staff feels this proposed facility is incompatible. Mr. Schwab sees the same reasons being relevant to a police station as far as compatibility and service, but service would be less of a question because a police station would definitely be serving that neighborhood. The FLUM issues would still have to be addressed with the comp plan, and the usage at night with the noise would possibly be in conflict with the character of the neighborhood.

Commissioner Wiatt stated he believes emphasis needs to be applied to the term "immediate vicinity" and "immediate planning area." Commissioner Wiatt thinks it is incredibly important to take into account what that immediate vicinity's and immediate planning area's views are on compatibility and primary service. It has been made clear that the immediate vicinity does not think this is either compatible or providing a primary service. Commissioner Hale agreed with Commissioner Wiatt that this is not the place for an office building for Homeland Security. Chair Werling agreed and stated, although it may be difficult and not cost effective, there is a more suitable location that would better facilitate this in a more appropriate area.

**Motion: Commissioner Wiatt made a motion that the applicant's appeal be denied based on the fact that the proposed application does not meet Monroe County Code Section 130-43, and that the proposal does not meet the definition of a public building as it would be permitted in the SC district as defined in Monroe County Code Section 101-1, and based upon the staff report presented at this hearing and the April 24, 2012 letter from Townsley Schwab, the evidence and testimony presented today, as well as the Commissioners' review of the building plans. Vice Chair Wall seconded the motion.**

Vice Chair Wall added that he upholds staff's recommendation due to the definition of compatibility, but believes that the applicant has met the other requirements. Vice Chair Wall stated he does not think there is a FLUM issue. Mr. Schwab explained for Commissioner Lustberg that the current FLUM does not allow this type of facility, even though the suburban business district does. The applicant would have to get an amendment to revise the FLUM to be able to have this facility allowed. It is just that the permit cannot be approved at this point unless that is accomplished.

Mr. Wolfe clarified that the FLUM does not have to be considered in the motion, but the Planning Commission does need to decide which reasons for denial in the staff report they are agreeing with. Not including the FLUM at this stage will not affect the Commission's ability to look at a map use change for this property in the future. Ms. Grimsley pointed out that the FLUM designation is to provide for land owned by public utilities and service providers, which

brings into question whether the applicant is a service provider. Vice Chair Wall stated that because the applicant is saying that their law enforcement mission does legitimately provide a service to the planning area, he would not be in favor of including the FLUM issue in the motion. Commissioner Wiatt added that the idea that their service primarily serves the immediate planning area, which the citizens of the immediate planning area disagree with, Commissioner Wiatt does not believe the applicant meets 130-43, nor do they meet Code Section 101-1, because the “immediate vicinity” does not feel that this operation is compatible with the community. Use of the “or” fails on both sides and, therefore, fails to meet code. Commissioner Wiatt believes the FLUM test is somewhat moot, because if the applicant fails to meet the requirements of code, then the appeal fails. Commissioner Wiatt explained that the initial ruling of staff did not include the FLUM and the application was denied. The fact that the FLUM issue did not pass the first test makes the FLUM question irrelevant. Mr. Wolfe asked for clarification that the motion rests on what was previously discussed. If the applicant appealed and won, the FLUM issue is still in existence because the County is still asserting they would need a FLUM change, but the motion is not based on that issue at this point. Commissioner Wiatt agreed.

**The roll was called with the following results: Commissioner Hale, Yes; Vice Chair Wall, Yes; Commissioner Lustberg, Yes; Commissioner Wiatt, Yes; and Chair Werling, Yes. The motion passed unanimously.**

#### **ADJOURNMENT**

The Monroe County Planning Commission meeting was adjourned at 1:55 p.m.