

PLANNING COMMISSION  
**December 16, 2015**  
Meeting Minutes

The Planning Commission of Monroe County conducted a meeting on **Wednesday, December 16, 2015**, beginning at 10:03 a.m. at the Marathon Government Center, 2798 Overseas Highway, Marathon, Florida.

**CALL TO ORDER**

**PLEDGE OF ALLEGIANCE**

**ROLL CALL** by Gail Creech

**PLANNING COMMISSION MEMBERS**

|                           |         |
|---------------------------|---------|
| Denise Werling, Chair     | Present |
| William Wiatt, Vice Chair | Present |
| Elizabeth Lustberg        | Present |
| Ron Miller                | Present |
| Beth Ramsay-Vickrey       | Present |

**STAFF**

|  |         |
|--|---------|
| Mayte Santamaria, Sr. Director of Planning and Environmental Resources | Present |
| Steve Williams, Assistant County Attorney                              | Present |
| Peter Morris, Assistant County Attorney                                | Present |
| John Wolfe, Planning Commission Counsel                                | Present |
| Mike Roberts, Senior Administrator, Environmental Resources            | Present |
| Kevin Bond, Planning & Development Review Manager                      | Present |
| Matt Coyle, Principal Planner  | Present |
| Devin Rains, Senior Planner  | 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 Mr. Wolfe.

**SUBMISSION OF PROPERTY POSTING AFFIDAVITS AND PHOTOGRAPHS**

Gail Creech confirmed receipt of all necessary paperwork.

**SWEARING OF COUNTY STAFF**

County staff members and all members of the public who believed they might possibly testify at today's meeting were sworn in by Mr. Wolfe.

**CHANGES TO THE AGENDA**

Ms. Santamaria requested that Item 5 be heard first. Ms. Creech stated the applicant of Item 1 has requested a continuance to the January 27, 2015, Planning Commission meeting. **Motion: Commissioner Wiatt made a motion to continue Item 1 to the January 27, 2015, Planning**

**Commission meeting. Commissioner Ramsay-Vickrey seconded the motion. There was no opposition. The motion passed unanimously.**

## MEETING

### Continued Item:

**1.The Trustee of Raymond A. Warner, Sr., Living Trust, 99550 Overseas Highway, Key Largo, mile marker 99:** A public hearing concerning a request for a Variance of 7 feet to the required 10 foot primary side non-shoreline setback, which is adjacent to the northeastern property line; and a request for a Variance to reduce the required amount of parking landscaping from 688 square feet to 399 square feet and to be located at a distance greater than 5 feet from the parking area. Approval would result in a primary side setback of 3 feet; and a 58% reduction in required landscaping located at a greater distance than allowed. The requested variances are required for the development of a proposed furniture showroom. The subject property is described as a parcel of land in Section 33, Township 61 South, Range 39 East, and further legally described in metes and bounds as provided in the application file, Key Largo, Monroe County, Florida, having real estate number 00088220.000000.  
(File 2015-122)

This item was continued to the January 27, 2015, Planning Commission meeting.

### New Item:

**5.Jose Reboredo, 167 Atlantic Circle Drive, Key Largo:** An appeal by a surrounding property owner to the Planning Commission concerning an administrative decision of the Senior Director of Planning & Environmental Resources dated September 18, 2015 approving a special exception to construct a 143.5 linear foot access walkway (134.9' waterward of MHWL) and 6' X 26.66' terminal platform with a 12,000 lb. cradle boat lift. The subject property is legally described as Lot 6, Block C, Tavernier #2 (Plat Book 2, Page 8), Monroe County, Florida, having real estate number 00556170-000000.  
(File 2015-197)

(10:08 a.m.) Mike Roberts, Senior Administrator of Environmental Resources, presented the staff report. Mr. Roberts reported that this is an appeal by a neighboring property owner on an application for a long dock exception. A slide was shown of the subject properties. Mr. Roberts reported that the appellant, Kenneth Bell, owns the parcel to the south of the proposed dock. The approved plans of the Reboredos' dock includes a platform at the end angled off to stay within the riparian lines. Mr. Roberts noted that may or may not be where the riparian lines actually are located. A list of all of the docks in the subject cove area were shown. Mr. Roberts continued to report that all of the other docks were constructed prior to 1997 and are over 100 feet in length in order to obtain the four foot navigable depth. Mr. Roberts stated that staff believes that the proposed dock is consistent with the character of this specific area, will not interfere with public recreational uses in or on adjacent waters and will pose no navigational or safety hazard. The gap between the Reboredo parcel and the Bell parcel is unimproved right-of-way and is platted as a private drive. Mr. Roberts requested the Commission uphold the decision by the Senior

Director of Planning and Environmental Resources because it was based on the criteria provided in the Land Development Code and the findings of fact summarized in the technical memorandum and the staff report.

Commissioner Wiatt asked who is responsible for setting the riparian lines. Mr. Williams explained riparian lines are sometimes set by deed. When not set by deed, the State of Florida historically has recognized riparian lines as an extension of a property line straight out into the water. Mr. Williams pointed out in this subject cove there appears to be a mixture of both ways of determining those rights. Neither Florida law nor County code has an established rule in that regard. Commissioner Lustberg pointed out that different riparian lines are shown in the material provided to the Commissioners. Mr. Wolfe added that a surveyor's interpretation is somewhat more qualified in determining riparian rights. Mr. Williams asked that the Commission uphold the decision of staff based on the staff report and the presentation to the Commission. Mr. Wolfe noted that there may be some testimony today from people disagreeing with staff as to the riparian lines. Mr. Roberts clarified that what staff has prepared is believed to be consistent with the comp plan and the Land Development Code. Staff makes no determination on the riparian rights of any of the property owners along the shoreline. County code and the comp plan are silent in terms of riparian rights. Staff accepted the riparian lines as shown because something had to be accepted, but whether or not the appellant's dock is located in the correct or incorrect space is not before the Commission today. Commissioner Wiatt asked for clarification regarding ownership of the property between the appellant's property and the applicant's property. Mr. Morris explained that there is no clear indication of title or interest to that property. There is no evidence of common law dedication to the County. It would be outside the scope of what would be competent substantial evidence to consider criteria that is not codified.

Commissioner Ramsay-Vickrey asked about the space between the current and proposed boat lifts. Ms. Santamaria replied that the proposed lift is approximately three to four feet placed catty-corner from the Bell dock. Commissioner Wiatt stated the placement of the proposed boat lift would make navigating through that gap very difficult even in a kayak, almost impossible in any kind of motorized vessel. Mr. Wolfe cautioned that Commissioner Wiatt's comments are as a Planning Commissioner and not as an expert witness. Commissioner Ramsay-Vickrey asked if it would be prudent for the applicant to extend their dock out further to bypass this navigational hazard. Ms. Santamaria responded that staff does not recommend longer docks because the code specifically states the minimum distance.

Nicholas Mulick, Esquire, representing the appellant, Ken Bell, stated this is a disaster waiting to happen with the placement of this dock and boat lift. Mr. Mulick also takes issue with the County's interpretation of the private drive. Mr. Mulick stated that the plat very specifically dedicates that private road to the subdivision owners for their use and the adjacent circular area is dedicated as a park. The community has been using that private road regularly as access to open water for kayaking. There will be evidence that the County maintains that right-of-way. The property owners cannot gain access to the water if this proposed dock is constructed. Mr. Mulick pointed out that the placement of this structure is a result of the applicant applying for an exemption from DEP because the dock is under 500 square feet in size. DEP requires five feet at mean low. The circumstances are therefore self-imposed to avoid certain criteria. There is a

policy in the comp plan that says access to open water by the public should not be limited. For all of these reasons the appellant believes that the application does not meet the required criteria. Mr. Mulick asked Mr. Roberts about his experience in boating and, specifically, navigating into boatlifts. Mr. Williams objected to any questions regarding Mr. Roberts' personal experience as opposed to his review of this item. Mr. Mulick explained the question was asked because nobody on the staff has any understanding of how one configures and locates boatlifts and staff has made a determination that this boatlift is not likely or expected to create a hazardous or dangerous condition.

The appellant, Kenneth Bell, upon questioning by Mr. Mulick, testified that he is familiar with the proposed location of the Reboredo dock. Mr. Bell has lived at his current address for 13 months and has been driving boats for 30 years. Using his boatlift for a year now, Mr. Bell has found that coming into a cradle lift is very similar to bringing a boat up onto a trailer at a ramp because it has to be lined up just right. The wind can affect that maneuver. Mr. Bell believes the proposed configuration of the subject dock is dangerous and will be hard to navigate onto during even a slight breeze. The private drive between the two residences is used by the neighborhood to launch kayaks and paddleboards. There is no problem navigating through this cove with the current docks that exist. Commissioner Wiatt asked Mr. Bell if he is in agreement or disagreement with the way the riparian lines are shown. Mr. Bell responded that he is not a riparian line expert, but his dock was put in within the riparian lines shown on one piece of paper, but there are other documents showing a different placement of the riparian lines. Commissioner Miller pointed out that the Bell dock is actually over two riparian lines, not just one.

Mr. Mulick noted that according to the Bells' survey and engineer their dock was built within the riparian rights. Mr. Mulick observed that determining riparian rights can be a balancing act to accommodate everyone. Mr. Mulick added that the Reboredos' riparian lines do not extend from the property lines, although riparian rights are not an issue today. Historically riparian lines have been hit or miss throughout the Keys. Mr. Williams pointed out that the same engineer and the same company prepared both the applicant's and the appellant's plans.

Commissioner Lustberg asked to hear from the applicant wanting to put in the dock regarding their riparian lines. Mr. Mulick objected that the riparian line location is not relevant to the decision-making. Mr. Wolfe noted that Mr. Mulick has raised the issue. Mr. Mulick countered that he was responding to questions about the riparian lines. Mr. Wolfe replied that the Planning Commission has a more relaxed standard than a court of law. The Commissioners can ask questions about riparian lines, but whether that becomes a determinative factor in their decision-making has to be looked at carefully. Mr. Wolfe clarified for Commissioner Miller that what was correctly or incorrectly previously built is not before the Commission. The Commission has to decide whether to uphold the Planning Director's decision or to deny it.

Gay Marie Smith, representing the Reboredos, stated that the Reboredos started the process to construct a dock back in 2009. A riparian survey was done by a qualified surveyor done with the lines straight out from the property. The applicant has done everything required of them in the process. When notified there was a difference in the configurations the applicant chose to go back through for another dock special exception. When the permit was approved everything

matched. Ms. Smith believes the problem developed in 2003 when the County approved the boatlift located on the Bells' property because they approved it without asking for a riparian survey. Mr. Bell currently has an application in with the County to put another boatlift closer in on the walkway. DEP requires that two or more slips on one property has to be approved by DEP in Ft. Myers. Ms. Smith stated there are two other areas located in close proximity to the private drive being referred to by the Bells that can be used to launch kayaks and paddleboards. The Reboredos are just asking to be able to use their water at the end of their property like everyone else.

Chair Werling asked for public comment.

Joyce Newman, resident of Big Pine Key, pointed out that many years ago things were allowed that, now the Keys are an area of state critical concern, things have become more difficult to get permitted.

Lisette Reboredo, daughter of the property owners, was present on behalf of her parents due to health reasons. Ms. Reboredo stated her parents have owned the property since 1992, before most of the docks were built in that area. After saving money to be able to build a dock on the property, in 2009 the process was begun to try to get a dock within all the parameters of what is allowed. Building a dock further out was inquired into, but the Reboredos were told by their engineer, Glen Boe, that was not possible because they had to stay within their riparian lines. Ms. Reboredo explained that within a half a block of the private drive being discussed there is a park that provides public access to the water. Ms. Reboredo stated that the Bells are the ones that went over their riparian lines prohibiting the access to the water. Ms. Reboredo pointed out that there are many times boats have to dock right next to each other and there are boat ramps that exist next to each other with less than a three-foot separation.

Commission Ramsay-Vickrey asked staff to address the comment about the dock being unable to extend out further. Mr. Williams replied that staff does not have any knowledge of that. That could have been an Army Corps of Engineers requirement. Commissioner Ramsay-Vickrey demonstrated with a tape measure the distance of three feet.

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

Mr. Mulick responded that this issue has nothing to do with riparian rights. The Reboredo dock has been shoe-horned in not to accommodate the riparian lines, but to meet the MLHW five foot level. The Bells' dock was built based upon engineering analysis because the location of anything in the water is required to be based on a survey. Mr. Mulick suggested that if the line from the private drive is extended out it will show that the Reboredos are outside of their riparian lines. Mr. Mulick noted that County code requires, in order to grant an extraordinary variance of this sort, there must be an affirmative statement in writing that it will not create an unsafe condition. There is no such affirmative finding in this instance. With regard to the access by the public, letters have been received from neighbors that they have been accessing the water there for years and year. The main issue remains is that a safe scenario? The comment made about boats docking close together does not consider that those are in protected basins, not on open water.

Ms. Smith pointed out that the requirement to put a dock within the riparian lines is a DEP requirement. Ms. Smith clarified that Ms. Reboredo misspoke: When she said “ramp” she meant to say “boatlift.” There are many narrow canals with boatlifts that the Keys residents have to maneuver through often. Any boater will use due care in windy situations so as not to damage their own boat. Ms. Smith reiterated that access is not being cut off. There is water access a half a block away. Ms. Smith asked the Commissioners to vote in favor of staff’s decision to uphold the variance.

Mr. Williams clarified that the first consideration is whether the proposed dock will not be inconsistent with community character. With seven docks already existing in this area, staff found it is not inconsistent with community character. The next consideration is that the proposed dock will not interfere with public recreational uses in or on adjacent waters. There is nothing that exists that would rise to the level of overcoming staff’s finding that the proposed dock would not interfere with public recreational uses. The final consideration is that the proposed dock will pose no navigational or safety hazard. Given the length of the proposed dock, that is not an issue. Mr. Williams pointed out that the top two docks on the slide of the subject area are as close together as the Bells’ dock and the proposed dock. There is no one voicing that those top two are too close to each other or they pose a navigational or safety hazard. On behalf of staff and the materials presented and the approval put through, Mr. Williams asked that the Commissioners uphold staff’s findings and deny the appeal.

Commissioner Lustberg commented that the County does not control or have jurisdiction over the riparian lines. The Commission should make this decision based on what the County has control over and not anything to do with the riparian lines. Mr. Wolfe pointed out that the Commission needs to either uphold or overturn the exemption by the Senior Director of Planning based upon the considerations in the staff report. A motion to either uphold or overturn the decision needs to include the reason for the motion. Commissioner Wiatt commented that if nobody has rights to the private drive between the two residences, then nobody has riparian rights to the water extending from that property. Therefore, the applicant’s rights or privilege to the riparian waters out in front of their property should not be taken away. Chair Werling agreed with Commissioner Wiatt.

**Motion: Commissioner Miller made a motion to uphold the decision of the Director of Planning based on the fact that the proposed dock will not be inconsistent with community character, will not interfere with public recreational uses, and will pose no navigational or safety hazard. Commissioner Wiatt seconded the motion. The roll was called with the following results: Commissioner Ramsay-Vickrey, Yes; Commissioner Wiatt, Yes; Commissioner Lustberg, Yes; Commissioner Miller, Yes; and Chair Werling, Yes. The motion passed unanimously.**

**Continued Item:**

**2. AN ORDINANCE BY THE MONROE COUNTY BOARD OF COUNTY COMMISSIONERS AMENDING THE MONROE COUNTY LAND USE DISTRICT (ZONING) MAP FROM SUBURBAN COMMERCIAL (SC) TO MIXED USE (MU), FOR**

PROPERTY LOCATED AT 28500 & 28540 OVERSEAS HIGHWAY, LITTLE TORCH KEY, MILE MARKER 28.5 OCEANSIDE, LEGALLY DESCRIBED AS PARCELS OF LAND IN A PART OF U.S. GOVERNMENT LOT 6, SECTION 28, TOWNSHIP 66 SOUTH, RANGE 29 EAST, LITTLE TORCH KEY, MONROE COUNTY, FLORIDA, HAVING REAL ESTATE NUMBERS 00113570-000000, 00113570-000100, 00113570-000200, 00113590-000000 AND 00113620-000000, AS PROPOSED BY PATRICK R AND DIANE COLEE, DOLPHIN MARINA ASSOCIATES LTD AND TORCH KEY PROPERTIES LTD; 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.

(2015-152)

(11:31 a.m.) Mr. Bond, Development Review Manager with the Planning Department, presented the staff report. Mr. Bond reported that this is a continuation of a hearing that began last month. The Commission continued the item to give both the applicant and staff some time to address some concerns raised at the last hearing. A supplement was provided on behalf of the property owner. Staff provided an addendum to the staff report. Mr. Bond showed on a slide other property within the Lower Keys within the mixed use/commercial FLUM category and also within the suburban commercial and mixed use land use districts. Most of the land in the Lower Keys within the MC FLUM is along US-1, and most of the property within the MC FLUM is zoned suburban commercial, but there is some mixed use property in the Lower Keys. Mr. Bond explained that most of the allowed uses in the suburban commercial district would continue to be allowed under the proposed amendment. A few more uses are allowed in mixed use that are currently prohibited on the property, most relevant being the attached and detached residential units. It would also allow the development of new detached residential units. Other uses that would be allowed would include boat building or repair in conjunction with the marina or commercial fishing and related uses. Mixed use would also allow broader commercial recreational uses that are currently limited in the SC district and would also allow light industrial uses on parcels greater than two acres and wastewater treatment facilities that serve any use. The other big question that came up at the last hearing was about the Lower Keys Livable CommuniKeys Plan and how it supports or does not support the proposed amendment. Mr. Bond reported that staff performed additional analyses on the LCP and found only one goal, three objectives and seven policies apply to the Torches sub-area. Staff's recommendation has not changed. Staff is still recommending approval based upon the seven factors for considering a map amendment under the County code, specifically Factors 4, 5 and 6.

Commissioner Miller asked about the nonconforming uses being brought into conformity. Mr. Bond explained that the existing two detached units would be brought into conformity. Mr. Bond explained to Commissioner Wiatt that the commercial fishing under SC is lawfully nonconforming, but allowed as of right under MU. The County code and comp plan limit expansions of nonconforming uses. There would be no restriction on charter boats in mixed use as long as it complies with all the other parts of the code, such as parking.

Jim Hendrick and Donna Bosold were present serving as consultants for the applicant. Mr. Hendrick agreed that there are nonconforming residential units and nonconforming commercial

fishing operations at the premises currently. Mr. Hendrick then explained that back in 1986 there was an analysis done of Little Torch Key on three basic categories of usage: Urban, suburban and a nature category. Dolphin Marina at the time was categorized correctly as urban, which now bears the title suburban commercial, because of the nature of the operation there. The residential density permitted by this rezoning would put it at much less density than the adjacent properties. Mr. Hendrick spoke of the community meeting held on December 13, 2015. 43 people attended for a give-and-take between the consultants, the manager of Dolphin Marina and a number of neighbors. Some members of Last Stand attended. At that meeting the basic difference between SC and mixed use were explained and the Colee family's plans to redevelop the marina were discussed. Invitations were mailed to all Little Torch residents within 300 feet and anybody who had signed up asking for information. The attendees were shown the latest iterations of plans for this property and reminded that rezoning must precede any particular site plan. Therefore, those iterations were not binding. The most outspoken of the neighbors were those living on the other side of the canal from the subject property with concerns about some of the operations going on right now. The neighbors were told the Little Palm passenger ferry was going to be moved from the canal over adjacent to the bridge in a basin. Operational changes were also explained to them to eliminate or greatly reduce inconsiderate boating operators. Mr. Hendrick stated that most of the people attending were pleased with what is being proposed when comparing 22 residential dwelling units as opposed to 39 hotel rooms, which are allowed under SC. The Colees have spent tens of thousands of dollars in architectural fees pursuing this. The Colees plan to build on this site the departure zone for the most successful resort in North America, Little Palm Island. The property will not be filled with traps or used for the repair and storage of boats. Mr. Hendrick believes this property should be zoned MU. Charter boat and sport diving are the only uses under the definition of "commercial fishing" that are expected to continue. There is a limit as to how many boats can be accommodated on the site. Commissioner Ramsay-Vickrey noted that there is very little dockage space left available.

Chair Werling asked for public comment.

Kim Schroeder, resident directly across from the marina, stated the recent meeting was appreciated. The proposed residential homes were explained as having lock-out rooms that allow for more rooms when there are more people. The neighbors believe that is going to lend to multi-families coming in and renting, increasing vehicular and boat traffic. Ms. Schroeder is concerned about the proposed change to the fuel dock creating problems with navigation in that area. Ms. Schroeder asked the Commissioners to keep this community livable the way that it is now.

Bill Hunter, representing Sugarloaf Shores Property Association, stated this is the first time he has seen the LCP used to support rezoning. Of the six criteria, three were dismissed and three apply. Mr. Hunter is uncomfortable with the LCP being used to support rezoning when, in fact, it does not support that. Goal Number 1 states "Monroe County shall manage future growth to preserve low density and preserve community character," while this rezoning increases the potential density which is not consistent with this LCP goal. Mr. Hunter stated although today there may be argument that the planned redevelopment will not add to density, the rezoning does increase the potential density because the applicant wants to change the uses on the property.

Mr. Hunter urged the Commission to not set the precedent of letting the LCP be used as rationale for rezoning when there is nothing in there that recommends rezoning.

John Jeffrey, resident directly across from the existing fuel docks at Dolphin Marina, stated his invitation to the community meeting was postmarked Miami, Florida, Friday p.m. for a Sunday meeting, which he does not believe is sufficient notice. Even the smaller scale that Dolphin Marina is today is a nuisance to the community because of all the traffic at this property. This proposed development will adversely affect the quality of life and the property values in this neighborhood. There will be noise and more boat traffic. The canal should actually be a no-wake zone.

Greg Sells, resident of Little Torch Key, stated he opposes the proposed change in zoning. Changing the community character of Little Torch Key and increasing the density this dramatically is not consistent with the Lower Keys LCP. The higher density combined with the short-term vacation rentals will change the residential character of the neighborhood to a more transient one while providing no additional, and maybe less, services to the neighborhood. The change in zoning permits other uses which are not in character with the neighborhood. The applicant has not sought community input on how to integrate the proposed zoning and development into the neighborhood. There is no assurance that current services will remain available to the community.

Jim Muir, resident of Little Torch Key, stated he, too, does not support this change in the zoning. Mr. Muir believes the community meeting was poorly announced. Mr. Muir stated the change in zoning would change the atmosphere in the neighborhood to a more transient and party-like atmosphere. Mr. Muir chose Little Torch Key to live because it was a low density and quiet area. Mr. Muir said that nobody is present from the north side of Little Torch Key because they were not notified of this and they are going to be impacted by this also from traffic and boat traffic.

Ron Roberts, resident of Little Torch Key, stated that the applicant is not a good neighbor because they do not address complaints made by the neighbors. The boat captains for Little Palm Island are inconsiderate of the neighbors and their properties. Changing the location of the ferry operations may not work because of the lack of water depth necessary. Mr. Roberts believes a more concrete conception as to what the applicant wants to do should be shown before the Commission makes a decision.

Jeff Pittis, resident of Little Torch Key, pointed out that even though the plans look nice, once the zoning change is made anything can happen.

Tony Farretta, resident of Little Torch Key, stated that this neighborhood is extremely quiet. The proposed detached single-family vacation rentals will create noise and smells that will transform the neighborhood. What Dolphin Marina is now compared to what they want to be is a huge transformation. Mr. Farretta believes there are fewer neighbors present at today's meeting because it is a workday. Mr. Farretta stated the attendees at the community meeting were never told that the shuttle was going to be moved over by the bridge and he does not believe the water is deep enough at that location for that to be allowed.

Deborah Pittis, resident of Little Torch Key, stated she is concerned about the increased boat traffic. There is no room for trailers or for boats to be moored. The increase in vehicular traffic will be prohibitive.

Alicia Putney, resident of No Name Key, outlined the increase in dwelling units that a change to mixed use from suburban commercial would allow. It would also allow numerous expanded uses. Ms. Putney explained that the overall purpose and intent of the Livable CommuniKeys Program is to maintain and enhance the existing community character of the local community so that the uniqueness of the Florida Keys would not be lost. Any major change in use or intensity to the Dolphin Marina property allowed as a result of this zoning change will alter the community character. Ms. Putney does not agree with staff that proposed zoning changes are consistent with the Lower Keys Livable CommuniKeys Plan, Monroe County code and is in concert with the intent of the comp plan. The Livable CommuniKeys Plan Goal Number 1 seems more supportive of denying this zoning request than recommending approval. Ms. Putney asked the Commissioners to deny this zoning request.

Deb Curlee, resident of Cudjoe Key, stated that Dolphin Marina could use improvement, but all of those improvements are allowed under the present zoning designation. The community will not benefit from the zoning change. Ms. Curlee believes calling the detached units residences is misleading because they will look like homes that are actually vacation rentals in a gated community. The current work on changing the height restrictions for sea level rise makes the height of these units unknown. The precedent being set by this proposed change could put all other Livable CommuniKeys Plans at risk. Ms. Curlee requested that the Commissioners deny this zoning change.

Pat Dawson, resident of Little Torch Key, voiced concern about the road traffic increase this development will bring. There is no guarantee that the plan put forth by the applicant will come to fruition once the zoning change happens. Increased density in this area is not in the best interest of the Lower Keys in general and of Little Torch specifically.

Joyce Newman, resident of Big Pine Key, opposes the requested rezoning because it would drastically change the community character of the adjoining quiet residential neighborhood in the Lower Keys. Ms. Newman voiced concern about traffic, safety and congestion, as well as the lack of affordable housing for the proposed resort workers and the loss of a fuel dock and boat ramp by the larger Lower Keys community. Ms. Newman believes the rezoning of this three-and-a-half acre site would enable a de facto destination resort. Ms. Newman concluded that there is no need for rezoning of the Dolphin Marina property and asked the Commissioners to deny this request for rezoning. Ms. Newman then spoke of a rezoning allowed in Big Pine Key that resulted in the property being flipped and the end result bringing unintended consequences drastically different than what was proposed.

Mary McCaffrey, resident of Little Torch Key, stated she chose to purchase in this area because it is a very friendly and very quiet neighborhood. This type of zoning change and the increased density will change the whole character of the community. Ms. McCaffrey clarified that there is no commercial fishing fleet on Little Torch Key.

Brenda Sells, resident of Little Torch Key, pointed out that of the 43 people who attended the community meeting only two spoke in favor of what was presented at the meeting. Most of the individuals who attended that meeting could not attend today's meeting because they have to work. Ms. Sells commented that it was stated at that prior meeting that there was a potential that Little Palm Resort would be closed to the public. Ms. Sells asked what benefit that provides the residents.

Suzanne Smith, resident of Little Torch Key, commented that there is only one sailboat charter and four to five fishing guides that come in and out of this marina. Ms. Smith stated she is very much against this proposal.

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

Mr. Hendrick clarified that this property is currently zoned suburban commercial and every single use that members of the public were complaining about can occur now. One form of redevelopment will occur whether the property is rezoned or not. Speaking against any change simply is not realistic. This property since 1986 has been characterized by Monroe County in official planning documents as urban. This commercial center and their neighbors on the other side of the canal have to learn to live together. What happens to Little Palm Island is not before the Commission today. The conditional use process affords a method to constrain some of the inappropriate behaviors occurring in the neighborhood currently. The transient density on this property is not being increased at all. What is increasing is the ability to use this property to have vacation rentals which are constructed to operate and look like residences. Mr. Hendrick addressed the public comment that was presented. The concern about a restaurant, pool, etc. is irrelevant and immaterial to the proposed rezoning because those are potential uses under the current zoning. To say that what is done with this property is going to operate as precedent for a totally dissimilar area is incorrect. The compelling argument is this is not an SC property because it is not intended to serve the needs of a local community. The commercial fishing operations currently on the property consist of five rental boats and five charter captains. There is not room for much more than that because of the layout of the property. Mr. Hendrick urged the Commissioners to not use the LCP to support the rezoning if they do not think it is appropriate, but to simply look to the fact that mixed use describes what exists there now and SC does not. Although there have been notice problems with this project, the community has been involved in the process. There is no dramatic increase in density as has been complained of. This reasonable increase in density is not out of conformity with the community character. The applicant is implementing mechanisms to try to reduce the impact of the existing operations on property owners and looks forward to working with them further.

Commissioner Miller asked about the statement made that this does not serve the local community. Mr. Hendrick clarified that it is not primarily intended to serve the local community. There are uses, such as the fuel docks, that the local community enjoys, but that is not primarily what is going on. Over 90 percent of this resort facility is not devoted to serving local needs. Mr. Hendrick addressed Ms. Newman's concern about unintended consequences by repeating that the concerns voiced today have to do with things inherent in the current zoning category.

Commissioner Lustberg pointed out that although the LCP wants to keep development on US-1, this development backs into the neighborhood. Mr. Hendrick replied that this is an enclave that is isolated completely by water from the adjacent residential subdivision. Mr. Hendrick urged that the Commission is not limited to considering only those seven criteria, but larger zoning law issues that say land use districts should be brought into full compliance with the comp plan. The fact that MU fits its intended purpose much better than SC is an overarching provision of the zoning law that warrants this rezoning. Commissioner Ramsay-Vickrey noted that this property has been a recognized and functioning marina since 1986 and operating under what would only be allowed under mixed use as opposed to SC. Mr. Hendrick agreed with that characterization.

Commissioner Wiatt asked what the provisions are for serving the local community under the SC classification. Ms. Santamaria responded that there is no particular requirement. The purpose of the SC district is to establish areas for commercial uses designed and intended to primarily serve the needs of the immediate planning area in which they are located. The purpose of mixed use is to establish or preserve areas of mixed uses representative of the character, economy and cultural history of the Florida Keys. Ms. Santamaria explained to Commissioner Miller that the maximum development potential is listed in the staff report. This was done not using the setbacks, but just estimating all of the area that is there. To build a hotel the applicant would have to buy transient units and transfer them to the site. Commissioner Ramsay-Vickrey pointed out that currently the applicant could turn this property into an RV campground.

Commissioner Wiatt believes this will be a start-from-scratch new development as opposed to a redevelopment. If starting from scratch, SC would be the best zoning here. Commissioner Ramsay-Vickrey contended that Dolphin Marina has been in existence since 1963 and all of the operations that go along with that are more of an MU designation rather than SC.

**Motion: Commissioner Miller made a motion to deny the zone change.** Mr. Wolfe asked for reasons to be put into the motion. **Chair Werling seconded the motion for discussion. Commissioner Miller withdrew the motion. Chair Werling agreed with that withdrawal.**

Commissioner Wiatt again voiced concern that this is fresh-start development, so the Commission should be looking at what is the most appropriate zoning for this property from that standpoint. From a fresh start Commission Wiatt believes the initial zoning of SC was appropriate. Commissioner Ramsay-Vickrey pointed out that under suburban commercial attached dwelling units, boat repair and commercial sports fishing related industries are not allowed. The ice, bait and fuel services would not be cut off to the community under MU.

Commissioner Miller noted that he cannot agree with Factors 4, 5 or 6 that staff used for approval. Commissioner Lustberg suggested not basing the Commission's decision on fresh-start development, but on non-compliance of Factors 4, 5 or 6. Mr. Wolfe reminded the Commission that their decision will be to recommend to the BOCC either to grant or deny the rezoning, including on what basis the recommendation is made.

**Motion: Commissioner Miller made a motion to recommend denial to the BOCC based on the fact that Factors 4, 5 and 6 of Ms. Santamaria's memorandum to the Planning Commission dated November 4 are not supported. That motion failed.**

Commissioner Lustberg agrees it fails to meet the requirements for Factors 4 and 6, but is unsure whether it meets the requirements of Factor 5. Chair Werling and Commissioner Wiatt feel that there is enough that can be accomplished under the current zoning so that it does not rise to the level of requiring a change to the zoning to facilitate other things that would take away from the neighborhood's cohesiveness. Mr. Wolfe explained that a denial would have to be based on the fact it does not meet any of the seven factors.

**Motion: Commissioner Miller made a motion to recommend denial to the BOCC based on the fact that the LUD change of zoning does not meet any of the seven criteria as listed in the staff report of November 4, 2015, and based on the testimony given today and the additional written supplements. Commissioner Lustberg seconded the motion. The roll was called with the following results: Commissioner Ramsay-Vickrey, No; Commissioner Wiatt, No; Commissioner Lustberg, Yes; Commissioner Miller, Yes; and Chair Werling, Yes. The motion passed three to two.**

Commissioner Ramsay-Vickrey left the proceedings.

A brief recess was held from 1:42 p.m. to 1:46 p.m.

#### **New Items:**

**3.AN ORDINANCE BY THE MONROE COUNTY BOARD OF COUNTY COMMISSIONERS** AMENDING THE MONROE COUNTY COMPREHENSIVE PLAN, CREATING POLICY 107.1.5 KEY LARGO MIXED USE AREA 1, TO PROVIDE LIMITATIONS ON DEVELOPMENT AND SPECIFIC RESTRICTIONS; TO ACCOMPANY A PROPOSED AMENDMENT TO THE FUTURE LAND USE MAP (FLUM) FROM RESIDENTIAL LOW (RL) TO MIXED USE/COMMERCIAL (MC); FOR PROPERTY LOCATED AT 97770 AND 97702 OVERSEAS HIGHWAY, KEY LARGO, MILE MARKER 98, DESCRIBED AS PARCELS OF LAND IN SECTION 6, TOWNSHIP 62 SOUTH, RANGE 39 EAST, ISLAND OF KEY LARGO, MONROE COUNTY, FLORIDA, HAVING REAL ESTATE NUMBERS 00091000.000000 AND 00091020.000000; AS PROPOSED BY SEE THE SEAS OF KEY LARGO, INC. AND COCONUT BAY OF KEY LARGO, 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 COMPREHENSIVE PLAN; PROVIDING FOR AN EFFECTIVE DATE. (File 2015-170)

(1:46 p.m.) Ms. Santamaria presented the staff report on behalf of Emily Schemper. Ms. Santamaria reported that this property is currently a hotel and motel with an existing lawfully nonconforming use recognized by the County in 2013. In 2014 the FLUM amendment and zoning changes were processed for the property to go from residential low to mixed use commercial. DEO had no objection to the map amendment, but the map amendment would

increase the allocated residential density for the site by 12 units, and as such would be contingent on meeting the discouragement policy. Policy 107.1.5 establishes specific development controls for this property and maintains the allocated residential density for the site at .50 dwelling units per acre. Staff recommends approval and finds it consistent with the comp plan, the principles for guiding development and Florida statutes.

David de Haas was present on behalf of the applicant. Mr. de Haas thanked staff for their hard work and offered to answer any questions.

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

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

**4.Richard and Polly Schwartz, 25094 & 25100 Northside Drive, Summerland Key, mile marker 25:** A public hearing concerning a request for a Variance of 14 feet to the required 25-foot primary front non-shoreline setback, which is adjacent to Northside Drive right-of-way. Approval would result in a primary front non-shoreline setback of 11 feet. The requested Variance is required for the development of a proposed single-family detached dwelling. The subject property is legally described as the Easterly 35 feet of Lot 5 and all of Lot 4, Block 1, Snug Harbor Subdivision (Plat Book 3, Page 162), Summerland Key, Monroe County, Florida, having real estate numbers 00194900.000000 and 00194920.000000.  
(File 2015-202)

(1:57 p.m.) Mr. Rains presented the staff report. Mr. Rains reported that this application is from Richard and Polly Schwartz, represented by their agent, David Koppel. Mr. Rains described the location of this property and significant prior County actions on the property. Pictures were shown of the property. Mr. Rains illustrated the proposed setbacks on the site. An illustration depicting the buildable area was shown. Mr. Rains noted that the illustration does not represent the square footage of the living area, but the buildable proposed area of the project. The applicant has provided some additional documentation to compare the location of their dwelling with that setback to the others in the community. Approximately 21 of the properties have some development encroaching in the front yard setback. Most of these properties also have development encroaching in the shoreline setback. Only one residence does not appear to have development in any setbacks, but it is located on two aggregated lots. Mr. Rains recommended approval for the requested variances.

Commissioner Miller commented that the hardship is self-imposed by the boat ramp because the boat ramp could be filled in for more buildable area. Mr. Rains responded that staff felt that the applicants did meet the definition of exceptional hardship. Staff also found that granting the variance will not give the applicant any special privilege denied to other properties in the immediate neighborhood. Commissioner Wiatt pointed out that the boat ramp can only be filled to the high water mark. Commissioner Wiatt and Commissioner Lustberg do not believe the boat ramp should be filled in.

David Koppel, professional engineer from Big Pine Key, was present on behalf of the applicants. Mr. Koppel stated if the boat ramp were filled in it would not change where the mean high water line is. Commissioner Miller disagreed. Ms. Santamaria noted that the boat ramp could be filled and the seawall capped at the same location and the water line would then be at the seawall. Mr. Koppel noted that the applicant is trying to build a nominal 1600 square foot home and there are encroachments in the neighborhood all over the place.

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

Commissioner Lustberg stated it would be inappropriate to deny this homeowner the ability to do what the rest of the neighborhood has done. Nobody is going to be harmed by them encroaching into the setbacks in this particular area. **Motion: Commissioner Lustberg made a motion to approve.** Commissioner Lustberg then noted that the continual allowance for variances is bothersome. **Commissioner Wiatt seconded the motion.** Mr. Williams cautioned that denials of variances can result in takings cases. Commissioner Wiatt requested that consideration be given and discussion had in the future regarding some sort of exemption of roof lines into existing setback requirements. **There was no opposition. The motion passed unanimously.**

#### **ADJOURNMENT**

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