PLANNING COMMISSION
**July 25, 2018**
Meeting Minutes

The Planning Commission of Monroe County conducted a meeting on **Wednesday, July 25, 2018,** 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 Debra Roberts after being welcomed by Chair Werling.

## PLANNING COMMISSION MEMBERS

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| Denise Werling, Chair | Present |
| William Wiatt, Vice Chair | Present |
| Teri Johnston | Present |
| Ron Miller | Present |
| Beth Ramsay-Vickrey | Present |

## STAFF

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| Emily Schemper, Acting Sr. Director of Planning and Environmental Resources | Present |
| Steve Williams, Assistant County Attorney | Present |
| Derek Howard, Assistant County Attorney | Present |
| Thomas Wright, Planning Commission Counsel | Present |
| Mike Roberts, Sr. Administrator, Environmental Resources | Present |
| Bradley Stein, Development Review Manager | Present |
| Tiffany Stankiewicz, Development Administrator | Absent |
| Devin Rains, Principal Planner | Absent |
| Cheryl Cioffari, Principal Planner | Present |
| Janene Sclafani, Sr. Planner | Absent |
| Devin Tolpin, Planner | Absent |
| Ryan Vandenburg, Planner | Absent |
| Barbara Valdes-Perez, Transportation Planner | Absent |
| Debra Roberts, Administrative Assistant | 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. Roberts confirmed receipt of all necessary paperwork.

**SWEARING OF COUNTY STAFF**
County staff members were sworn in by Mr. Wright.

**CHANGES TO THE AGENDA**
Ms. Emily Schemper reported that the applicant for Item 8 had requested to be heard first as he had a time conflict with another meeting. Additionally, the appellant for Item 9 had requested a continuance.

**Motion: Commissioner Ramsay-Vickrey made a motion for Item 8 to be heard first and to discuss Item 9. Commissioner Wiatt seconded the motion. There was no opposition. The motion passed unanimously.**

Commissioner Ramsay-Vickrey asked Ms. Schemper if the appellant opposed a project that had already been approved and if allowing a delay would hold up the original project. Mr. Wright and Ms. Schemper indicated that was correct. Commissioner Ramsay-Vickrey stated with that being the case, she would not vote to hold up the project. If the appellant has a problem with a neighbor's project it needs to be heard today. Commissioner Johnston agreed. Commissioner Miller asked what the reason was for the requested delay. Mr. Steve Williams responded that staff had moved too fast and brought it before the Commission too quickly. Ms. Schemper added that the appellant could provide more details, but it would be up to the Commission to hear from them. Commissioner Wiatt suggested Item 9 be left on the agenda and be addressed when the time comes. The entire Commission agreed.

**APPROVAL OF MINUTES**
**Motion: Commissioner Johnston made a motion to approve the May 30, 2018, meeting minutes. Commissioner Ramsay-Vickrey seconded the motion. There was no opposition. The motion passed unanimously.**

**MEETING**

**New Items:**

**8. AN ORDINANCE BY THE MONROE COUNTY BOARD OF COUNTY COMMISSIONERS** AMENDING THE MONROE COUNTY LAND USE DISTRICT (ZONING) MAP FROM SPARSELY SETTLED (SS) TO SUBURBAN RESIDENTIAL (SR), FOR PROPERTY LOCATED AT 10 EGRET LANE, GEIGER KEY, MILE MARKER 11, LEGALLY DESCRIBED AS LOTS 4, 5, 6 AND 7, BLOCK 6, BOCA CHICA OCEAN SHORES, GEIGER KEY, RECORDED IN PLAT BOOK 5 AT PAGE 49, OF THE PUBLIC RECORDS OF MONROE COUNTY, FLORIDA, HAVING REAL ESTATE #00142020-000000; AS PROPOSED BY SMITH HAWKS, PL ON BEHALF OF DEBRA S. TOPPINO, AS TRUSTEE OF THE DEBRA S. TOPPINO LIVING TRUST, AND RICHARD TOPPINO; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL OF CONFLICTING PROVISIONS; PROVIDING FOR TRANSMITTAL TO THE STATE LAND PLANNING AGENCY AND THE SECRETARY OF STATE; PROVIDING FOR AMENDMENT TO THE LAND USE DISTRICT (ZONING) MAP; PROVIDING FOR AN EFFECTIVE DATE.

(FILE 2018-091)

(10:17 a.m.) Ms. Cheryl Cioffari, Principal Planner, presented the staff report. This Land Use District amendment application was received on May 2, 2018, and is to amend the Land Use Zoning District Map from Sparsely Settled to Suburban Residential for property located at 10 Egret Lane on Geiger Key. The property currently has a Future Land Use Map designation of Residential Low and is developed with accessory uses and structures associated with a home damaged by Hurricane Irma that was demolished, and is now in the process of being rebuilt having an active building permit for replacement of that single-family home. The reason for the proposed amendment is to allow for a change in the minimum open space ratio from .80 in Sparsely Settled to .50 in Suburban Residential, which would allow the applicant to rebuild the house on the property and have hardscape and a pool without changing the density or restricted usage of the property. In accordance with the Land Development Code, a community meeting was held at the property on June 6, and was considered by the Development Review Committee to provide opportunities for public input.

The blue portion of the table on page four of the staff report shows the proposed zoning amendment would result in no increase in permitted allocated residential development potential, an increase in one unit of maximum net density residential potential for market rate units with the use of TDRs, an increase in one unit of affordable residential development potential, would maintain a development potential of zero rooms or spaces for transient units, and an increase in non-residential development of 1440 square feet. This proposed amendment is not anticipated to adversely impact the community character of the surrounding area. Staff finds the proposed amendment to be consistent with the Monroe County 2030 Comprehensive Plan. As required by Land Development Code Section 102-158, the BOCC may consider the adoption of an ordinance enacting a change based on one or more of the following factors: The factors identified begin at page eight of the staff report and are data errors and new issues. This proposed Land Use District of Suburban Residential would allow the property to be brought into compliance with open space regulations without necessitating the removal of any existing accessory uses or structures. Although the proposed amendment would not bring the property into compliance with density standards, property owners whose lands contain lawfully-established dwelling units in existence prior to January 4, 1996, are permitted to replace those units and it shall not be considered non-conforming to density, so the density is protected.

The proposed amendment would not increase the development potential on the parcel beyond the existing market rate dwelling unit. The redevelopment of the previously-existing residential density is permitted provided the property comes into compliance with other applicable regulations including open space. Staff recommends approval.

Commissioner Miller stated this is déjà vu all over again as it would allow a vacation rental on the property, so what we'd have is a community of one with a vacation rental property ability and that is a change to the community character. Ms. Schemper confirmed that to be correct that Suburban Residential does allow vacation rentals.

Mr. Richard Toppino, the applicant, was sworn in by Mr. Wright and stated that this has been his home for 30 years and he does not plan on having a vacation rental in the home. Commissioner Miller responded that the Commission does not go on the word of people as to what they're going to do with the property. Mr. Toppino reiterated that he had been sworn in and this is his

home that he plans on living in. He does not ever foresee it being a vacation rental. Mr. Nick Batty, representing Mr. Toppino, asked for a moment to discuss this with Mr. Toppino, after which Mr. Batty stated that the applicant would be willing to deed restrict the property to prohibit transient rentals in perpetuity. Chair Werling stated she was going to ask for that but that it is nicer that the applicant offers. Mr. Toppino reiterated that he is only trying to put his home back. Chair Werling explained that it's what happens to the property after Mr. Toppino no longer resides there, but this solution alleviates everyone's concerns. Mr. Toppino stated he is perfectly fine with that as long as this can be moved forward today.

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

**Motion: Commissioner Johnston made a motion to approve with the deed restriction as stated in perpetuity. Commissioner Ramsay-Vickrey seconded the motion. There was no opposition. The motion passed unanimously.**

**1. <u>SUMMERLAND KEY MARINA, 24326 OVERSEAS HIGHWAY, SUMMERLAND KEY, MILE MARKER 24.5 OCEAN SIDE:</u>** A PUBLIC HEARING CONCERNING A REQUEST FOR AN AMENDMENT TO A MAJOR CONDITIONAL USE PERMIT FOR THE PROPOSED DEVELOPMENT OF TWO (2) NEW EMPLOYEE HOUSING UNITS ON A PROPERTY WITHIN AN EXISTING MARINA. THE SUBJECT PROPERTY IS LEGALLY DESCRIBED AS LOTS 9, 10, 11, 12 AND 13, BLOCK 2, SUMMERLAND KEY COVE ADDITION 2 (PLAT BOOK 4, PAGE 100), SUMMERLAND KEY, MONROE COUNTY, FLORIDA, HAVING REAL ESTATE NUMBER 00190830-000000. (File 2017-140)

(10:27 a.m.) Ms. Emily Schemper stated that at last month's meeting the Commission had had a parking variance for this same property and that this is the Conditional Use Permit that was to go with that parking variance. However, the applicant has amended their request for a Conditional Use in a way that no longer requires the parking variance. This is why the continued item is no longer before the Commission.

Ms. Janine Sclafani, Senior Planner, presented the staff report. This item is an amendment to a Major Conditional Use Permit. A supplement to the staff report was presented with recommended additional approval conditions. Commissioner Ramsay-Vickrey expressed confusion about the email asking to reschedule the Summerland Key Marina Amendment to another day. Mr. Williams clarified that the email was from a neighbor. Commissioner Miller noted that it's lobster season. Ms. Sclafani continued, indicating that the parking variance originally requested to be heard with the CUP is no longer needed. The applicant is requesting approval of an amendment to the site's Major Conditional Use Permit originally approved through Planning Commission Resolution P20-10, which has now expired. This request is to complete the remaining development which consists of two new employee housing units, indicating the applicant had reduced the request from four to two units, modification of off-street parking area, installation of landscaping, and improvement of the existing marina building. Under relevant County actions, on July 30, 1990, Development Order 1590 for a Major Conditional Use was approved to construct a 3,000 square foot addition to the existing commercial building. On September 8, 2010, the Planning Commission approved Resolution P19-10 which granted a variance to setbacks, buffer yards and parking standards, reducing the

required 33 parking spaces to 15; and P20-10 which was an amendment allowing improvement of the existing marina building, four new employee housing units within the building, one boat rack, commercial retail intensity from low to medium, modification of off-street parking area, landscaping and various other associated improvements. Of this Conditional Use, all that was followed through with was the commercial intensity and installation of the boat rack. On July 5, 2011, there was a Code case initiated with the outstanding issues of building permits required, unsafe buildings and final inspection. This amendment would allow the applicant to resolve these aforementioned Code Compliance issues.

Chair Werling asked how two affordable units would take care of these things. Ms. Sclafani indicated that from her understanding, there was construction already going on for the four units and it never got completed. The applicant now needs to get this approved to follow through with that. Ms. Schemper added that the Conditional Use would need to be approved in order to obtain the necessary building permits in order for it to be properly constructed and signed off on as safe. Commissioner Ramsay-Vickrey asked if they were starting construction without the permits, and Ms. Schemper confirmed that to be correct. In order to get their permits reviewed and approved, the Conditional Use Permit, which expired, needs to be active. Commissioner Johnston asked when that Code case took place. Mr. Williams and Ms. Schemper both stated that it was from 2011.

Ms. Sclafani presented an aerial of the current site conditions, the proposed site plan for the amendment which is unchanged from the original, a proposed landscaping plan, and proposed elevation plans. During the last Planning Commission meeting held June 27, 2018, the Commission had requested Variance File 2018-037 be continued and to be heard with this requested amendment. That file was for a variance to the parking requirements due to the amendment of the Code Section which increased the minimum required number of off-street parking spaces. The applicant voluntarily reduced the request from four dwelling units to two. So, based on the shared parking calculations, the reduction of the dwelling units brings the requirement to 32 spaces, which is within the parameters of the previously-approved Resolution P19-10 which granted Summerland Key Marina a reduction of 16 off-street parking spaces from the required 33. Therefore, that variance is no longer required and the application has been withdrawn. Ms. Sclafani presented the change in the parking, and the two units being proposed with the existing market rate unit brings the total spaces required to 6, whereas previously it would have been 10, and brings the shared parking calculations to a total of 32.

The applicant has taken the concerns of the surrounding community and the recommendations from County staff into consideration and added landscaping in front of the parking spaces and boat lift area to mitigate light and noise infiltration. In addition, lighting facing residences across the canal will also be shielded. The site plan demonstrating these changes was presented. Staff recommends approval with the following conditions: The ROGO allocations must be obtained and each affordable dwelling unit shall be deed restricted. The property must be connected to central wastewater and have final plumbing inspection and approval. The exterior improvements and site work must have final Planning and inspection approval prior to COs for the dwelling units. All landscaping shall have final bio-inspection and approval prior to CO. The sign in the driveway must be removed prior to issuance of the building permit. All lighting facing residences across the canal shall be shielded. The plans must be found in compliance with LDC

regulations prior to issuance of building permits. Scenic corridors, outdoor lighting, recycling, solid waste must be found compliant. The landscaping installed to mitigate light and sound must be installed and maintained and be compliant with Florida Building Code and DOT. Additional conditions staff is recommending would be a revision to number one adding, "Prior to issuance of a building permit, two affordable ROGO allocations must be obtained for each affordable dwelling unit and each unit shall be deed restricted as employee housing." Ms. Schemper interjected that the wording should be tweaked to say, one affordable dwelling unit for each so the number is clear.

Ms. Sclafani continued with the conditions: The northernmost access drive shall remain gated and used for emergency access only. No more than one charter guide boat shall operate out of the marina and shall be restricted to accommodate 6 or fewer passengers; which were from the conditions of the prior amendment and should be carried over. There shall be no live-aboard vessels. Any change of occupancy or use increasing required parking shall require further Planning approval. Pursuant to LDC Section 18-12(m)(4) no dock together with a moored vessel and/or lift structure shall preempt more than 25 percent of the navigable portion of a water body.

Commissioner Wiatt asked if the first bullet was being incorporated into condition one, and would the remaining five bullets be standalone conditions totaling 20 conditions. Ms. Sclafani confirmed that to be correct, that the first one would be incorporated and the other ones were additional.

Chair Werling asked for questions. There were none at this time. Chair Werling asked if the applicant wished to speak.

Mr. Alexander Fernandez, after being sworn in by Mr. Wright, spoke on behalf of the owner, and wanted the Commission to know that the work that was being done without the permit was done by the previous owner and that the two employee housing units fit within the existing variance. Commissioner Wiatt asked when he had purchased the property.

Mr. George Secchiaroli, after being sworn in by Mr. Wright, responded that he had purchased the property in 2010 and, at that time, the perimeter upstairs was all framed in with two-by-fours and there was one wall up for an apartment. When inspections were done for downstairs, the building inspector went upstairs and said they couldn't have it up there so they ended up tearing out the wall that made that unit. But the two-by-fours looked as if they'd been there for 10 years before he bought the property. Commissioner Johnston asked why the Code case was still active if the inspector was there. Mr. Secchiaroli responded that he didn't know the answer to that, but that there is a $500,000 fine against him now and as part of reviewing this, he's supposed to get through all of that. The Building Department required a two-hour fire rating in the ceiling and after doing that, Sherman's original plan had only one area condoned and the rest open to the bottom, but had ply-wooded in the whole area upstairs. Somehow, he had 15 to 20 inspections that the computers didn't cross and show the inspections being done. So Martina Lake went through it and he was told that if they could get all of this stuff approved, he could go forward with the project.

Chair Werling asked if there were still liveaboards in the back. Mr. Secchiaroli stated his boat is the only boat there and that there was another one that was gotten rid of but it couldn't be lived on as it sunk during the hurricane. Also, the sign was the billboard that came down with the hurricane so that will stay down. Commissioner Miller asked if there was one residential unit upstairs presently. Mr. Secchiaroli responded that there was only one unit downstairs.

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

Commissioner Ramsay-Vickrey stated she was somewhat dumbfounded because at the last meeting, she had suggested to complaining neighbors that they should call Code Enforcement. Today she finds out there are serious Code issues with the property. She does not know how to take the statement about needing approval so the Code violations could be brought into compliance. Building without a permit and an unsafe building are not little violations. Commissioner Johnston agreed, adding that she believes a lot of leeway was given to offer four workforce housing units. It's clear the applicant has never been a good neighbor and continues not to be a good neighbor. Staff has taken a good deal of time and effort to move through these last proposals and little if anything has been done to fulfill those proposals. The problems should have been corrected in 2010 when the property was purchased. Commissioner Johnston stated she has very little faith in what the applicant is saying today. Mr. Williams interjected that to come into compliance from a Code Enforcement perspective, the recommendation may be to do X, Y or Z. In this particular situation, the applicant was either ordered or requested to obtain a building permit. This building permit cannot be obtained until Planning Commission approval is received. All three branches of Growth Management are working in conjunction in the same circus to try to get a particular parcel into compliance. The Planning Commission is one of three rings to get them Code compliant.

Commissioner Ramsay-Vickrey asked if the other alternative would be for them to remove the second structure that isn't in compliance and was built without a permit. Mr. Williams stated he did not have that particular file with him but demolition of a non-permitted structure is always an option, which also needs a permit. Commissioner Johnston asked if there was a way to parse this out for the Commission's approval today to be to only correct the Code issue and nothing else in the request. Mr. Williams responded that it would take a review of the Code file and at this point, it would be cross-referencing each other in virtually a continuous infinity loop. The Commission is obtaining workforce or employee housing, which is desired, but which is certainly not part of the Special Magistrate's order in terms of coming into compliance or to get the building permit. It appears to be an accommodation the applicant is making. Ms. Schemper added that removing the partially-built units would still make them non-compliant with their already approved Conditional Use Permit. It's tough because the applicant built part of what was approved and then the permit expired, so they sort of have approval for part of what they've built. If the site plan is changed now, it won't match what was previously approved where the commercial structure was built. Commissioner Ramsay-Vickrey asked what they were previously approved for. Ms. Schemper responded that they were approved for the same site plan presented today but with one additional dwelling unit. The previous Conditional Use Permit included 4 dwelling units upstairs, the issue being that they proceeded to put some of that in without getting the required building permits. Commissioner Miller asked for the owner's input.

Mr. Secchiaroli responded that he had never done any work upstairs. The work had been done previous to him buying the building. The only thing the prior owner was only supposed to build on the second floor was on the south side of the building, one quarter of the building would have flooring for rail storage and there would be a walkway from the back door to that area. He believes this is why he has a safety violation because it's all plywood down on the floor. Believing that he would be doing the four units upstairs, in the interim, he had to do the two-hour fire rating on the ceiling.

Chair Werling asked on the original approval from July of 2010, number six states that the lease for the billboard could not be renewed and it must be removed on or before August of 2016, which the applicant had stated Irma removed it which was in 2017. Ms. Sclafani stated the billboard is gone now. The sign she had referenced in the current proposal is a different sign that was in the access driveway which must be removed. Commissioner Ramsay-Vickrey summarized that the building was bought in 2010, the Code violations occurred in 2011, so this applicant owned it at the time of the Code violations, but the applicant stated that all of the Code violations were taken care of and not all of them were. Commissioner Johnston asked for staff to check that. Ms. Sclafani stated the last she had checked, the building violations were the remaining violations. The Code case is in litigation and compliance is pending approval of the amendment so the permits can be obtained to do what needs to be done. Commissioner Johnston again asked if the 2011 Code cases were resolved. The applicant stated a lot of them had been closed out and the only one left is the safety issue on the second floor. Commissioner Johnston asked why staff could not tell if those Code cases were closed or not. Mr. Williams responded that they don't have it available to them today unless they bring someone from the Code Enforcement Department to testify, but that Ms. Schemper was going to try to find it. Ms. Sclafani clarified that the last she had checked, the unsafe buildings and final inspection requirements were not in compliance and that is what is in litigation.

Commissioner Wiatt asked that with the concerns about past and potentially present Code violations, if it could best be managed with an additional condition, something to ensure any and all previous Code violations are properly and completely closed. Ms. Schemper stated that condition could be put on there, but it wouldn't be able to be worded in a way such as prior to building permit issuance or CO, because those are the things needed to close the case, so it could be added to make it clear that the desire is to clear up all Code violations, but there would be no trigger. Chair Werling stated that this applicant was the owner for the July 28, 2010 Conditional Use Permit so all of the conditions under that approval were for this owner. Mr. Secchiaroli responded that he was supposed to tear up three-quarters of the second floor, which would be unsafe for the construction, and it's crazy to tear it up to come into compliance and then put it back down the next day. The reason they didn't pull the permit in 2010 was because of the sewer. He was waiting for the sewer system to come on line to avoid putting in a septic system. All of the rest was done except for the apartments. Chair Werling pointed out that the billboard hadn't been taken down. Mr. Secchiaroli responded that there was a lease that ran out in 2017, and CBS was going to sue him. So when it ran out, he wasn't going to renew it. He had been advised he couldn't do that until the lease ran out because he really didn't own it. Chair Werling pointed out that there were still people living on the liveaboards. Mr. Secchiaroli stated that he

stayed on the boat last night because of the meeting today, but that there is nobody on the liveaboards there.

Commissioner Miller pointed out on page seventeen of eighteen the 15 recommended actions, adding that there are additional ones to cover the whole deal. Commissioner Johnston stated this is hard as it rewards bad behavior to get a mess cleaned up, yet it appears there is no other way to do it except to approve it. Commissioner Ramsay-Vickrey agreed. Chair Werling added that although her favorite type of affordable housing is putting it over existing commercial, this is not the average situation. This is a bustling, crowded type of business and not a real good fit. Commissioner Ramsay-Vickrey expressed concern that this mess had not been taken care of for a very long time and, as Commissioner Johnston had stated, it's rewarding the applicant for not doing what should have been done. Commissioner Wiatt added that it wasn't just the applicant, that it was also the previous owner. It should be taken into consideration, to some extent, that the horse is already out of the barn here with Minor Conditional Uses already approved. The parking change has been addressed. The only way to get into compliance is to pass this and they are covered with 20 conditions. He doesn't see it getting better without doing it. Chair Werling stated she was not sure it was going to get better. Commissioner Johnston agreed based on the history. No matter how many conditions are listed, it's up to this gentleman to act on them. Commissioner Wiatt added that the neighbors would be well served to make sure the conditions are met. Ms. Sclafani responded that all of the landscaping, lighting, everything needs to be completed with final inspections prior to being able to build the dwelling unit to ensure everything is done this time.

**Motion: Commissioner Wiatt made a motion to approve with the 20 conditions recommended by staff. Commissioner Johnston seconded the motion under duress and disgust. Chair Werling asked for a roll call.**

Commissioner Miller wanted to first add that if the applicant's heart was not into being a good neighbor he could not be forced to keep a hedge up or anything like that. His hope is that the applicant does want to at least have good relations with the neighbors. Ms. Schemper also confirmed the addition of the condition that the Code violations be resolved.

**Roll call: Commissioner Ramsay-Vickrey, grudgingly, yes; Commissioner Miller, yes; Commissioner Johnston, yes; Commissioner Wiatt, yes; Chair Werling, no. Motion passed, 4-1.**

**2. <u>AN ORDINANCE BY THE MONROE COUNTY BOARD OF COUNTY COMMISSIONERS</u>** AMENDING THE MONROE COUNTY COMPREHENSIVE PLAN AS A SMALL-SCALE COMPREHENSIVE PLAN AMENDMENT PURSUANT TO SECTION 163.3187, FLORIDA STATUTES, CREATING POLICY 107.1.7 COCO PALMS AFFORDABLE HOUSING SUBAREA; ESTABLISHING THE BOUNDARY OF THE COCO PALMS AFFORDABLE HOUSING SUBAREA; LIMITING THE PERMITTED USES OF THE SUBAREA TO DEED RESTRICTED AFFORDABLE HOUSING DWELLING UNITS; LIMITING MAXIMUM NET DENSITY FOR AFFORDABLE HOUSING IN THE SUBAREA; AND ELIMINATING ALLOCATED DENSITY AND FLOOR AREA RATIO; FOR PROPERTY LOCATED AT 21585 OLD STATE ROAD 4A, CUDJOE KEY,

APPROXIMATELY MILE MARKER 22, LEGALLY DESCRIBED AS A PORTION OF LOT 30, SACARMA A SUBDIVISION OF GOVERNMENT LOTS 3 AND 4 IN SECTION 29, TOWNSHIP 66 SOUTH, RANGE 28 EAST, CUDJOE KEY, MONROE COUNTY, FLORIDA, RECORDED IN PLAT BOOK 2, PAGE 48 OF THE PUBLIC RECORDS OF MONROE COUNTY, FLORIDA, HAVING REAL ESTATE #00174960-000000. AS PROPOSED BY SMITH HAWKS, PL ON BEHALF OF MOBILE HOMES HOLDINGS COCO, LLC; TO ACCOMPANY A PROPOSED AMENDMENT TO THE FUTURE LAND USE MAP (FLUM) FROM RESIDENTIAL HIGH (RH) AND RESIDENTIAL CONSERVATION (RC) TO MIXED USE /COMMERCIAL (MC); 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 #2018-050).

Ms. Schemper stated that Items 2, 3 and 4 go together.

**3. AN ORDINANCE BY THE MONROE COUNTY BOARD OF COUNTY COMMISSIONERS** AMENDING THE MONROE COUNTY FUTURE LAND USE MAP AS A SMALL-SCALE COMPREHENSIVE PLAN AMENDMENT PURSUANT TO SECTION 163.3187, FLORIDA STATUTES, FROM RESIDENTIAL HIGH (RH) AND RESIDENTIAL CONSERVATION (RC) TO MIXED USE/COMMERCIAL (MC), FOR PROPERTY LOCATED AT 21585 OLD STATE ROAD 4A, CUDJOE KEY, APPROXIMATELY MILE MARKER 22, LEGALLY DESCRIBED AS A PORTION OF LOT 30, SACARMA A SUBDIVISION OF GOVERNMENT LOTS 3 AND 4 IN SECTION 29, TOWNSHIP 66 SOUTH, RANGE 28 EAST, CUDJOE KEY, MONROE COUNTY, FLORIDA, RECORDED IN PLAT BOOK 2, PAGE 48 OF THE PUBLIC RECORDS OF MONROE COUNTY, FLORIDA, HAVING REAL ESTATE #00174960-000000, AS PROPOSED BY SMITH HAWKS, PL ON BEHALF OF MOBILE HOMES HOLDINGS COCO, LLC; CONTINGENT ON ADOPTION AND EFFECTIVENESS OF PROPOSED SUBAREA POLICY 107.1.7 OF THE COMPREHENSIVE PLAN TO PROVIDE LIMITATIONS ON DEVELOPMENT AND SPECIFIC RESTRICTIONS ON THE SUBJECT PROPERTY; 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 AND FOR AMENDMENT TO THE FUTURE LAND USE MAP; PROVIDING FOR AN EFFECTIVE DATE.
(File #2018-051).

**4. AN ORDINANCE BY THE MONROE COUNTY BOARD OF COUNTY COMMISSIONERS** AMENDING THE MONROE COUNTY LAND USE DISTRICT (ZONING) MAP FROM NATIVE AREA (NA) AND URBAN RESIDENTIAL-MOBILE HOME (URM) TO SUBURBAN COMMERCIAL (SC), PROPERTY LOCATED AT 21585 OLD STATE ROAD 4A, CUDJOE KEY, APPROXIMATELY MILE MARKER 22, LEGALLY DESCRIBED AS A PORTION OF LOT 30, SACARMA A SUBDIVISION OF GOVERNMENT LOTS 3 AND 4 IN SECTION 29, TOWNSHIP 66 SOUTH, RANGE 28

EAST, CUDJOE KEY, MONROE COUNTY, FLORIDA, RECORDED IN PLAT BOOK 2, PAGE 48 OF THE PUBLIC RECORDS OF MONROE COUNTY, FLORIDA, HAVING REAL ESTATE #00174960-000000. AS PROPOSED BY SMITH HAWKS, PL ON BEHALF OF MOBILE HOMES HOLDINGS COCO, LLC; CONTINGENT ON ADOPTION AND EFFECTIVENESS OF A CORRESPONDING FUTURE LAND USE MAP AMENDMENT; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL OF CONFLICTING PROVISIONS; PROVIDING FOR TRANSMITTAL TO THE STATE LAND PLANNING AGENCY AND THE SECRETARY OF STATE; PROVIDING FOR AMENDMENT TO THE LAND USE DISTRICT (ZONING) MAP; PROVIDING FOR AN EFFECTIVE DATE
(File #2018-052).

(11:17 a.m.) Ms. Cheryl Cioffari, Principal Planner, presented the staff report, beginning with the Subarea Policy. This application was received on March 15, 2017, to amend the Monroe County 2030 Comp Plan to create Policy 107.1.7 Coco Palms Affordable Housing Subarea, to accompany the proposed Future Land Use Map Amendment from Residential High and Residential Conservation to Mixed Use Commercial for a portion of the property located at 21585 Old State Road 4A on Cudjoe Key. The proposed Subarea Policy would provide additional development restrictions on a portion of the subject parcel including a limitation that the only permitted use on the property would be affordable housing and accessory uses. The proposed Subarea Policy and FLUM amendment would be processed as Small-Scale Comprehensive Plan Amendments.

The current FLUM designation is Mixed Use Commercial, Residential High and Residential Conservation. The current Land Use Districts are Suburban Commercial, Urban Residential-Mobile Home and Native Area. The subject property was historically used as a mobile home and RV park known as Rainbow's End Trailer Park, and a restaurant, Coco's Cantina, dating back to the 1970s. The property is currently developed with 17 mobile homes that are deed restricted affordable and is mostly scarified land. The applicant states the reason for the proposed amendments is to ensure the property is only utilized for affordable housing and accessory uses, to bolster the ability for residents to obtain affordable housing in proximity to Key West and Marathon employment centers, and based on change projections, especially in light of the loss of housing as a result of Hurricane Irma.

The applicant's proposed text as submitted on March 12, 2017, revised on July 9 and July 12, is shown starting on page seven of the staff report. The proposed language includes specific boundaries of the Subarea, so it includes the legal description; the Land Use designations that the property would be subject to so that would be the Mixed Use Commercial FLUM designation; and the Suburban Commercial Land Use Zoning District. It also contains density provisions. There is no maximum net density for market rate dwelling units, there is no non-residential floor area permitted, and a maximum net density of 18 dwelling units per buildable acre for affordable dwelling units which is consistent with the proposed Mixed Use FLUM category in the Suburban Commercial Zoning District. The permitted uses are affordable dwelling units and accessory uses, and the property is not eligible as a sender site. Staff recommends changes to the proposed Text Amendments show in purple beginning on page fourteen of the staff report. The changes requested are: Add a simple boundary map. Under Subsection 3A the provisions must be clarified that there is an allocated density of zero. Subsection 3B should include that there are no

maximum net density standard available for market rate dwelling units or transient units to make it crystal clear that it's just for affordable housing and accessory uses. Update the estimated maximum development potential table to clarify that transient units are not permitted. Clarify that there is zero non-residential floor area ratio. Clarify total upland square footage, showing 100,359 square feet of upland per the survey dated 12/5/17. Clarification with a statement that all new residential units developed within the Subarea shall be subject to the ROGO permit allocation system.

The proposed amendment was found to be consistent with the goals, objectives and policies of the Comp Plan and with the changes stated in the staff report presented today, staff recommends approval.

The corresponding applications are for the FLUM and Zoning District. This FLUM amendment would be processed as a Small-Scale Comp Plan Amendment. The proposed FLUM amendment with the proposed Subarea Policy would result in a decrease of 9 units in permanent residential development potential, a decrease of 18 units in max net density residential development potential for market rate units with the use of TDRs, an increase of 3 units in affordable residential development potential, a decrease of 23 rooms or spaces for transient units, and a decrease in non-residential development potential of 20,535 square feet. Policy 101.5.26, known as the Disparagement Policy, would apply to this FLUM amendment if it were not accompanied by the Subarea Policy, which does not propose an increase in allocated density so is not subject to the Disparagement Policy. The proposed FLUM is not anticipated to adversely impact the community character of the surrounding area and it's not anticipated to have any adverse impacts the concurrency requirements including traffic, potable water, sanitary sewer and solid waste. The proposed amendment was found to be consistent with the Goals, Objectives and Policies of the Comp Plan and staff recommends approval contingent upon the adoption and effectiveness of the proposed corresponding Subarea Policy which would restrict the development to a maximum of 33 affordable dwelling units.

There is also the corresponding Land Use District Amendment. There was a community meeting for all three applications held on May 31, 2017, to discuss the proposed changes and receive public participation and input, and this was brought before the DRC on May 29, 2017. Chair Werling asked if residents attended from that neighborhood. Ms. Cioffari responded there was only one member of the public but he was not a resident of the property. With the Subarea Policy, the proposed Zoning Amendment would result in a decrease of 6 units of residential for market rate units, a decrease in two units of max net density residential for market rate units with the use of TDRs, a decrease of 8 units in development potential for transient units, an increase of 18 units in affordable residential development potential, and a decrease of non-residential development potential of 15,620 square feet. LDC Section 102.158 has a number of factors that the BOCC can consider when approving a change. The applicant has cited changed assumptions, new issues, and cited information including an increasing need for affordable housing the Lower Keys especially post-Hurricane Irma, but generally the continued need for affordable housing. The new issue being that if the Subarea Policy and FLUM are adopted, the corresponding Land Use is required to be consistent with that category per Florida Statute. The proposed LUD Amendment is consistent with the Goals, Objectives and Policies of the Com Plan and staff recommends approval.

Commissioner Miller asked if changing the Zoning from Native Area would protect the ability to rebuild what was previously there. Ms. Schemper responded that the unit previously on the site is protected regardless of the Zoning District. Native Area does allow detached residential so detached residential could be rebuilt to the same number of units. Commissioner Miller asked how long this would run. Ms. Cioffari responded forever. The current or a future property owner could apply for an amendment to amend the text because that Subarea Policy is text within the Comp Plan but would have to go through the same process of DRC, Planning Commission and BOCC. It could be changed, but it is a process. Commissioner Miller asked if the Zoning that it was changed to was kept, then what would be the potential density increases without the Subarea Policy wording. Ms. Schemper directed him to the Zoning table in the staff report on pages eight and nine indicating changes to density in the top portion. Without the Subarea Policy there would be no increase in permanent allocated residential development, an increase of 9 units of max net density residential potential for market rate units with the use of TDRs, an increase of 18 units of affordable housing, an increase of 17 rooms or transient spaces, and an increase in 24,623 square feet of non-residential development potential. So it takes out the transient, the market rate and non-residential floor area. Chair Werling added that it leaves the same amount of affordable potential that there is now. Ms. Cioffari clarified that the change would allow for an increase of affordable of 16, because there are 17 on site, totaling 18 units per buildable acre; but the Subarea Policy limits it to only affordable housing.

Commissioner Wiatt noted that he did not see any reference as to what type of affordable housing was being talked about as far as very low, low, median and moderate. Ms. Cioffari responded that there was no proposal to limit it to very low, low, median or moderate. Commissioner Wiatt asked if there were any restrictions on the Commission from limiting the type of affordable housing in the language. Ms. Schemper responded that approval could be recommended with the condition that it is limited to a certain mix. Commissioner Wiatt wanted to make sure there was no reason behind not having any of that language included. Ms. Cioffari responded that the applicant may be able to answer that.

Mr. Nick Batty, representing the applicant, stated that staff had covered this well and thoroughly. The purpose is to take two portions of this site which are underutilized and change the Zoning which requires the corresponding FLUM to Suburban Commercial which will allow construction of 16 dwelling units. Pursuant to the site-specific policy, those units would be required to be deed restricted affordable. There are 17 deed restricted units on the site. It is scarified and there are no concerns in terms of the area becoming rezoned. It is a defined line in terms of where the gravel stops and where the mangroves and sensitive areas start and none of those areas are included within the Subarea Policy. This will be a beneficial project limiting this area to affordable development and removing any ability to develop market rate non-residential. Chair Werling asked if the existing residences would stay or go. Mr. Batty responded that there are seven trailers or mobile homes which were put in within the last three or four years, though others are of lesser quality. The developer's intent is to add additional mobile home style units or modular style units which would fit into the scheme of the existing detached dwelling units in existence. The units present will remain. This is not contemplated to be a new multi-story, multi-unit project. There will be additional units of the scale and type currently in existence. Chair Werling stated that there were some very low present now. Mr. Batty clarified that the

current mix is 14 moderate, two median and one low. Commissioner Ramsay-Vickrey asked if there was any contemplation of deeding this as affordable workforce housing if there were no federal funds involved. Mr. Batty responded that it had not been proposed as being workforce housing specifically to give the applicant flexibility in terms of financing the acquisition and installation of the additional 16 units. Ms. Schemper interjected that the Suburban Commercial Zoning category only allows employee housing and does not allow straight affordable housing. Housing within the Suburban Commercial District either has to be connected with a non-residential use for the employees or owners of that business on site, and that is not necessarily affordable. The only other housing allowed is affordable housing designated as employee housing which is the current category, similar to what everyone calls workforce housing. Chair Werling asked if that applied to the existing residents. Ms. Schemper responded that what is on site was built before that was a requirement, but redevelopment would have to be in compliance. The density is protected for the 17 units but the uses would have to come into compliance with the Code so the use would have to be affordable employee housing. Mr. Batty stated that at this point, only the very front portion of the property where Coco's Cantina used to be is zoned Suburban Commercial. There is one unit within that portion and it was in existence prior to the implementation of the Code that is apparently grandfathered. The site-specific policy doesn't allow going above and beyond what the Zoning Category and FLUM are. Other than the grandfathered units, the remaining units would need to be employee housing.

Commissioner Wiatt asked if these were units to be rented or sold. Mr. Batty responded that they are contemplated to be rental units. Commissioner Wiatt also asked, regarding page three of thirty in the third paragraph, where the applicant states the reason for the proposed amendments is to ensure the property is only utilized for affordable housing and accessory uses, but then goes on to say to bolster the ability for residents to obtain affordable housing in proximity to Key West and Marathon employment centers, etc., and whether the applicant still stands by this purpose. Mr. Batty responded affirmatively. Commissioner Wiatt then referenced the following paragraph and the data sources compiled by the University of Florida, indicating he had read that data for Unincorporated Monroe County which indicates the average rental rate for a two-bedroom unit currently stands at $1,682 per month. Comparing that to the rental for affordable housing unit numbers updated this past April, a median affordable housing maximum monthly rental for a two-bedroom is $1,985. Moderate is $2,382. A median or moderate affordable housing rent control is actually above market rate. In this case, if there are only a few low and the remaining are median and moderate, he wants to make sure everyone knows that is above market rate. This is something he has pointed out time and time again on the Commission. He thought median and moderate were market rate but he was wrong, as it is substantially over market rate. Going through this process without identifying what type of affordable housing is being approved may cause over market rate housing to be approved and he is not willing to do this anymore.

Commissioner Miller asked if he was really not convinced that double-density for moderate affordable is the best way to go. Commissioner Wiatt responded if concessions were to be made, especially on density, the concessions should damn sure be made for real affordable housing. Commissioner Miller added that the County is going gangbusters for double-density over the prior density for affordable and some of it is moderate. Commissioner Wiatt reiterated that moderate is $700-ish over current market rate per month. Chair Werling added that after

Hurricane Georges, the word "moderate" was stuck in front and people don't look that far into it. Commissioner Wiatt continued that the real tragedy will be when enough median and moderate affordable housing is approved and there are no more ROGOs available for very low and low. When an applicant says they want to do something about elevated rents in the Keys and are not willing to do at least low, which is $1,588 per month, then he has to balk at that. Commissioner Johnston, playing devil's advocate, asked what was sitting in affordable housing units that have not been pulled out, that no one has applied for. Ms. Schemper responded that there were 550. Commissioner Johnston stated there is a reason they don't get applied for. Commissioner Wiatt agreed everything is expensive to build but emphasized they are over market. Chair Werling added that they were not making it better. Commissioner Wiatt continued that calling it affordable makes good press headlines but if median and market are over market rate, politically correct or not, it doesn't make sense.

Mr. Batty responded that it is the best data the applicant had available, that often national studies don't keep up. Those studies were for 2009-2010. Commissioner Wiatt stated the ones he had read were from 2016, and the rental numbers for very low, low, median and moderate were from April 3, 2018. Mr. Batty continued that secondarily, the 17 current units are 14 moderate, 2 median and 1 low, yet at least 12 of those units were being rented for between $1,600 and $1,800 per month. Based on the quality of those units, a lot of them are not the highest. There is a submarket which exists within the ability to rent up to the Code parameters. Commissioner Wiatt interjected that was called market rate. Mr. Batty responded that if there is a trailer not up to market, even if it's set at moderate or median, the market will still dictate if the market rate is below those parameters, which obviates the importance of those restrictions to a certain extent if the market rate were below those levels. Commissioner Wiatt agreed, adding that is why when it comes to legislation such as this, he wants to see very low and low. If the Commission is being asked to make concessions in particular, at that point in time, he really wants to see low. Mr. Batty then responded that he does not consider this proposal to be a concession in terms of density as there is an elimination of transient, non-residential and market-rate intensity that goes along with it. Everything is a balancing act but this proposal does weigh those competing concerns properly and in a direction that creates a level of affordable housing. Commissioner Wiatt asked staff if they agreed with that, if there would be any concession in making this change from a density standpoint. Ms. Schemper stated she was not sure how to answer that as she is not sure what he would consider a concession. The applicant is increasing the affordable on the site and decreasing the other potentials on the site.

Commissioner Miller asked if the Commission could weigh in on the affordable categories of what would actually be in the Subarea Policy. Ms. Schemper responded that the Commission could make a recommendation, assuming a certain number per which category were provided but that recommendation would not be a requirement. Commissioner Miller stated he is not comfortable with allowing this density at moderate rate, basically getting rid of the mobile homes there and building moderate rate. He does not believe this helps affordable housing. The applicant is saving money on buying property. Ms. Schemper confirmed that he was referring to the policy requiring mitigation for increases in density, and stated that it only applies to the allocated density, and this amendment only increases the max-net density. Commissioner Miller reiterated that he is not comfortable with 33 units of moderate affordable on this property. Chair Werling asked if Mr. Batty was in control since these are all existing rental units, on what the

rents are. Mr. Batty indicated that was correct, up to the limits contained in the Code. Due to the condition of the majority of the existing units, those rents are in the median low range for the majority of those structures. Commissioner Miller asked if by doing this Subarea Policy, it circumvents what would need to be done for a mobile home park. Ms. Schemper responded that it is what would need to be done concerning the mitigation for increasing density for the FLUM. Commissioner Miller then asked about getting rid of the mobile homes. Mr. Batty responded that the applicant's intention is to retain the existing deed-restricted mobile homes which are protected in perpetuity. The applicant wants to continue the existing scheme and create more units in the open spaces which would all be deed restricted.

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

Commissioner Miller asked what would happen without a Subarea Policy, and if the existing mobile homes would be protected but their spacing would not be protected. In other words, they could be moved over for more density on the property. Mr. Batty presented a survey of the Suburban Commercial area at the front of the site where Coco's Cantina used to be. At the rear edge of the property there is a line delineating the upland to the wetland. That area is all scarified and graveled in, so there is room for an additional four to five modular units there. The majority of the units would be added within the currently zoned Suburban Commercial portion to the front of the site. Commissioner Miller stated that his only recommendation and condition would be that these units not be moderate affordable. Commissioner Johnston asked Mr. Batty if he had the authorization to discuss that. Mr. Batty stated his baseline mix which the applicant had authorized was 8 moderates, 4 medians and 4 lows. Chair Werling asked how many units would be in the old Coco's location. Mr. Batty thought an additional 5 units would fit into that area. Chair Werling asked if the remaining 11 units would be in the back. Mr. Batty responded that he could not represent specifically defined areas and that the spaces between the uses could possibly be decreased. There are a lot of variables in terms of placement and reconfiguration.

Commissioner Wiatt reiterated that moderate is $700 above market rate for a two bedroom; median is $303 above market rate; and low is $94 below current market rate per month. Chair Werling added that the size of the units had not been discussed. Mr. Batty stated it would be a mix of one- and two-bedroom units. Chair Werling and Commissioner Miller discussed the distance between units. Commissioner Ramsay-Vickrey added that market rate is what the market will bear, and the market rate on Big Pine which is probably lower than the surrounding areas is $1,000 per bedroom. Commissioner Wiatt stated that using the applicant's numbers that would be 37 percent of the households paying more than 30 percent of their income. The idea that the applicant is going to do what they say by their own testimony, having that number of median and moderate units is inconceivable. Commissioner Ramsay-Vickrey added the Commission has to work with what is in the planning guide. Commissioner Wiatt agreed, stating low and very low is in the planning guide. These numbers can be worked with but the low category must be identified as being the standard. Median and moderate are above market rate so why even bother. It's a waste of ROGO. To really do what the applicant says they want to do, it needs to be low. Commissioner Ramsay-Vickrey added that ideally would be half low and half median to have something to make up the costs. Commissioner Miller suggested 5, 5 and 6. Commissioner Wiatt stated that was not 50 percent, meaning 50 low and 50 median or moderate. Mr. Batty confirmed the number stated was 8 moderate, 4 median and 4 low, adding that

whatever the Commission's recommendation to the BOCC would be, there needs to be at least a moderate component within it as they are still gaining 25 percent low units and there is still a level of benefit. To make it economically feasible and make it work for the private market to get it done, there will be those lows. The developer would be significantly discouraged from moving forward with the project if there was no moderate component. Commissioner Ramsay-Vickrey indicated she could live with Commissioner Miller's third, third, third.

Chair Werling asked Ms. Schemper if there was anything that would prevent the applicant from getting rid of all of the existing units and reconfiguring the entire property. Ms. Schemper responded that the Subarea Policy would not require the property to be maintained as mobile homes or separated units. They could rebuild under the SC Zoning, detached or attached. Mr. Batty stated it's an economic factor and the applicant at this point has an existing development and is looking essentially to do in-fill development. It wouldn't make sense to rip out the 17 existing units. The deed restrictions are by the individual units, not the entirety of the property. Theoretically, with some other density increase, market rate units could be developed there as it sits now, though not if the Subarea Policy is adopted. Ms. Schemper added that the applicant is requesting a change to the Zoning category Suburban Commercial. In terms of land uses, that permits both detached and attached dwelling units, restricted as employee affordable housing. The proposed Subarea Policy does not include any language that restricts what type of building can be put there, just the income restrictions. If the amendment goes through, the applicant could, at some point in time, take away what's there and rebuild under the SC zoning as affordable employee housing, either site-built detached or attached units. If the mobile homes were removed, they could not be replaced with mobile homes as they are not allowed in SC, but the deed restrictions still remain.

Commissioner Wiatt added that in the big picture, larger resorts and motels putting affordable housing on their property may actually be the solution. In that case it's not about exact dollars and cents, it's so they can ensure they have employees and accomplish their mission. In those cases, those employees are not going to be able to afford anything other than low. Those scenarios would be the place where the affordable housing ROGOs should be put. A proposal like this one is largely skewed to the median and moderate numbers, and approving these is not doing anyone a favor. Commissioner Johnston suggested making a recommendation. Commissioner Wiatt responded that unless the applicant was willing to change their maximum monthly rental rates from moderate and median to low, he would not support it. Commissioner Ramsay-Vickrey stated she was willing to make a motion going along with Commissioner Miller of basically a third, third, third mix. Mr. Batty stated that 16 additional units could not be split into thirds, and suggested 5 moderate, 5 median and 6 low, adding that if this comes to fruition with the Commission it would need to be hashed out more with staff. Commissioner Ramsay-Vickrey emphasized that she had specified to the 16 new units.

**Motion: Commissioner Ramsay-Vickrey made a motion to approve Item 2 with a recommendation that the 16 new units consist of 5 moderate, 5 median and 6 low. Commissioner Johnston seconded the motion. Roll call: Commissioner Ramsay-Vickrey, yes; Commissioner Wiatt, no; Commissioner Johnston, yes; Commissioner Miller, yes; Chair Werling, no. Motion passed 3-2.**

Commissioner Miller asked Commissioner Wiatt what he would be comfortable with as far as the mix. Commissioner Wiatt responded that historically, he had been comfortable with 50/50 which had not even been met here, and moderate and median is above market. His 50/50 went away when he found out that a two bedroom market rate is $1,682. He now wants more like 75/25 and the only way to get that is with a hotel or resort or other business puts affordable housing on their own property, and that's where the ROGOs should be put. Commissioner Miller agreed. Commissioner Wiatt added that until this is pointed out to the public, that the median and moderate affordable housing is not only not affordable, it is over market rate, then the political pressure is going to be don't worry about it, don't sweat the details, call it affordable housing and open up the floodgates. We will burn those 500 ROGOs and do a disservice to the community. Commissioner Johnston stated that the solution is to give direction to go to HUD and get those changed because that's who sets the guidelines. Chair Wiatt didn't believe that would work unless you got the moderate number down to the low number, adding this is outside of their control. Commissioner Miller asked how much the applicant would need from the County to leave the property the way it is. Mr. Williams corrected that to be how much the applicant would need from Commissioner Miller. Commissioner Wiatt again responded to the original question that his ratio would be 75/25.

**Motion: Commissioner Ramsay-Vickrey made a motion to approve Item 3 with a recommendation that the 16 new units consist of 5 moderate, 5 median and 6 low. Commissioner Johnston seconded the motion. Roll call: Commissioner Ramsay-Vickrey, yes; Commissioner Wiatt, no; Commissioner Johnston, yes; Commissioner Miller, yes; Chair Werling, no. Motion passed 3-2.**

**Motion: Commissioner Ramsay-Vickrey made a motion to approve Item 4 with a recommendation that the 16 new units consist of 5 moderate, 5 median and 6 low. Commissioner Johnston seconded the motion. Roll call: Commissioner Ramsay-Vickrey, yes; Commissioner Wiatt, no; Commissioner Johnston, yes; Commissioner Miller, yes; Chair Werling, no. Motion passed 3-2.**

**5. AN ORDINANCE BY THE MONROE COUNTY BOARD OF COUNTY COMMISSIONERS** EXTENDING AN INTERIM DEVELOPMENT ORDINANCE AS INITIALLY ESTABLISHED ON JULY 19, 2017 THROUGH ORDINANCE 010-2017 FOR AN ADDITIONAL 365 DAYS TO DEFER THE ACCEPTANCE AND APPROVAL OF NEW APPLICATIONS FOR THE ESTABLISHMENT OF MEDICAL MARIJUANA DISPENSING FACILITIES COMMENCING OCTOBER 27, 2018, UNTIL SUCH TIME AS A COMPREHENSIVE PLAN AND LAND DEVELOPMENT CODE AMENDMENT PROCESS IS COMPLETED REGARDING MEDICAL MARIJUANA DISPENSING FACILITIES AND PROVIDING FOR EXPIRATION WITHIN 365 DAYS OF THE EFFECTIVE DATE OF THIS INTERIM DEVELOPMENT ORDINANCE OR WHEN THE COMPREHENSIVE PLAN AND LAND DEVELOPMENT CODE AMENDMENTS BECOME EFFECTIVE, WHICHEVER COMES FIRST; PROVIDING FOR SEVERABILITY; PROVIDING FOR TRANSMITTAL TO THE STATE LAND PLANNING AGENCY AND THE SECRETARY OF STATE; PROVIDING FOR AN EFFECTIVE DATE. (File 2018-052)

(12:21 p.m.) Ms. Cheryl Cioffari, Principal Planner, presented the staff report. The Planning Department is proposing an extension to the approved Interim Development Ordinance 010-2017 deferring the acceptance and approval of new application for the establishment of medical marijuana dispensing facilities commencing on October 27, 2018. The amendments are being worked on; however, the extension is sought as the State of Florida is still developing regulations from which the County regulations would be derived. The recommended extension is for 365 days or until an ordinance amending the Comp Plan and LDC adding County regulations is adopted and become effective, whichever comes first. This item was reviewed by the DRC on June 26, 2018, and staff recommends approval to the extension.

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

Commissioner Miller commented that this reminds him of the repeal of prohibition when your senator said, "Before prohibition was repealed, I could get a drink anywhere, and now I have to go into a bar." Commissioner Johnston asked if the State was actively finishing up the guidelines. Mr. Williams responded that as of last week, there were still hearings being held in Tallahassee. There seems to a dispute in Tallahassee and until the County is given clear direction, anything drafted could potentially run afoul of what that says. The voters have approved this for over a year now and there is no safe mechanism the County has found to be able to implement this while waiting. The extension is for another year but if something is received meanwhile that can be worked with, the whole year won't be needed. The desire is to do it once and do it right.

**Motion: Commissioner Johnson made a motion to approve the extension. Commissioner Miller seconded the motion. There was no opposition. The motion passed unanimously.**

**6. <u>AN ORDINANCE BY THE MONROE COUNTY BOARD OF COUNTY COMMISSIONERS</u>** EXTENDING AN INTERIM DEVELOPMENT ORDINANCE AS INITIALLY ESTABLISHED ON JULY 19, 2017 THROUGH ORDINANCE 011-2017 FOR AN ADDITIONAL 365 DAYS TO DEFER THE APPROVAL OF NEW PRIVATE APPLICATIONS OR RECEIVED APPLICATIONS THAT HAVE NOT BEEN FULLY APPROVED UTILIZING MONROE COUNTY CODE SECTION 139-2 (AFFORDABLE HOUSING INCENTIVE PROGRAM) TO TRANSFER ROGO EXEMPTIONS FROM MOBILE HOMES TO ANOTHER LOCATION, OR SECTION 138-22(b) TO TRANSFER OFF-SITE MARKET RATE UNITS TO ANOTHER LOCATION, COMMENCING OCTOBER 27, 2018, UNTIL THE LAND DEVELOPMENT CODE IS AMENDED TO LIMIT THE TRANSFER OF ROGO EXEMPTIONS FROM MOBILE HOMES TO ONLY TIER III DESIGNATED PLATTED LOTS WITHIN THE IMPROVED SUBDIVISION (IS) LAND USE DISTRICT OR THE URBAN RESIDENTIAL MOBILE-HOME (URM) LAND USE DISTRICT AND WITHIN THE SAME ROGO PLANNING SUBAREA FOR THE DEVELOPMENT OF SINGLE FAMILY DETACHED DWELLING UNITS AND THE RECEIVER PROPERTY SHALL NOT BE A WORKING WATERFRONT; AS RECOMMENDED OF THE AFFORDABLE HOUSING ADVISORY COMMITTEE AND THE BOCC; PROVIDING FOR EXPIRATION WITHIN 365 DAYS OF THE EFFECTIVE DATE OF THIS INTERIM DEVELOPMENT ORDINANCE OR WHEN THE LAND

DEVELOPMENT CODE AMENDMENTS BECOME EFFECTIVE, WHICHEVER COMES FIRST; PROVIDING FOR SEVERABILITY; PROVIDING FOR TRANSMITTAL TO THE STATE LAND PLANNING AGENCY AND THE ESECRETARY OF STATE; PROVIDING FOR AN EFFECTIVE DATE. (File 2018-089)

(12:25 p.m.) Ms. Cheryl Cioffari, Principal Planner, presented the staff report. The Planning Department is proposing an extension to the approved Interim Development Ordinance 011-2017, which defers the acceptance of new private applications or received applications that are either utilizing Code Section 139-2 to transfer ROGOs from mobile homes to other locations or 138-22(b) to transfer off-site market rate units to another location until the LDC is amended to transfer ROGO exemptions from mobile homes only to Tier III designated platted lots within the IS or URM Land Use Districts within the same ROGO planning subarea for the development of single-family detached dwelling units, and the receiver site shall not be a working waterfront as recommended by the Affordable Housing Advisory Committee. Since the adoption of Ordinance 011-2017 there have been instances in which applicants seek to transfer market rate units to an off-site location and redevelop the property with deed restricted affordable dwelling units. However, the Interim Development Ordinance prohibits that ability to transfer at this time and does not allow owners to realize the full potential of the incentives the BOCC wishes to offer for redevelopment of homes with deed restricted affordable units. The Planning Department proposed a resolution to the BOCC to reduce the scope of the existing Ordinance 011-2017 to allow for the transfer of market rate units utilizing Section 139-2 or 138-22(b) in certain limited situations. That was approved by resolution by the BOCC on July 18, 2017. The proposed amendment to the ordinance would maintain the moratorium, except to allow the transfer of market rate ROGO exemptions only to receiver properties that meet all of the following criteria: Receiver site is designated as a Tier III, is a legally platted lot, is within the IS or URM Land Use District, is located within the same ROGO planning subarea as the sender site, and the receiver site is not a working waterfront. Staff continues to work on the BOCC-directed amendments related to limiting the transfer and is recommending approval of the extension.

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

**Motion: Commissioner Johnson made a motion to approve the extension. Commissioner Wiatt seconded the motion. There was no opposition. Motion carried unanimously.**

**7. <u>AN ORDINANCE BY THE MONROE COUNTY BOARD OF COUNTY COMMISSIONERS</u>** EXTENDING AN INTERIM DEVELOPMENT ORDINANCE AS INITIALLY ESTABLISHED ON JULY 19, 2017 THROUGH ORDINANCE 012-2017 FOR AN ADDITIONAL 365 DAYS TO DEFER THE APPROVAL OF NEW APPLICATIONS OR RECEIVED APPLICATIONS THAT HAVE NOT BEEN FULLY APPROVED FOR COMPREHENSIVE PLAN OR LAND DEVELOPMENT CODE AMENDMENTS, DEVELOPMENT AGREEMENTS (INCLUDING 380 DEVELOPMENT AGREEMENTS), AND MINOR AND MAJOR CONDITIONAL USE PERMITS (EXCLUDING APPLICATIONS PROPOSING ONLY AFFORDABLE HOUSING DWELLING UNITS), WITH PROPOSED OCCUPANCY BY "THREE UNRELATED PEOPLE" OR "TWO UNRELATED PEOPLE AND ANY CHILDREN RELATED TO EITHER OF THEM" OF A DWELLING UNIT, AND APPLICATIONS UTILIZING THE TERM "LOCK-OUT," COMMENCING OCTOBER 27, 2018, UNTIL THE BOCC CAN REVIEW AND POSISBLY

AMEND THE COMPREHENSIVE PLAN AND LAND DEVELOPMENT CODE REGARDING THE DEFINITIONS OF DWELLING UNIT; HOUSEHOLD; FAMILY AND THE UNDEFINED TERM "LOCK-OUT" OF A DWELLING UNIT; PROVIDING FOR EXPIRATION WITHIN 365 DAYS OF THE EFFECTIVE DATE OF THIS INTERIM DEVELOPMENT ORDINANCE OR WHEN THE COMPREHENSIVE PLAN AND LAND DEVELOPMENT CODE AMENDMENTS BECOME EFFECTIVE, WHICHEVER COMES FIRST; PROVIDING FOR SEVERABILITY; PROVIDING FOR TRANSMITTAL TO THE STATE LAND PLANNING AGENCY AND THE SECRETARY OF STATE; PROVIDING FOR AN EFFECTIVE DATE. (File 2018-0900

(12:31 p.m.) Ms. Cheryl Cioffari, Principal Planner, presented the staff report requesting a 365-day extension or until such time as amendments are made to the Comp Plan and LDC addressing definitions of lock-outs and clarifying that. The item was reviewed June 26, so this extension would essentially allow the moratorium to continue for another 365 days while staff continues to work on amendments that were reprioritized post-Hurricane Irma. Staff recommends approval.

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

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

**9. <u>JOHN & LESLIE COUGHLIN, 1355 OCEAN DRIVE, SUMMERLAND KEY:</u>** AN APPEAL BY A SURROUNDING PROPERTY OWNER TO THE PLANNING COMMISSION CONCERNING AN ADMINISTRATIVE DECISION OF THE ACTING SENIOR DIRECTOR OF PLANNING & ENVIRONMENTAL RESOURCES DATED MAY 18, 2018 APPROVING A SPECIAL EXCEPTION TO CONSTRUCT A 209 LINEAR FOOT ACCESS WALKWAY AND 8'X20' TERMINAL PLATFORM WITH A 14,000 LB. BOAT LIFT. THE SUBJECT PROPETY IS LEGALLY DESCRIBED AS LOT 11, SUMMERLAND ESTATES, PLAT BOOK 2, PAGE 167, AND BAY BOTTOM EASTERLY AND ADJACENT TO LOT 1, SUMMERLAND BEACH ADDITION, PLAT BOOK 3, PAGE 45, SUMMERLAND KEY, HAVING REAL ESTATE NUMBERS #00115140-000000, #00197930-000000 AND #00200590-000000. (MM +/-25) (File 2018-116) (REQUEST TO CONTINUE)

(12:35 p.m.) Mr. Mike Roberts, Senior Administrator, Environmental Resources, reminded the Commission that the appellant had requested a continuance and wanted to allow the Commission to address that prior to his presentation of the staff report.

Commissioner Miller made a motion to approve a continuance. There was no second. Commissioner Wiatt asked to hear the rationale for the continuance. Mr. Roberts stated he did know and would defer to the appellant. Ms. Schemper responded that the appellant does have a rationale for the continuance if the Commission wants to hear from the appellant.

Ms. Donna Janiuk, the appellant, after being sworn in by Mr. Wright, stated the reason for the request for a continuance is there wasn't enough time to get all of their information put together appropriately nor could they get it to the Commission in enough time prior for them to digest all

of the information. Ms. Janiuk stated she has no problem with the erection of a dock, but wanted the Commission to have time to look over all of their information.

Mr. Steve Williams responded behalf of the County, indicating that the appeal had been received six weeks prior, filed by the appellant who elected to go down this route, and who is now stating they don't have their documents in order. Ms. Janiuk agreed but stated they had no idea this meeting would happen so quickly, believing it would be put off to August 27.

Chair Werling asked if there was additional paperwork to be submitted. Ms. Janiuk responded affirmatively. Commissioner Miller asked for a characterization of the additional information. Ms. Janiuk responded that the design of the dock was not consistent with community character and caused impacts to the environment. Alternate locations had not been surveyed to determine a better location for the dock. The information she has reflects that. Commissioner Miller asked to hear from the applicant.

Ms. Leslie Coughlin, after being sworn in by Mr. Wright, made herself available for questions. Commissioner Miller asked if postponing this item for a month would be onerous. Ms. Coughlin responded that it would as they had been in this process for quite a while and had traveled 2000 miles yesterday to be at the meeting today. Commissioner Johnston asked if she had a building permit. Ms. Coughlin responded that she had permits from the Corps of Engineers, DEP and had been through the process with the Fisheries and NOAA. The County had approved and now there is this appeal. Mr. Roberts clarified that the special approval for the long dock exception was a requirement for the submittal of a permit application to construct the dock so there is no permit to build the dock at this time. Approval of the exception is necessary for the applicant to apply for that. As long as the exception approval is under dispute or under appeal, staff cannot review a building permit. Ms. Coughlin also clarified that she had the same amount of time to provide her information to the Commission as the appellate. Chair Werling asked if this was her residence. Ms. Coughlin responded that this is her residence.

Commissioner Ramsay-Vickrey stated she would like to hear this item today and made a motion to deny the continuance. Commissioner Johnston seconded, noting that out of community character is an easy thing to determine. Commissioner Ramsay-Vickrey agreed, adding that she would also be happy to hear anything the biologist had to add.

Ms. Janiuk interjected that the additional evidence produced in order to obtain the exception was a benthic survey simply of the location where the proposed dock was to be located and no benthic surveys were performed in alternate locations. The Janiuks had a benthic survey prepared of the entire area owned by the Coughlins to determine another location with limited impacts to the environment, as opposed to the original proposal. Commissioner Ramsay-Vickrey stated that once this item was called and presented by staff, she would have an opportunity to present her side of the story, and the Commission would have an opportunity to ask the biologist as well.

**Motion: Commissioner Ramsay-Vickrey made a motion to deny the continuance. Commissioner Johnston seconded the motion. There was no opposition. Motion passed unanimously.**

Mr. Mike Roberts then presented the staff report. This is an administrative appeal filed by the Januiks on a long dock special approval that was issued for the Coughlins, the adjacent property owner. Mr. Roberts presented an aerial depicting the Januik property to the north of the Coughlin property, which was outlined in blue, at 1355 Ocean Drive on Summerland Key, indicating it is zoned IS. All of the lots in this single-family development front on the ocean. The special exception that was approved by Ms. Emily Schemper as the Acting Senior Director was a 209 linear foot walkway, waterward of the seawall, with an 8 by 20 platform, and includes a 48-foot by 4-foot boardwalk through the mangroves parallel to the shoreline. The boardwalk goes through the mangrove wetlands, then turns 90-degrees and runs out to open water, and that's the approved design.

The Coughlins had originally applied for a special exception in March of 2017. Then Senior Director Mayte Santamaria denied that application based on the availability of the canal immediately adjacent to the Coughlin property on the south, determining that it was a more appropriate dockage than the long dock. Subsequent to her denial, the Coughlins submitted supplemental data indicating that the approaches to the canal were of insufficient depth and did not meet the minimum dock depth requirements. On May 18 of this year, Planning Director Emily Schemper rescinded the prior denial and approved the special exception.

Part of the Januik appeal is that there is not another dock in the community that utilizes the design going parallel to the shoreline before going out, they are challenging the technical data regarding the benthic assessment and are questioning the adequacy of the data submitted. The action of the Commission is based upon and restricted to the record. The decision by the Senior Director of Planning and Environmental Resources 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. Based on review of all of the information, staff requests the Commission uphold the decision of the Acting Senior Director of Planning and Environmental Resources. Staff has not had an opportunity to review or to see the data that was submitted by the appellant today and is unable to recommend an alternative design. It would be up to the applicant, the Coughlins, as to whether or not they wanted to amend their application in such a way.

Commissioner Ramsay-Vickrey asked why the dock did not go straight out. Mr. Roberts responded that based on the benthic information that was submitted with the application, the direct shot across the flats actually impacted more seagrasses and corals than the alternative design. The Code actually prohibits or significantly restricts impacts to seagrasses and corals more so than it does the impact to the mangroves. The alignment of the boardwalk through the mangroves actually reduced impacts to seagrass and coral.

Commissioner Miller asked if the dock was actually longer because it was coming from further landward than if it were constructed off the scarified property. Mr. Roberts responded that the benthic information submitted with the original application indicated that there was more seagrass and coral located in this alternate area. Staff had not physically verified the data that was submitted in the original application because they don't have a boat. Commissioner Miller

asked what the decision was based on. Mr. Roberts responded that the data and information had been submitted by the applicant through Terramar Environmental.

Commissioner Ramsay-Vickrey asked for more information on the depth of the channel not being sufficient. Mr. Roberts pointed out a canal immediately to the south of the Coughlin property that had been maintenance dredged two years ago, indicating that the dredging was limited to the confines of the canal itself. At the end of the canal, the water depth is not four feet. The purpose of the long dock is to reach navigable depth.

Mr. Wright interjected that the appellant had brought a number of handouts and though they were not timely submitted, the Commission may want to make a decision on how to handle them. Mr. Williams stated that in the appellate process, the Commission is not here to approve or deny the dock, only to grant or deny an appeal, and the appeal is limited to the record. Data and documents received today are not a part of Ms. Schemper's decision, which is what the Commission is considering. To the degree there's a new benthic survey or brand new data or brand new anything else is not part of the appellate record.

Ms. Januik wanted to interject and Chair Werling stated that the Commission could not accept the paperwork she had brought. Ms. Januik stated that she understood but that the reason for bringing the paperwork was because it had not been provided to the permitting agencies by the applicant as requested. Her issue is with the dock location and if it were built where her benthic survey indicates it should be, there would be no need for a special exception.

Commissioner Miller asked Ms. Schemper about the information being discussed, and Ms. Schemper indicated she hadn't seen it. Commissioner Miller told Ms. Januik he did not understand what she was saying. Ms. Januik explained that further information had been requested from the applicant and it had not been provided. The applicant had chosen the path through the mangroves and felt it was least impactful to the environment, but did not survey other locations in front of the residence. Commissioner Miller stated Terramar had done that. Ms. Januik responded that they had not, that they had only surveyed the chosen location for the dock. Mr. Wright pointed out that appellant is held to a standard of having to provide substantial, competent evidence that the action taken by the County in granting the permit was improper or erroneous. Discussions of whether there were better alternate locations are not relevant to the appeal. Commissioner Miller thought they would be if a previous denial had requested further information that had not been brought forward. Commissioner Wiatt pointed out page three of six of the application review showing three bullet points, none of which speak of biological benthos studies. Anything outside of those three bullet points for the basis of the appeal is really not appropriate.

Mr. Williams interjected that in the event he had to defend this down the road, he would much rather defend it on the merits than on the procedures. If the appellants have documents they want the Commission to see, it would be much easier to proceed with those, though he would not necessarily want to consider it a waiver by the County, as the County is very much against the people speaking before the Commission because it's an adversarial process. This is a quasi-judicial hearing. He is counsel for staff and the County. Mr. Wright is counsel to the

Commission. The appellant is an adversarial third party to the County action. But if these documents need to be before the Commission, then they needed to be "part of the record below." So if the Commission wants to allow them in, that is within the Commission's discretion.

Commissioner Wiatt reiterated his point that if the County provided this special exception based on this 118-12(m)(15)(e), then it doesn't matter what the study says because it doesn't say they have to consider that. Commissioner Miller stated he was not sure he followed that when there had been a previous denial asking for more information that wasn't forthcoming. Ms. Schemper responded that the applicant did provide more information following Ms. Santamaria's original denial and that was what the now approval was based upon. Ms. Santamaria's denial was based on the option to use a different location for water access through the already-established canal but, as Mr. Roberts had explained, the applicant could not use that canal or cut-in slip area because it does not have continuous access to four feet of water. The applicant did come back with further information, and also did a benthic survey for the proposed location. The County does not normally require someone to provide a benthic survey of the entire area with every possible alternative location in evaluating where a dock can go. Commissioner Miller indicated he would agree except for the fact that mangroves were involved.

Commissioner Wiatt reiterated that the three bullet points that have to be considered for the review of the appeal were consistency with community character, interference with public recreational uses in or on adjacent waters, and whether or not it would pose a navigation or safety hazard. If those are the bases for approval, there's nothing else to talk about. Ms. Januik requested the Commission at least allow her to make her presentation. Commissioner Wiatt again stated that whatever she had to say wouldn't have any impact on the County's decision because the regulations limit the review to the three bullet points, none of which have anything to do with benthos studies, biological studies, going through mangroves or anything else. Ms. Januik insisted that a lot of it had to do with being inconsistent with the character of the community, and that she also had letters from members of the community stipulating that and showing how they feel about this project. Commissioner Wiatt responded that he is happy to hear everything but the County had fulfilled their responsibility as it pertains to conformance with the regulatory requirements. There is nothing about mangroves, benthos studies or any of that stuff. Commissioner Miller asked who owned the lot where the dock goes through the mangroves and Ms. Coughlin indicated she did. Chair Werling stated that technically then, it is in front of the applicant's house. Commissioner Ramsay-Vickrey added that it would be more costly for the applicant to have the dock make this jog and go out and she would think the applicant would have taken the more cost-effective route if one had existed. Commissioner Wiatt stated that it's not the County's responsibility to determine whether or not it's more cost effective or anything else. Commissioner Ramsay-Vickrey agreed. Chair Werling added that the dock may not be in front of the residence but it's certainly in front of the applicant's property. Commissioner Ramsay-Vickrey noted that there was certainly no lack of long docks out through the area based on the photographs presented.

Commissioner Wiatt stated that he supposed it could be argued that it's inconsistent because there are no other piers that are not in front of a residence. Ms. Januik corrected him, stating that it could be argued that there are no other piers like this because all of the other piers are perpendicular to the property. This one is horizontal to the shoreline for 48 feet, through mangroves, and then goes out perpendicular 209 foot, which is what makes it inconsistent with the community. Chair Werling asked if anybody else had the same mangrove configuration. Ms. Januik could not answer that question, but stated she could show what others in the community have built. Her point is that these folks have an alternative where they would not have to go through the mangroves that would be less impactful to the environment by 20 to 30 percent, be more cost effective, and would not need an exception.

Commissioner Miller asked Mr. Roberts what the limitations were for going through mangroves with a dock. Mr. Williams interjected that he needed a record that looks like an appeal. The Commission has already denied the continuance. Staff has presented their evidence. The appellant would like to have some documents considered by the Commission. It is the County's position they were untimely but an argument could be made they were part of the record and he would rather have the Commission consider everything and decide this on the merits. Though he is confident in staff's opinion whether the Commission considers the information or not, he sees no harm in placing the evidence before the Commission. Chair Werling stated that the Commission should look at the documents to make Mr. Williams more comfortable. A brief recess was taken for the paperwork to be distributed by Ms. Roberts.

After the Commission reviewed the material, Chair Werling asked if there were any questions. Commissioner Miller asked Mr. Williams if he had meant that the Commission could vote on whether the procedure was flawed as far as the approval of the dock. Mr. Williams responded that what he was attempting to say is the additional documents provided are not part of "the record below" but that he would rather the Planning Commission have a full record below and a full record in front of them to make a decision. The documents he objects to are the neighbors' complaints as that would not go into an appeal. Mr. Williams further explained that what the Commission has before it today is a yea or nay on an appeal; do you reverse Emily's decision or do you uphold Emily's decision. This is not a re-consideration or any other re-fact finding.

Commissioner Wiatt stated that it is important to point out, assuming that page one of Item 9 is correct, that the appellant is appealing an administrative decision by Ms. Schemper in her capacity as Acting Senior Director of Planning and Environmental Resources to grant a special exception, not to grant a permit for this dock. It's to grant a special exception because of length. Commissioners Johnston and Ramsay-Vickrey agreed. Commissioner Wiatt continued that such an exception is required once you get over a hundred feet or something like that, so that's what should be discussed. In order to grant such an exception, there are three bullet points that staff has or the Director has to address, and none of those include anything environmental. So the whole discussion about environmental is moot. Mr. Wright confirmed that to be correct, that the purpose is not to substitute the Commission's discretion for that of the Planning Department. This is an appeal of a decision that was made. The appellant needs to show you that either there were criteria improperly considered or proper considerations were not taken, there was an error,

a mistake of law, something along those lines. To come in and talk about a better way to do it is not relevant and not the function of the Commission. This is simply an appeal from a decision that's already been made.

Commissioner Miller wanted to talk about the mistake of law, stating that the Code says that a dock should be placed on a property where it is least environmentally sensitive. Mr. Williams asked him which one of those bullet points he was referring to. Chair Werling told Commissioner Miller that that horse was already out of the barn. Commissioner Miller insisted that there is a mistake of law where the Code says that a dock will be built on the least environmentally sensitive part of a property. Then there are dueling environmental experts. Mr. Williams asked Commissioner Miller what section of the Code he was referring to. Mr. Roberts indicated that there is language in the Land Development Code where avoidance and minimization of impacts to wetland and mangroves is required, but there is nothing in the Code that requires an applicant or staff to consider the least environmentally impacted location. Commissioner Wiatt asked if there was anything in the Code that requires staff to look at anything environmental for a special exception to the length of the dock. Mr. Roberts confirmed that under that section it says "among other things," and then those three bullet points earlier referred to. When staff does the evaluation, they evaluate the dock against the design criteria contained in 118-12. Commissioner Wiatt asked if the only thing being appealed here was the granting of the special exception. Mr. Roberts responded affirmatively. Commissioner Wiatt reiterated that none of the three things to be looked at were environmental. The length of the dock is the special exception. That's what's being appealed. The criterion for approving that exception has nothing to do with anything environmental.

Ms. Schemper explained that the special exception allows additional length so that the required depth can be reached. Commissioner Miller stated that that is an environmental concern. Mr. Wright interjected that it is not the Commission's function to substitute its judgment and discretion for the judgment that's been made by the County. They should only decide if an error was made or if matters were not considered. Commissioner Miller stated that based on what he sees, an error was made. Commissioner Wiatt again asked, in which of the three bullet points. Commissioner Miller stated in the interpretation of the Land Development Code. Commissioner Wiatt responded that that was not under Section 118-12(m)(15)(e). Commissioners Johnston and Ramsay-Vickrey agreed.

Mr. Williams stated that the appellant had the burden and should be allowed to speak. Mr. Wright agreed adding that the applicant should be heard as well. Ms. Januik stated that she had brought an expert who could better explain the presentation. Ms. Sandra Walters, President of SWC Engineers, Planners and Environmental Consultants, was sworn in by Mr. Wright and thanked the Commissioners for allowing the presentation. Ms. Walters stated she was not an attorney and apologized as she did not know an attorney was required for an appeal before the Planning Commission, that she would be presenting this as a planning and environmental consultant.

Ms. Walters stated that when the Januiks had brought her the Coughlin application for their special exception, the first thing she saw in the Code that seemed relevant was Section 118-

12(m)(14) and (15). Both sections say that the dock and walkway shall be located to avoid and minimize covering wetland vegetation or mangroves. By extension, she had interpreted this to include submerged habitat. Avoidance and minimization cannot be done without looking at alternatives. With NEPA, you always have to look at no action versus a couple of alternatives and demonstrate what has the least impact. In the benthic assessment previously conducted by Terramar, they were asked to look at the one corridor. Ms. Walters stated that the entire shoreline should be looked at in order to pick the spot that would avoid and minimize impacts to the maximum extent practicable, which is the guideline under other state and federal legislation. The next relevant section was Section 118-12(m)(14)(d) and (15)(e) which says, "Such alternative designs shall only have the minimum deviations from this subsection to address this unique situation." Again, an alternative must be looked at. And finally, there are actually three bullet points, but Ms. Walters felt only two were relevant to this case under Subsection (15)(e), not being inconsistent with community character and posing no navigational and safety hazard.

Ms. Walters stated that her company had gone out over the last two weekends and mapped the resources on the entire shoreline of both parcels. This information was presented to the Commission. They found considerably less corals than in the Terramar study, which indicates there was quite a bit of coral damage from Hurricane Irma. The data found in the alternative location was less. Comparing the two locations, the alternative dock corridor, which is right along the edge of the previously-dredged channel, showing that edge from the shallow flat down into that dredged channel, is the perfect place to put a dock because it will have the least impact, and the first approximately 90 feet of that area from the shoreline would have virtually no impacts. The design originally proposed by the Coughlins goes through mangroves, a valuable natural resource, and wetland on that shoreline that that walkway would go right through.

Ms. Walters presented a summary table of the impacts from the original dock location and the alternative corridor. The alternate dock corridor has 21 to 26 percent less marine resource impacts, and has zero mangrove impacts. It does not require a special exception, except for the length. It meets the 25-foot riparian line setback requirement. Single-family docks are exempt from the State's submerged land lease. The Coughlins stated that they wanted to put this dock in the submerged land that they owned, which would be fine except from the standpoint of environmental impacts. If the Coughlins were to build their dock on State submerged lands, they're required by the State Submerged Land Rule to be 25 feet from the riparian line, which they would be, and there would be no additional cost to them in having their dock on State submerged land because a single-family dock is exempt from a lease. Ms. Walters proffered that the majority of the perpendicular docks along the shoreline were on State submerged land so it would not be a hardship if the Coughlins put theirs on the State submerged land in front of their house.

Ms. Walters then spoke about avoidance and minimization, that there is an alternative location that would have significantly less impacts and appears to meet the Code. The proposal is supposed to have the minimum deviations. The alternative location has less deviation than what is being proposed by the Coughlins. Regarding community character of the area, there are perpendicular finger piers along the entire shoreline. The difference is that they don't go through

wetlands. Ms. Walters began presenting letters from neighbors and Mr. Williams objected as to hearsay, indicating he may even ask that these be stricken from the record as it is so wholly inappropriate. Ms. Walters asked whether these neighbors could have been present to speak. Mr. Williams indicated he would have objected then as well. Mr. Wright added that due process for the applicant must also be provided and they had no way to cross-examine the matters asserted in the letters. Ms. Walters moved past the letters. Ms. Walters then addressed navigational issues, stating that the distance between the Januiks' dock and boatlift and the proposed dock was only 75 feet and maneuvering a 27-foot un-motored Catamaran in that space could be difficult. Ms. Walters summarized that the alternate design meets the County Code by avoiding and minimizing impacts, avoiding all impacts to mangroves, removing the need for the special exception, is consistent with perpendicular docks throughout the neighborhood, and avoids impacts to navigation that would be suffered by the Januiks. Ms. Walters opined that the denial of the special exception is based on full assessment of multiple alternatives, protects the environment, community character and navigation, and is required by County Code.

Commissioner Wiatt referenced Section 118-12(m)(14) and asked Ms. Walters if there was anywhere in that section that discusses granting a special exception by the Planning Director for length. Ms. Walters responded there was not, that it is in (15). Commissioner Wiatt stated that Ms. Walters was appealing the Planning Director's granting of a special exception on something not even discussed in the Code references she had. Ms. Walters replied that she understood what he was saying. Commissioner Wiatt then asked if there was anywhere in Section (15) that discusses granting special exception by the Planning Director other than in paragraph (e). Ms. Walters referenced Subsection (6) of Section 118-12(m) that requires conditions, and then continues until T-style docks which is (14), and pier-style docks which is (15). Ms. Walters indicated that all of these conditions are part of the review of a dock application and were referenced in the original staff report. Commissioner Wiatt understood, but stated that that is not what was being appealed. Ms. Walters responded that she understood. However, Subsection (d) of (14) states, "Such alternative design shall only have the minimum deviations from this subsection to address this unique situation." Commissioner Wiatt pointed out that was for the original application of the dock, not for the exception by the Planning Director, which is what he had been trying to say all along. If you really want to appeal the permit, appeal the permit, not the special exception. Getting back to the three bullet items and the four letters from neighbors, three of the four specifically talk about environmental which is not an issue here. The last one has more to do with aesthetics than community character. As far as navigation is concerned, one dock seems to be a little bit longer than another. Ms. Walters pointed out that in the original denial that was issued by the Senior Director of Planning and Environmental Resources on May 18, 2018, the second-to-last paragraph says, "The County Biologist recommends that at a minimum, the proposed dock alignment be modified to eliminate the impact to mangroves and the access pier relocated to Lot 11. Additional benthic surveys will be required to demonstrate that the proposed dock alignment minimizes impact to macro algae communities, seagrass beds and hard bottom communities." Ms. Walters stated she had done that but the applicant had not, and it does not support the special exception. Ms. Walters urged that the decision go back to the original denial.

Mr. Williams then asked Ms. Walters if she had reviewed the Army Corps permit in this matter. Ms. Walters responded that she did, as much as was available online. Mr. Williams asked what portion she reviewed. Ms. Walters responded that it was the record for this exception, not the whole permit. Mr. Williams asked if she believed the Army Corps permit was issued in error. Ms. Walters indicated she had grave doubts over whether it was appropriate because the federal guidelines require avoidance and minimization of impacts and there was no evaluation to that effect. However, the application met the federal dock guidelines for the Florida Keys. The benthic assessment that was submitted in that application was conducted in February of 2016, and typically, benthic assessments are not accepted by the Corps or National Marine Fisheries Service unless they're conducted between May and September. This was another irregularity. Mr. Williams asked if she had appealed the Army Corps permit. Ms. Walters responded she had not at this time. Mr. Williams asked if the Army Corps permit addressed avoiding and minimizing impacts on the benthic resources. Ms. Walters stated the permit guidelines address that as well as the DEP permit and that if new information is brought forward, that the permit can be reconsidered. It would be up to the Januiks if they want to bring the new information to the attention of the Corps of Engineers or the Florida Department of Environmental Protection. Mr. Williams asked if both the Army Corps and the DEP had found that the property owner had adequately avoided and minimized impacts to the benthic resources. Ms. Walters responded that DEP asked for an evaluation of alternatives and the only information provided to them was an email from the biologist with Terramar stating that they had not evaluated any of the rest of the property, but had swam around and it was pretty similar, where she has a detailed study with empirical data.

Mr. Williams asked if County staff, Army Corps and DEP had all found that the benthic resource findings were adequate, whether she was really appealing the County's decision based on impacted sight lines or a neighbor's view. Someone in the audience shouted out “Yes.” Ms. Walters responded that she believes her client is appealing the special exception based on the points raised in her presentation, that there are different sections of Code that were not addressed, and the new information she has provided bears on those determinations and it will be a decision of the Planning Commission as to whether they agree or not.

Mr. Williams then asked Ms. Walters to pull up the aerial photograph that showed all of the docks and he counted aloud 26 docks on that aerial. He then asked Ms. Walters if she still believed this one dock would be out of the community character. Ms. Walters responded that it would because it has a section of dock that's parallel to the shoreline that goes through mangroves where none of the others in the photograph do. Mr. Williams asked her if she could tell that from this aerial. Ms. Walters stated she had not field-confirmed it but believed it to be true as she had been told by people in the community. Mr. Williams asked if she had no issue with interference with public recreational uses or adjacent waters. Ms. Walters said she did not include that in her presentation. Mr. Williams stated that there were docks extending further into the water than this one was proposed to and whether this dock would pose any navigational or safety hazard. Ms. Walters responded it would for the Januiks’ boat and existing dock.

Mr.Williams asked if it would be inconvenient for the Januiks to get their boat in and out and Ms. Walters responded in the affirmative and envisioned an argument happening if they ever ran into the Coughlins' boatlift while trying to tack their sailboat out, adding that it could be an unpleasant situation for both involved, and is an actual site-specific hazard to navigation. Mr. Williams indicated he had no further questions.

Commissioner Miller asked if he could cross-examine the witness and Mr. Williams indicated affirmatively. Chair Werling asked if he thought he was Clarence Darrow. Commissioner Miller asked Ms. Walters to bring up Section 118-12 where it talks about special exceptions and avoiding all impacts to mangroves. Ms. Walters found the section he desired and Commissioner Miller observed that it did not specifically say special exceptions in Section 118-12, the first statement, but he was assuming the thought was being carried forward, "The dock and walkway shall be located to avoid and minimize covering wetland vegetation or mangroves." Commissioner Miller had thought it said special exceptions under Section 118-12, but it did not, adding that special exceptions had been drummed into his head here. Commissioner Wiatt added that that is the reason for the appeal.

Chair Werling asked if there were further questions or comments. Commissioner Miller stated that it wasn't too late to do the right thing. Commissioner Wiatt added that it's not too late if this were a different appeal. Chair Werling agreed that the right thing hadn't been appealed. Chair Werling then asked if the applicant would like to speak.

Ms. Coughlin first spoke regarding going through the mangroves, noting there are exceptions in the Code that say, "Such structures," this would be the dock, "should be located in an existing break in the mangroves or shoreline vegetation. However, if such a break does not exist, a walkway no more than four feet in width may be cut through the mangroves or shoreline vegetation." That is right in the Florida Land Development Code. When applying for the dock and speaking with the folks at DEP, she had received a booklet showing different mangrove trimming styles, which states that homeowners who have decided to let their mangroves grow naturally may trim a small path through the mangroves providing access to their dock and pier. So both DEP and the Land Development Code allow trimming of a walkway. Mangroves are not being removed or cut down to the ground, only a walkway is being trimmed through them. She has also had Earth Balance plant 25 mangroves and she is planning on planting more in the wetland so she is not anti-mangrove and is a good steward of the wetland.

As to docking, having a dock on an adjacent parcel of land is allowed and they own the parcel of land that the dock is proposed to be on and it can run parallel to the shore. Land Development Code 118-12(m) under (14) T-dock styles, it says, "The portion of the dock parallel to the shoreline, whether floating or stationary, may run the entire shoreline length of the parcel and shall not exceed eight feet in width or ten percent of the width of the water body as required in subsection (m)(2), whichever is less." As far as the resources near the mangroves, there are no corals and seagrass in the mangroves or several feet out on the other side of the mangroves. It's a sandy bottom, and that is shown in the benthic study.

Phil Frank from Terramar states the deck design includes boards spaced at half-inch terminal platform, and a half-inch terminal platform includes grating to allow light transmission and shading to be partial. This is in reference to the seagrass or any of the other resources that are located along the walkway or on the terminal of the dock. His final statement on page seven of fourteen of the benthic states, "In addition, the dock design is elevated to allow light transmission which will allow the remaining corals to thrive. Furthermore, because of their small size, relocation of corals is not recommended as a mitigation alternative." This is coming from the benthic study that was done.

Ms. Coughlin asked if the Januiks had done a bathymetric study, and Chair Werling instructed her that questioning wouldn't be allowed. Mr. Williams also objected. Mr. Wright explained that it doesn't work that way. Ms. Coughlin indicated she had had a bathymetric done. DEP had said it would be best to locate the dock on their bay bottom they owned, if possible. The dock needed to be kept as short as possible out into the ocean to reach four feet of water at low tide. The bathymetric shows that the closer you get to the dredged boat basin, the shallower the water is. Glen Boe and Associates verified this. Also on the benthic, page three says there is no seagrass bed observed at the four-foot surveyed water depth where our terminal would be, so that means it's not over a seagrass bed. The amount of corals found that would be impacted along the whole entire 200-foot length were about the size of a sheet of paper. So impacts were considered though she shouldn't even be defending this because it's not the issue at stake right now. If they could have put a dock or boatlifts in the boat basin, they would have done that as it would have been much less of a headache, but you can't get in and out from there as the water is shallow. It's also shallow out past the end of the rock jetty so the dock would have to have been longer and they would still have needed a dock length exception. Ms. Coughlin stated she had permits from the DEP and the Corps of Engineers, and had paid the Fisheries. In an email from Phil Frank to Joanne Delaney of NOAA and the Fisheries, he wrote, "We focused our benthic survey on the area of the proposed dock alignment using project plans as our references for impact assessment. However, we did swim the general area while doing our work and I can attest that the benthic habitats in the vicinity of the proposed dock are effectively similar. We did not observe any large hard or soft corals that would warrant relocation of the proposed dock alignment. Coral resources were all small and distributed patchily throughout the hard bottom areas. There was some rubble and exposed rock along the dredged canal with more resources attached but the proposed dock is distance from that area. So I believe that in this case, the dock terminus has been sighted in a location that minimizes resource impacts relative to another location within the applicant's deeded bay bottom." This shows the area that they did swim and it wasn't only at the dock location.

There was some back and forth between Commissioner Miller and Ms. Coughlin regarding the term "pretty similar." Ms. Coughlin added that everybody within 600 feet of her home had been notified during this process and nobody had ever written a letter, said anything, contacted her or said anything contrary other than what the Januiks have appealed.

Commissioner Johnston asked when she had started this process. Ms. Coughlin responded that it began in 2016 with the Army Corps permit. Mr. Williams asked if Ms. Coughlin's neighbors

had docks. Ms. Coughlin responded affirmatively. Mr. Williams asked if the parcel immediately adjacent to her, owned by the Januiks, had a dock. Ms. Coughlin responded in the affirmative. Mr. Williams asked if there were other docks in the area of Summerland Key. Ms. Coughlin responded in the affirmative, adding up and down the whole ocean. Mr. Williams asked if she believed that it is the community character of the lots along her street to have a dock. Ms. Coughlin responded affirmatively. Mr. Williams stated there were allegations regarding navigational or safety hazards, and asked if the presence of her dock would post any such hazard. Ms. Coughlin responded that she believed Mr. Januik was capable of operating his boat within a 75-foot space and that he would have no more concern of running into her dock than his own. Ms. Coughlin added that the reference made earlier to the dock looking like a picket fence was incorrect, that it would be built to Code with two rope handrails instead of wood. Additionally, as a result of Hurricane Irma, multiple pieces of the Januiks' dock were in her yard and she had not complained. She had asked Mr. Januik if he wanted any of those lengths of dock back because they were in full sections, thinking he could reuse them, and he told her no, to take them away, which she did. Mr. Williams indicated he had no further questions.

Chair Werling asked for public comment.

Ms. Lissette Javierre, after being sworn in by Mr. Wright, stated she was a neighbor and had now seen the impacts to both parties and it is unfortunate that we cannot go in happy medium. The information provided showing minimal impact should have been considered. The Coughlins did their homework as well but it doesn't show that it's of more weight than what the Januiks have presented. Minimal impact to environment is important to our community. I've been a member of that neighborhood for 22 years and I have seen the changes over time of neighbors that built upon exceptions and it's changed the character of the community. Every time exceptions are approved and good data is not considered, no favors are being done to the community. It sends the wrong message for others and we're not helping the natural resources.

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

**Motion: Commissioner Ramsay-Vickrey made a motion to uphold staff's decision. Commissioner Wiatt seconded the motion. There was no opposition. Motion passed unanimously.**

**BOARD DISCUSSION**

There was no board discussion.

**ADJOURNMENT**

The Monroe County Planning Commission meeting was adjourned at 2:24 p.m.