

PLANNING COMMISSION
February 22, 2017
Meeting Minutes

The Planning Commission of Monroe County conducted a meeting on **Wednesday, February 22, 2017**, beginning at 10:00 a.m. at the Marathon Government Center, 2798 Overseas Highway, Marathon, Florida.

CALL TO ORDER

PLEDGE OF ALLEGIANCE

ROLL CALL by Ilze Aguila

PLANNING COMMISSION MEMBERS

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

STAFF

Mayte Santamaria, Sr. Director of Planning and Environmental Resources	Present
Steve Williams, Assistant County Attorney	Present
Thomas Wright, Planning Commission Counsel	Present
Mike Roberts, Senior Administrator, Environmental Resources	Present
Tiffany Stankiewicz, Development Administrator	Present
Kevin Bond, Planning & Development Review Manager	Present
Ilze Aguila, Sr. Planning Commission Coordinator	Present

COUNTY RESOLUTION 131-92 APPELLANT TO PROVIDE RECORD FOR APPEAL

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

SUBMISSION OF PROPERTY POSTING AFFIDAVITS AND PHOTOGRAPHS

Ms. Aguila confirmed receipt of all necessary paperwork.

SWEARING OF COUNTY STAFF

County staff members were sworn in by Mr. Wright.

CHANGES TO THE AGENDA

Ms. Aguila stated that Item 6 was being withdrawn. Items 7, 8, 9 and 10 have all requested to continue to the March 29, 2017, Planning Commission Meeting.

APPROVAL OF MINUTES

Motion: Commissioner Ramsay-Vickrey made a motion to approve the January 25, 2017, meeting minutes. Commissioner Miller seconded the motion. There was no opposition. The motion passed unanimously.

MEETING

Continued Items:

1. AB FISH LLC, 363 BARRY AVENUE, LITTLE TORCH KEY: AN APPEAL BY A SURROUNDING PROPERTY OWNER TO THE PLANNING COMMISSION CONCERNING AN ADMINISTRATIVE DECISION OF THE SENIOR DIRECTOR OF PLANNING & ENVIRONMENTAL RESOURCES DATED NOVEMBER 15, 2016 APPROVING A SPECIAL EXCEPTION TO CONSTRUCT A 240 LINEAR FOOT ACCESS WALKWAY (230' WATERWARD OF MHWL) AND 8' X 20' TERMINAL PLATFORM WITH A 16,000 LB. CRADLE BOAT LIFT. THE SUBJECT PROPERTY IS LEGALLY DESCRIBED AS LOT 15 AND BAY BOTTOM EASTERLY AND ADJACENT TO LOT 15 BARRY BEACH, PLAT BOOK 2 PAGE 127, LITTLE TORCH KEY, MONROE COUNTY, FLORIDA, HAVING REAL ESTATE NUMBER 00215090-000000. [MM +/- 28.7] (File 2016-210)

(10:05 a.m.) Mr. Mike Roberts presented the staff report. This is an appeal to a long dock exception that was issued by the director in November of 2016. The appellant is the adjacent property owner, Michael Nestico. The property owner in question is AB Fish LLC at Barry Avenue. Mr. Roberts presented a diagram showing the subject property in blue with the adjacent property beneath being the appellant's. The yellow line on the diagram represents the mean length of the adjacent long docks, and a red line to approximate the length of the proposed long dock. The review for a long dock approval consists of an evaluation of the community character, whether or not the proposed dock will interfere with public recreational uses in or on adjacent waters, and whether or not it would pose a navigational hazard. The technical memorandum submitted indicates the proposed dock met all of these conditions. Additional criteria reviewed is the physical characteristics of the proposed construction, the necessity of the exception, whether the length of the dock is necessary to attain water of an adequate depth, whether the proposed dock constitutes a danger to life or property, community importance, community compatibility, emergency access and cost of governmental services. All of this is covered in the technical memorandum and staff found no indications that the proposed dock was counter to any of these criteria.

The appellant's basis for their appeal states that the proposed dock would be a disruption to the vacation rental property that they own immediately south of the subject property, that the upland land use draws rodents, that the land is unkempt, and that it would constitute a hardship on the appellant's vacation rental business. The appellant did not provide any further information relating to Comprehensive Plan Policies or Land Development Codes that were incompatible. The property owner and the representative for the appellant are present for questions.

Commissioner Miller asked Mr. Roberts if he was saying that the length of the dock itself was consistent or not inconsistent with community character. Mr. Roberts stated that it was consistent. Mr. Miller asked at what point a dock would become inconsistent. Mr. Roberts responded if it were perhaps the only long dock within several hundred feet of the subject property or if there were other docks that were present that provided access to navigable water, but that it basically is a reflection of the adjacent properties and their development. Commissioner Miller asked how much longer the proposed dock was than the neighboring docks and what would be the cutoff. Mr. Roberts did not remember the exact measurement, but pointed out the red line on the diagram as a rough representation of the length of the proposed dock. Ms. Santamaria stated there is no specific cutoff, that staff looks at surrounding property owners and whether it will conflict with navigation of the channel. Referencing the staff report, Ms. Santamaria pointed out that a neighboring dock to the north is 290 feet in length. Commissioner Lustberg pointed out that the land from which the 290-foot dock comes is further back so it doesn't stick into further out into the water. Commissioner Miller thanked staff for the larger photograph which allowed him to see boats in a marina and asked if this dock was necessary for the commercial use. Mr. Roberts responded that it is necessary to meet the code requirements relative to depth at mean low water and the required depth for platforms over seagrasses and hard bottom communities. Commissioner Miller asked what the depth was at the terminal of the proposed dock. Mr. Roberts indicated it was four feet at mean low water. Commissioner Miller wondered how the boats pictured got into the dock as they looked like they're pretty good-size boats. Chair Wiatt noted that they also looked like outboards. Commissioner Miller added that for a commercial boat you would need more depth. Mr. Roberts explained that staff did not evaluate the use of the dock, only whether it was in accordance with the criteria previously covered. Chair Wiatt noted that from a community character standpoint he thought the zoning was Commercial Fishing. Mr. Roberts clarified that the zoning was for Mixed Use and the future land use designation was Mixed Commercial, which applies to all of the properties that could be seen in the photograph. Chair Wiatt asked if commercial fishing is allowed in Mixed Use Commercial and Mr. Roberts responded that it is.

Chair Wiatt asked if there were any further questions for staff. There being none, Chair Wiatt asked if the appellant would like to speak.

Mr. Gregory Oropeza of Smith Oropeza Hawks, 138 Simonton Street in Key West, spoke on behalf of the appellant, first thanking the Commission for providing them the opportunity to try and work things out from the last meeting though, unfortunately, both sides were not able to see eye to eye. This appeal had been filed by the appellate before Mr. Oropeza had been retained and was not what he would have submitted so he wanted to go through the application.

Mr. Oropeza continued that, by his calculations, this proposed dock is about 79 feet longer than the longest dock. The prior dock referenced at roughly 300 feet starts landward quite a bit further back so it's not quite as far into Pine Channel as the proposed dock. The technical memorandum provided in the staff report refers back to the DEP permit for the dock which specifically references that it only allows a single-family use of the dock. This is a commercial

parcel of land that houses roughly 10,000 lobster and crab traps and operates a very thriving commercial operation. He believes the DEP permit prohibits the use of this dock for commercial fishing. Also, though a benthic survey is referenced, he did not see one attached. Therefore, the data and analysis as to the actual controlling depth in this area has not been presented.

Mr. Oropeza then went through the seven special exception conditions leading to the decision on the three criteria. The first is to show good and sufficient cause why the special exception should be granted. Looking at the attached aerial there is a 39-foot inboard commercial fishing vessel which apparently had adequate access to come in and out of the property so the need for the exception does not appear to be there since the property owner had a viable use of the dock with this vessel as it stands. The second is what exceptional hardship would occur if the special exception is not granted. From a legal standpoint, Mr. Oropeza does not believe there is any hardship as there is viable use with this vessel at the present. The third is if the special exception is granted, would there be additional threats to public expense which would not otherwise occur. Mr. Oropeza believes there would be because the use of the dock from a commercial standpoint. The fourth is the length of the dock being consistent with community character. The applicant believes it is not, that at some point a line must be drawn as to how far out into the channel you could permit the dock, and any increase would be contrary to the community character. Number five, would the proposed dock interfere with public recreational uses or pose navigational hazards. The application contains no analysis of intergovernmental coordination with the Florida Fish and Wildlife or the United States Coast Guard, who are the two qualified agencies to make that determination as to Pine Channel which is a very active transient waterway for this area of the Lower Keys. Number six, are there unique or particular physical geographical circumstances or conditions that apply to the property subject to the special exemption. The application and the staff report clearly show that this is a viable parcel of land as it is now and has adequate access for larger vessels, both inboard and outboard. And number seven, if the special exception is granted would it confer upon the applicant any special privilege denied other properties in the same land use district. Mr. Oropeza believes it would as the code prohibits this length of dock without a special exception. The granting of the special exception, by its very nature, would confer a privilege on the applicant. Mr. Oropeza summarized that the applicant cannot meet any of the seven criteria so this dock should not be allowed, and he is requesting that the Planning Commission uphold the appeal.

Chair Wiatt asked if there were any questions for the appellant. There were none. Chair Wiatt then asked if the property owner would like to address the Commission. Mr. Wright placed the applicants, Mr. James Hanson and Mrs. Ginger Hanson, under oath.

Mr. Hanson explained that he and his wife had bought this property a little over three years ago when it was in foreclosure and that it is a work in progress. After looking around and seeing the other long docks, their dream was to build one of these docks to both add value to their property and for access as the water is very shallow. They have a 25-foot boat that they use for pleasure and they sometimes must wait until high tide to get the boat out on the water. Glenn Boe and Associates in Marathon had been hired to get them through this process. All fees have been paid and they have been through extreme vetting, dealing with multiple agencies, hiring marine

biologists, divers, having multiple people on the property and were approved by the Army Corps of Engineers. He's spent close to \$10,000 to build this dock. The property owner from next door, Mr. Nestico, runs a vacation rental business on his property and does not live there, though he does live elsewhere on Pine Channel and, amazingly, has one of these long docks. The County has approved the dock and he is asking to have the right to enhance the value of the property and for the Commission to uphold the decision to allow him to go forward with the dock.

Chair Wiatt asked if there were any questions for the property owner. Commissioner Ramsay-Vickrey asked about the 35-foot boat being at the current dock and whether there were times he could not get the boat out during low tide. Mr. Hanson stated he would be using the boat for multiple uses. Commissioner Ramsay-Vickrey clarified that her question referenced having access based on the tides. Mr. Hanson responded there are many times he can't get in and out and they have to wait for a higher tide because they don't want to disturb the seagrass and dig up the bottom. That is why there are so many of these long docks already there because it is a very shallow area. Commissioner Miller asked if there is a residence at this property because the DEP authorization says single-family dock. Mr. Hanson responded that it is mixed use. Commissioner Miller asked if someone could explain. Ms. Santamaria responded that the property appraiser has the property listed as PCL-1, single family home, and DEP has it permitted as a single-family dock and boat lift. Commissioner Miller asked about having accessory uses without a residential home. Ms. Santamaria clarified there is a single-family home on the property, which Mr. Hanson confirmed. There were no further questions for the property owner.

Commissioner Ramsay-Vickrey stated she was a little thrown by the DEP permit. Mr. Williams explained that it was not the County's permit to expand upon and not the subject of this appeal. Commissioner Ramsay-Vickrey stated her understanding is that part of the regulations are based on the control depth of four feet so this dock must go out to meet that requirement. Therefore, she is inclined to uphold the director's decision granting this special exemption. Chair Wiatt agreed, explaining this isn't about the length of the dock, but rather the four feet at mean low water. The four-foot requirement is an environmental requirement and should trump pretty much all the others. Commissioner Miller added it wasn't necessary to get political. Chair Wiatt further explained that the activity is allowed within the zoning and he would also have to agree with the director. Mr. Williams interjected that unless there were more speeches, a motion and a second were required.

Commissioner Lustberg then asked Commissioner Ramsay-Vickrey if that was a motion. Commissioner Ramsay-Vickrey replied in the affirmative. Commissioner Lustberg seconded the motion and asked Ms. Santamaria if anything presented today would change the staff report and recommendation. Ms. Santamaria indicated she had no changes.

Motion: Commissioner Ramsay-Vickrey made a motion to deny the appeal and uphold the Planning Director's decision. Commissioner Lustberg seconded the motion. There was no opposition. The motion passed unanimously. For the record, Mr. Williams noted this was a four-nothing vote today in the absence of Ms. Werling.

2. BEARDS & BREWS, 5178 OVERSEAS HIGHWAY, STOCK ISLAND, MILE MARKER 5.0: A PUBLIC HEARING CONCERNING A REQUEST FOR A 2COP ALCOHOLIC BEVERAGE SPECIAL USE PERMIT, WHICH WOULD ALLOW BEER AND WINE FOR SALE BY THE DRINK (CONSUMPTION ON PREMISES) OR IN SEALED CONTAINERS FOR PACKAGE SALES. THE SUBJECT PROPERTY IS LEGALLY DESCRIBED AS LOT 17 AND PART OF LOT 16, SUN KREST SUBDIVISION (PLAT BOOK 1, PAGE 107), STOCK ISLAND, MONROE COUNTY, FLORIDA, HAVING REAL ESTATE NUMBER 00132560-000000.

(File 2016-112)

(10:32 a.m.) Mr. Kevin Bond presented the staff report, filling in for Barbara Bauman. This request would allow beer and wine consumption on premises or in sealed containers for package sale and be used in conjunction with the Beards & Brews Barber Shop. The property is located on Stock Island, fronting on U.S. 1, with Suncrest Road on the back side. The property is in the middle of the block located in the Mixed Use Land Use district and the Mixed Use Commercial FLUM category. It consists of a two-story building, the ground level having a barber shop on one side and a sign shop on the other, the second floor having an apartment. This request is only for the barber shop portion of the building. The proposal would allow beer and wine to be sold to clients while waiting for or during their haircuts. Commissioner Miller interjected that he liked the idea. Mr. Bond continued, stating there would be no table service or designated service area within the business. Public notices went out and public comment had been received. The main concern was regarding hours of operation and ensuring that it continues as a barber shop and not turn into a bar. The property has limited parking, not conforming to code, but no changes are proposed or required at this time for parking. Staff recommends approval with one condition, to specifically approve for the barber shop portion of the property only. The applicants are present to address the hours-of-operation question.

Mr. Eric Castellanos and Mrs. Victoria Castellanos were sworn in and indicated they would be happy to answer any questions. Chair Wiatt asked if there were any questions for the applicant. Commissioner Ramsay-Vickrey asked him to address the hours of operation. Mr. Castellanos responded that the hours were from 9:00 to 6:30. Chair Wiatt asked if there were any plans to change those hours. Mr. Castellanos indicated there would be no changes in the hours. They only wanted to sell beer and wine to their clients because the law no longer allows for them to serve complementary drinks because they are providing a service. Commissioner Ramsay-Vickrey asked if this is something they had been doing all along. Mrs. Castellanos answered that they had thought about it, but looked into it and were now applying for the permit. Chair Wiatt asked for public comment.

Mr. Bill Hunter of Sugarloaf Key was sworn in and stated he had not intended to speak, that he had no problem with what the applicant wanted to do, but his issue was that this area has a big problem with parking and Mr. Bond had stated parking was not in compliance. Mr. Hunter wanted staff to know about the parking problem there and nearby at an automotive shop where people sometimes park out into the actual highway. So parking is becoming a real problem; however, he is not in opposition. A glass of wine with a haircut is a great idea.

Chair Wiatt asked for any further public comment. There was none. Chair Wiatt asked if there were any questions for staff. Commissioner Miller asked at what point would parking be addressed when someone comes in for something like this and parking is not in compliance. Ms. Santamaria explained that there is no trigger with the alcoholic beverage permit. Only when structural improvements are being done would they address the parking. Chair Wiatt added that it sounds like the problem is coming from the auto body shop and it would be a code enforcement issue. Chair Ramsay-Vickrey commented that she does not see the barber shop increasing traffic to that area. Commissioner Miller stated that when he was a kid, you got your alcohol from the barber shop because they sold it in the back room. Chair Wiatt asked about Mr. Sam Holland's concern, which had been sent via email, and whether the permit would allow for drinking outside of the barber shop, that he wanted to ensure that the consumption of alcohol would only be inside the barber shop. Mr. Bond stated the requested license is for consumption on the premises, but the condition can be specific that it's for indoor consumption only. Commissioner Lustberg asked should the business change to be something other than a barber shop, would the alcohol permit stay with the business. Ms. Santamaria stated the alcohol permit goes with the property, not just the business. Commissioner Lustberg stated she has no issue with this alcohol license for this business, but this would not prohibit a bar. Ms. Santamaria stated that that would be a change in use from low-intensity commercial retail. A bar-restaurant use would trigger other reviews. Commissioner Lustberg added, in regard to the conditions, part of what is really nice is being outside at a bar with music, and wondered if the Commission is no longer able to permit any new alcohol licenses at a place where music performances are outside. Mr. Bond stated there is no prohibition, they just need to comply with parking standards, account for the outdoor seating and the noise ordinance. Commissioner Miller asked if a condition requiring arrival by bicycle would be going too far. Ms. Santamaria responded that it would.

Motion: Commissioner Ramsay-Vickrey made a motion to approve. Commissioner Miller seconded the motion. There was no opposition. The motion passed unanimously.

New Items:

3. A PUBLIC HEARING TO CONSIDER AND FINALIZE THE RANKING OF APPLICATIONS IN THE DWELLING UNIT ALLOCATION SYSTEM FOR OCTOBER 13, 2016, THROUGH JANUARY 12, 2017, ROGO (2ND QUARTER YEAR 25). ALLOCATION AWARDS WILL BE ALLOCATED FOR ALL UNINCORPORATED MONROE COUNTY.

(File 2016-164)

(10:43 a.m.) Ms. Tiffany Stankiewicz presented the staff report for the residential dwelling unit allocations in the Lower Keys sub-area and the Big Pine and No Name Key sub-areas. Planning recommends approval of the following market-rate rankings: Lower Keys, rank 1 through 14, are recognized for allocation award. Big Pine and No Name Key, applicants 1 through 2, are subject to mitigation availability at the time of permitting. Upper Keys applicants 1 through 15 are also recommended for allocation awards. There were only 6 affordable housing applications in the moderate income category in the Upper Keys. There were no other affordable housing applicants.

Commissioner Miller asked if any Tier 1 had been used the year 25 in the Upper Keys. Ms. Stankiewicz responded they had in the Lower Keys, but not in the Upper Keys. Commissioner Miller wanted to confirm that there were three Tier 1s available in the Upper Keys.

Motion: Commissioner Miller made a motion to approve. Commissioner Ramsay-Vickrey seconded the motion. There was no opposition. The motion passed unanimously.

4. MONROE COUNTY ANNOUNCEMENT OF NROGO BALANCES

PURSUANT TO MONROE COUNTY CODE SECTION 138-53(E)(14), THE PLANNING AND ENVIRONMENTAL RESOURCES DEPARTMENT IS PROVIDING A NOTIFICATION TO THE GENERAL PUBLIC OF THE NROGO ACCOUNT BALANCES. THE BALANCES ARE AS FOLLOWS:

NROGO YEAR 25 Balances Available for Quarter 2

	ANNUAL NROGO	NROGO BANK	
NROGO Year 25	Year 25 Annual Allocation Amount	Subarea Bank Accounts (rollover from Year 24)	Year 25 General (Joint) Bank Total
Big Pine Key and No Name Key subarea	2,390 SF	10,431 SF**	N/A
Upper Keys subarea	22,944 SF	22,428 SF	546,662 SF*
Lower Keys subarea	21,749 SF	20,509 SF	
Totals	47,083 SF	53,368 SF	546,662 SF*

**The YR 25 Bank Totals includes 20,000 SF in reserves each for the Upper and Lower Keys (for a total of 40,000 SF in reserves). (Ord. 020-2013)

** Includes NROGO SF from expired allocation awards. (File 2016-165)

(10:45 a.m.) Ms. Tiffany Stankiewicz presented the staff report, indicating they had received one applicant in NROGO and therefore staff is recommending approval of that one applicant.

Chair Wiatt asked if there were any questions for staff. There were none.

Motion: Commissioner Ramsay-Vickrey made a motion to approve. Commissioner Miller seconded the motion. There was no opposition. The motion passed unanimously.

5. MCDONALD’S / DOLLAR TREE, 101000 OVERSEAS HIGHWAY, KEY LARGO, MILE MARKER 101:

A PUBLIC HEARING CONCERNING A REQUEST FOR A MAJOR CONDITIONAL USE PERMIT. THE REQUESTED APPROVAL IS REQUIRED FOR THE

PROPOSED DEMOLITION OF A 9,965-SQUARE-FOOT PORTION OF AN EXISTING 20,284-SQUARE-FOOT COMMERCIAL RETAIL BUILDING AND THE PROPOSED DEVELOPMENT OF A NEW 3,116-SQUARE-FOOT COMMERCIAL RETAIL MCDONALD'S RESTAURANT WITH A DRIVE-THROUGH AND A NEW 5,016-SQUARE-FOOT COMMERCIAL RETAIL BUILDING. THE SUBJECT PROPERTY IS DESCRIBED AS THAT PORTION OF LOT 8 IN SECTION 28, TOWNSHIP 61 SOUTH, RANGE 39 EAST, ON KEY LARGO, ACCORDING TO MODEL LAND COMPANY'S PLAT BY P. F. JENKINS, CIVIL ENGINEER, RECORDED IN PLAT BOOK 1 AT PAGE 68, OF THE PUBLIC RECORDS OF MONROE COUNTY, FLORIDA, LYING NORTHWESTERLY OF STATE ROAD NO.5 (U.S. NO. 1), KEY LARGO, MONROE COUNTY, FLORIDA, HAVING REAL ESTATE NUMBER 00087350-000000

(File 2015-163)

(10:46 a.m.) Mr. Kevin Bond presented the staff report. This is a major conditional use application for the Dollar Tree property in Key Largo. This is a redevelopment of the property including the demolition of the rear half of the Dollar Tree building, almost 10,000 square feet, and replacing that square footage with a new 3,116 square foot commercial retail building for McDonald's. Next to that will be a just over 5,000 square foot retail building. Those tenants have not been identified at this time. As part of the proposed development there will be a 58-space off street parking area. This property is in the Suburban Commercial Zoning district. Mr. Bond showed the Commission the existing driveway configuration, the demolition plan and the proposed site plan. Parking will be located all the way around the building except for the front of the building. The two existing U.S. 1 curb cuts will remain, with one being moved further north to comply with FDOT standards, granted last month by the Commission. Last September the Commission had allowed the front drive aisle to remain partially within the front yard setback. The garbage collection areas and loading space is in the back. With the exception of the two variances previously granted, the property is being brought into full compliance with the LDC including landscaping and buffers.

Mr. Bond then reviewed the criteria for compliance. This project is not subject to the non-residential ROGO because existing square footage is being replaced and reduced. This is a major conditional use because of the high-intensity use after combining all of the retail uses for a total of 18,116 square feet. Access is in compliance with the two existing curb cuts. Access was reviewed by the County's transportation consultant and all changes requested were made. The clear-sight triangles were incorrect on the plans and there is a staff-recommended condition on that. Open space is in compliance with 36 percent open space. After all of the development they will be at 85 percent of development potential for non-residential floor area. Maximum height is in compliance. The new building will be 21 feet 4 inches from crown of road. The existing Dollar Tree building is at 17 feet. Stormwater management will be brought into compliance. Off-street parking is in compliance with 58 spaces being required and 69 being proposed including 5 ADA spaces, 11 more than required. Loading/unloading is in compliance; a 111-by-55 space is required with a 118-by-100 space being proposed. Landscaping and buffer yards will be brought into compliance. Solid waste and recycling is in compliance with 175 square feet being required and 910 square feet being proposed. The collection areas are located where they can be accessible to trash collection vehicles. Bicycle and pedestrian circulation are in compliance. The applicant has incorporated some features including pedestrian walkways

connecting the Overseas Heritage Trail to the front of the two buildings and striping where the bike path intersects the two driveways. No bus stop or shelter is being proposed at this time, though staff did talk to the applicant about doing that later on. Though not required, the applicant also held a community meeting in Key Largo on September 19, 2016.

Staff's recommendation is approval with some conditions. A few of those conditions are submittal of a full drainage utility stormwater, landscaping and irrigation plans for review as part of the building permit; that either the notice of intent or letter stating no additional improvements are necessary from FDOT for the two U.S. 1 curb cuts be provided; and that there is coordination with the county engineer for any alterations to the bike path that runs in front of the property as the county did pay for some of the costs of that, but it's in FDOT right-of-way. The rest of the recommended conditions are in the staff report and Mr. Bond is available for questions. The agent for the applicant is also present.

Chair Wiatt asked if there were any questions for staff. There were none. Chair Wiatt asked if the applicant would like to address the Commission.

Mr. Chris Collins of CPH was sworn in and thanked Mr. Bond for the excellent presentation. Having been before the Commission twice prior for the variances, he believes the site plan has been gone over thoroughly though he did highlight some of the items covered by Mr. Bond, adding that FDOT has found that the level of service for this segment of U.S. 1 will not be impacted by this development. The applicant wanted to go above and beyond the requirements so they had hosted a community meeting that was not required. One member of the public attended, asked a few general questions and left. The existing site has multiple areas that are not compliant with the current code including open space, parking and drainage. This proposed development drastically improves that and brings the site into compliance.

Commissioner Ramsay-Vickrey asked what the turnout was from the community meeting and if there was any feedback. Mr. Collins responded that a couple hundred mailings were sent to neighbors with the site plan, building elevations and landscape plan. One member of the public attended, asked a couple of generic questions and left within 10 minutes. They stayed for two hours and there was no further attendance. Information has been provided to a couple of parties over the last year and the applicant has responded to any concerns the neighbors had. Commissioner Ramsay-Vickrey then asked about traffic impact, stating that the January 11 traffic study indicated the development will generate 1,188 additional side driveway daily trips. Her interpretation is that this pulls from the reserve capacities for Segments 22 through 24 of Overseas Highway, which would mean there are additional trips generated, but they are just being pulled from the reserves. Mr. Collins responded that he didn't mean to imply that there wouldn't be an overall increase in traffic generated. Although there is less square footage proposed, the fast-food restaurant has a higher use category than retail. The traffic study did show that in the busiest p.m. peak hour there's about 30 extra vehicles entering and exiting the site. However, the traffic study was not allowed to incorporate the flea market service which is there today so existing numbers may have been a little skewed, but that's what they were allowed provide. This segment is Level of Service A which is the best in the County, and both FDOT and the County felt it was acceptable. Commissioner Ramsay-Vickrey stated she just wanted to clarify that there is a traffic increase, it's being pulled from the reserves for that area.

Commissioner Lustberg asked about the Heritage Path where it crosses the driveways to U.S. 1 and what the distance is between the crosswalks and the road; her concern being if there was room for a car pulling out onto U.S. 1, if they could cross the crosswalk and then wait to pull into traffic or if they would block the crosswalk. Commissioner Miller pointed out that the Heritage Trail is actually on the ocean side, and this is the pedestrian bicycle path. Mr. Collins pointed out the crosswalk and the roadway, indicating room for one car, maybe two, to stop between the crosswalk and U.S. 1 as it is at least 40 feet.

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

Commissioner Lustberg had a question for staff concerning page 7 of 19, number (6), regarding the applicant having the financial and technical capacity to complete the development as proposed, stating that the Commission never requires a bond nor checks into financial and technical capacities and she wanted to know if they could either require a bond or remove this from the checklist. Mr. Williams stated this was unique to Monroe County and a bond is still not required, though it is on the checklist. Ms. Santamaria added that the Commissioners could propose amendments. Commissioner Lustberg's next question referenced page 13 of 19 regarding landscaping where applicant is encouraged to replace non-native shrubs with native shrubs, questioning the difference between being encouraged versus required. Mr. Roberts responded that the required native plants were included in this instance. The non-natives were in addition to the required native planting. So the applicant meets the code but staff is encouraging them to reduce some of the non-native vegetation. Mr. Collins interjected that the applicant does not have an issue with making that modification. When they eventually file for the building permit and include the landscape plan, they will make that change. Commissioner Lustberg commented that the landscape plan is far better than what presently exists. Ms. Santamaria responded that the Planning Commission can add conditions to their approval, but since there wasn't a code requirement it was stated this way. Commissioner Lustberg commented that it was nice that the site triangles included the bike path as opposed to just the vehicle traffic, and wondered if the reference to the Heritage Trail should be changed to bike and pedestrian path to ensure this still applies. Commissioner Miller agreed but didn't think it changed anything. Chair Wiatt added that if these requirements need to apply to the bike path, it should say bay side bike path. Ms. Santamaria added that it will be on the site plan at the time they approve the site plan.

Chair Wiatt asked if there were any further questions. There were none.

Motion: Commissioner Miller made a motion to approve. Commissioner Ramsay-Vickrey seconded the motion. There was no opposition. The motion passed unanimously.

Commissioner Lustberg asked if Item 6 was withdrawn for good or temporarily. Ms. Santamaria stated it was at least temporary.

New Business:

Commissioner Lustberg had an inquiry about how it appears affordable ROGOs are not being used, however there are apparently things going on that will use the affordable ROGOs. She

would like to understand what the numbers and placement look like. Ms. Santamaria responded that back in December of last year, there was an update to the BOCC based on the Affordable Housing Advisory Committee's recommendations and an update of affordable allocations was made at that time. The BOCC decided to make all of the affordable allocations available up front rather than doing the 76 per year. At that time, there was a balance of approximately 692 allocations for the County. The City of Marathon has multiple projects and were attempting to accelerate their affordable housing as well, but had only 34 or 36 allocations in their pool because they receive a smaller amount from the state than the County does. So the BOCC awarded the City of Marathon 135 allocations for a two-year period so they could compete for low-income tax credits. The City, at that time, returned 82 allocations to the County that had been previously held for them for previous low-income tax credit projects. There were two other requests by the City that the Commission did not approve. At that time, the BOCC asked for the expected usage of these allocations.

Ms. Santamaria has put together a table of projects she knows are in the works that may or may not receive allocations. There are two Habitat projects in the Lower Keys consisting of 10 units in Big Coppitt and 16 units in Cudjoe. The Commission approved the development agreement with Floyd's Trailer Park on Stock Island for 108 units that are market rate today where they can deed restrict them affordable and transfer off the market rates. Tavernier Inn is approved to convert the hotel into employee housing and has 6 units. PL Ocean, which is across the street from the Playa Largo Hotel, has 24 affordable allocations for a project there. Sea Horse RV Park on Big Pine where there were 135 units, the majority being transient, the transients were transferred off and the Commission added a LCP action item that the only thing that could be redeveloped on site would be affordable housing. That site can support 27 total units based on density. There is the Toppino project on Big Coppitt which can support up to 113 allocations for affordable housing; and the Commission also set aside 96 allocations for that project so they could compete in the low-income tax project. A project known as the Henderson Building on Big Pine Key, the former Montego Bay Restaurant which burned down, has a proposed redevelopment for an office and six affordable units on top of that. The BOCC approved the overlay for the Rockland Key Shopping Center commercial center, which needs a mutually agreeable affordable housing component that has not been accomplished yet. Items 8, 9 and 10 that were continued to March were for the Shrimp Farm which could potentially be an affordable housing project of about 263 units. The Caribbean Village project will have approximately 31 units, which has been continued to the April BOCC meeting in Marathon. There are a few others that have just applied for pre-application meetings; a project in Key Largo for 31 units and two in the Lower Keys on Saddlebunch for 3 to 5 units. Assuming all of these things happen and these projects move forward, all allocations would be used or in the negative if the City keeps the allocations that the County has preserved for them.

Commissioner Lustberg commented that this would be a wonderful problem to have because forever there's been minimal affordable housing. She then asked if the affordable ROGOs were used up, would the state grant additional affordable ROGOs; and then, if they were used up would someone wishing to develop and deed restrict affordable be allowed to use the regular ROGO process to get allocations. Ms. Santamaria responded that if they were used up, it is the state's decision and would be based on the hurricane model. However, based on information today, she is not sure how the state would allocate more unless there were changed conditions. It

is not anticipated but Ms. Santamaria cannot speak for the state. In terms of regular ROGO, someone could compete for market rate. It would take longer as they would need to compete with everyone there, but they do have the ability to do that. They could also potentially buy units and deed restrict them as well.

Chair Wiatt added that it would be helpful to start breaking down the ROGOs as far as very low, low, medium, moderate, because the need is low and very low. There is a limited number and they should go to the most needy. He would also like to get away from using the word affordable, breaking it down and fully understanding what's being discussed. Commissioner Ramsay-Vickrey stated this circled back to what was discussed a couple of months ago about not being affordable, rather being workforce. Commissioner Lustberg asked if the BOCC was changing or adding definitions. Ms. Santamaria stated they had directed staff to do it, but staff had been waiting for the code to become effective. Chair Wiatt thinks this is going to be very important so the limited supply goes to the right place. Commissioner Miller stated he would like to see an accounting of what affordable housing will cost the taxpayers after reaching the point where there are no more allocations and the County is buying property, the so-called takings issue. At one point 300 or 400-million dollars was discussed to buy properties that can't get an allocation, but yet the affordable could be one of those things where they just keep pulling them out of the well. Ms. Santamaria responded she wasn't sure if she could put that together. Commissioner Miller stated that at some point in the future it will be quantifiable. Commissioner Lustberg stated it would be quantifiable after completing all of the takings. Ms. Santamaria responded that that is what she meant. Chair Wiatt added that being quantifiable doesn't mean the County will be able to afford to pay for it.

Commissioner Lustberg then pointed out that when the Commission looks at all of the things listed in the staff reports that support what is being reviewed, there is not a corresponding list of all of the things that it violates, and that may be useful when looking at whether to approve something. There are pieces in the LDRs and the Comp Plan that say different things and in trying to decide whether to approve something or not, things have to be balanced and it's not always clear cut. Something will look like it should be supported because it supports everything listed, but then a member of the public will stand up and go through all of the things that it violates. She would feel better prepared to address an item if both were available. Mr. Williams interjected that they are preparing a record and want to win the appeal. Therefore, you want competent, substantial evidence on your side of the appeal, not on the other side of the appeal. Ms. Santamaria added that the difference is if staff is recommending approval, they are finding it's not violating an item. Members of the public may have a different opinion on that than staff. An example will be when the Commission reviews the Shrimp Farm, the staff report has some things that support it, that it could be inconsistent with this, but here are other policies where it's in support of that. So staff does try to address those if they think there is a provision that might be inconsistent. A lot of them are large, reaching objections so people will focus on one word and say this one word is inconsistent, but they're not reading the whole goal.

Commissioner Lustberg continued that they care about a bunch of things and there are a bunch of goals. If applying all of them to one situation, they might not all fit. Mr. Williams added that earlier today was an example where one person was reading seven criteria from a variance section which is one person's interpretation of what rules should apply. There was a list of seven

criteria which were variance criteria, not criteria for a long dock which has its own separate and enumerated criteria. Mr. Williams does not believe it would be within staff's possibility to foresee every such reach that could be brought by an objector. If staff feels that one is being violated, Ms Santamaria will include it in the staff report for you.

Ms. Santamaria mentioned there was a DRC yesterday with two text amendments proposed. Staff listed all of the things they believed the potential amendment was in conflict with and the recommendation was for the applicant to go back, make revisions and come back to DRC. Those types of things are attempted to be resolved before they come before the Planning Commission. Commissioner Lustberg stated she understands the desire to protect the County from a lawsuit, but the Planning Commission's job is to make the best decision possible to avoid the lawsuit to begin with and the more information, the better the decision. Commissioner Ramsay-Vickrey added that it may be better to just call Ms. Santamaria on the phone and ask the questions of her. Commissioner Lustberg felt that if something comes to the Planning Commission, it is questionable. Ms. Santamaria explained that it coming to the Planning Commission only means there is a required step to get approval on, not that it's questionable. Mr. Williams added that there are a lot of things that Ms. Santamaria may have authority to sign off on her own, but there is a vast majority that needs to be brought to the Planning Commission, regardless of whether there is an issue or no problem with it at all. Commissioner Lustberg stated she understands they have to follow the rules, but sometimes things are not always clear cut and it's good to understand things.

Mr. Wright added, in light of some of the conversation, that when the Commission conducts a quasi-judicial hearing they are required to disclose ex parte communications. Speaking to third parties outside of the hearing or site visits all need to be disclosed on the record prior to the hearing and then a statement must be made whether or not that would affect their decision in the matter. Commissioner Ramsay-Vickrey commented that having the Comp Plan and the Code online as a searchable PDF document is really great for researching items.

ADJOURNMENT

The Monroe County Planning Commission meeting was adjourned at 11:35 a.m.