PLANNING COMMISSION
February 27, 2019
Meeting Minutes

The Planning Commission of Monroe County conducted a meeting on **Wednesday, February 27, 2019,** 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

PLANNING COMMISSION MEMBERS

Denise Werling, Chair	Present
William Wiatt	Present
Ron Miller	Present
Tom Coward	Present
Joe Scarpelli	Present

STAFF

Emily Schemper, Acting Sr. Director of Planning and Environmental Resources	Present
Peter Morris, Assistant County Attorney	Present
Steve Williams, Assistant County Attorney (arrived at 11:40 a.m.)	Present
John Wolfe, Planning Commission Counsel	Present
Mike Roberts, Senior Administrator, Environmental Resouorces	Present
Cheryl Cioffari, Comprehensive Planning Manager	Present
Bradley Stein, Development Review Manager	Present
Tiffany Stankiewicz, Development Administrator	Present
Janene Sclafani, Senior Planner	Present
Debra Roberts, Planning Coordinator	Present

ANNOUNCEMENT

Chair Werling welcomed the new Planning Commissioner Joe Scarpelli to the Commission.

COUNTY RESOLUTION 131-92 APPELLANT TO PROVIDE RECORD FOR APPEAL

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

SUBMISSION OF PROPERTY POSTING AFFIDAVITS AND PHOTOGRAPHS

Ms. Debra Roberts confirmed receipt of all necessary paperwork.

SWEARING OF COUNTY STAFF

County staff members were sworn in by Mr. Wolfe.

CHANGES TO THE AGENDA

Ms. Schemper announced that Items 4 and 5 had requested to be continued to the March 27, 2019 meeting.

Motion: Commissioner Wiatt made a motion to approve the continuance of Items 4 and 5 to the March 27, 2019 meeting. Commissioner Coward seconded the motion. There was no opposition. The motion passed unanimously.

Ms. Schemper requested that Items 7 and 8 be read together, and that Items 11 and 12 be read together.

APPROVAL OF MINUTES

Motion: Commissioner Coward made a motion to approve the December 12, 2018, meeting minutes. Commissioner Wiatt seconded the motion. There was no opposition. The motion passed unanimously.

MEETING

1. A PUBLIC HEARING TO CONSIDER AND FINALIZE THE RANKING OF APPLICATIONS IN THE DWELLING UNIT ALLOCATION SYSTEM FOR OCTOBER 13, 2018, THROUGH JANUARY 14, 2019, ROGO (Quarter 2, Year 27). ALLOCATION AWARDS WILL BE ALLOCATED FOR ALL UNINCORPORATED MONROE COUNTY. (File 2018-128)

(10:06 a.m.) Ms. Tiffany Stankiewicz, Development Administrator, presented the staff report. The Planning Department recommends approval of the following market rate rankings: Lower Keys applicants ranking one through thirteen; Big Pine/No Name applicants ranking one through two, subject to the mitigation availability; Upper Keys applicants ranking one through fifteen; and, there were no affordable housing applicants, which will all be rolled over.

Chair Werling asked for public comment. There was none. Public comment was closed. There were no questions or comments from the Commission.

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

2. A PUBLIC HEARING TO CONSIDER AND FINALIZE THE RANKING OF APPLICATIONS IN THE NON-RESIDENTIAL ALLOCATION SYSTEM FOR OCTOBER 13, 2018, THROUGH JANUARY 14, 2019, NROGO (Quarter 2, Year 27). ALLOCATION AWARDS WILL BE ALLOCATED FOR ALL UNINCORPORATED MONROE COUNTY. Pursuant to Monroe County Code Section 138-53(e)(14), the Planning and Environmental Resources Department is providing a notification to the general public of the NROGO account balances. The balances are as follows: (See Table in Agenda)

(10:07 a.m.) Ms. Tiffany Stankiewicz, Development Administrator, presented the staff report. There was one applicant in the Upper Keys and staff recommends approval. There were no other applicants.

Chair Werling asked for public comment. There was none. Public comment was closed. There were no questions or comments from the Commission.

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

3. <u>PRISCILLA CEJA, 26959 OLD STATE ROAD 4A, RAMROD KEY</u>: AN APPEAL, PURSUANT TO SECTION 102-185 OF THE MONROE COUNTY LAND DEVELOPMENT CODE, BY THE PROPERTY OWNER TO THE PLANNING COMMISSION CONCERNING AN ADMINISTRATIVE DECISION OF THE ACTING ASSISTANT PLANNING DIRECTOR DATED FEBRUARY 9, 2018. THE SUBJECT PROPERTY IS LEGALLY DESCRIBED AS LOT 10, BLOCK 4, RAMROD SHORES, RAMROD KEY, PLAT BOOK 4, PAGE 6, MONROE COUNTY, FLORIDA, HAVING REAL ESTATE NUMBER 00207530-000000. (FILE 2018-053) **CONTINUED FROM 12/12/2018**

(10:08 a.m.) Janene Sclafani, Transportation Planner, presented the staff report. This item is an appeal for a ROGO exemption request where two dwelling units were requested and only one was found to be established. The site is located in the Approved Subdivision Land Use District. The structure in question is located closer to State Road 4A, which was denied a ROGO exemption. This structure existed in 1959, prior to the initial Monroe County Code which was established in 1960. Building permit 32429, dated June 19, 1974, established the second dwelling unit located toward Angel Fish Road. There were supplemental permits to that which were Permit Numbers 32335 and 34324, one of which was for a septic. Both permits stated that the property was vacant at that time. The Land Use District of RU1 did allow for single-family residences. One piece of evidence submitted was Permit 9610009, issued in 1996 to replace a rotten floor, a door, and tile in bathroom for the structure in question. The permit did not establish a lawful dwelling unit. Accessory structures are allowed per Code. The Property Record Card indicates a classification of 01, single-family residence for the years from 1982 to 1994, and then again from 2012 to present. From 1985 to 2011, the classification was listed as multi-family; however, when it was reverted back to single family, there were notes stating it was changed due to one electric meter, one water meter, and a shared septic. It is important to note that during the time period of the establishment of ROGO exemption in 1992, it was also listed as single-family. Items submitted do not support the lawful establishment or use during the time period of a ROGO exemption. Additionally, there was a ROGO exemption filed in 2007 for two units, only one of which was found to lawfully exist.

Commissioner Miller asked why it took a year to get this in front of the Planning Commission. Ms. Schemper responded that the ROGO denial was issued a year ago, and then the applicant appealed that. The timing of this application has not been an issue for anyone and there are various reasons why things may get scheduled quickly or take longer. Ms. Sclafani added that there had been additional documentation submitted by the applicant later.

Commissioner Coward asked for more elaboration on the rehab program and how that came about. Mr. Morris interjected that the rehabilitation program is not a program under the auspices of Planning and Environmental Resources, rather the separate and distinct office of the County Housing Authority. Commissioner Coward noted that it was submitted as potential evidence as to why it should be recognized. Mr. Morris agreed it had been submitted, adding that he had some direct examination questions for Ms. Sclafani to address that. Mr. Morris asked for Ms. Sclafani's background. Ms. Sclafani responded that she has a bachelor's degree in urban design from Florida Atlantic University, had joined the Planning Department in January of 2016, and had prepared approximately 30 to 50 staff reports. Mr. Morris asked if she was familiar with the household rehabilitation permit, and Ms. Sclafani responded she that was, and that it was issued in 1996. Mr. Morris asked when the ROGO was founded, and Ms. Sclafani responded on July 13, 1992. Mr. Morris had no further questions for Ms. Sclafani.

Mr. Morris then proceeded questioning the Planning Director, Ms. Emily Schemper. Ms. Schemper stated she has bachelor and master degrees in Urban Planning from the University of Michigan, has worked for the Planning Department for seven years, and has been the acting and then permanent Director for approximately one year. She is a certified flood plain manager, has an American Institute of Certified Planners designation, has been accepted by a court as an expert witness, and has provided court testimony. Ms Schemper explained that the Land Development Code does not give the Housing Authority the ability to interpret the Land Development Code or the Comp Plan. That is done by the Planning Director. A ROGO exemption determination is appealable. Ms. Schemper is familiar with the prior ROGO exemption filed in 2007 pertaining to this same property and structures as in this appeal, and the conclusion was the same. That Senior Director, Townsley Schwab's decision in 2007 had not been appealed. Mr. Morris asked the Planning Commission to accept Ms. Schemper as an expert in the field of Planning and Environmental Resources, limited to the Monroe County Comp Plan, Land Development Code and Monroe County Code. The Commission unanimously accepted Ms. Schemper as an expert.

Commissioner Wiatt asked what the County's position was as to when this structure/cottage in question was built. Ms. Sclafani stated it had appeared in aerials in 1959. Commissioner Miller asked if the only piece of evidence that could stand was a building permit for a ROGO exemption, as found on page three of nine of the staff report. Ms. Sclafani believed he was referring to the part of the Code where if a building permit is found for the original construction, that alone can stand as evidence. However, that had not been found, so then the body of evidence may be presented to substantiate it.

Mr. Bart Smith, speaking on behalf of the appellant, began by asking follow-up questions to Ms. Schemper. Ms. Schemper, in responding to those questions, confirmed that people will reapply for a ROGO exemption if there is additional or different evidence. When Ms. Schemper had reviewed the 2007 request, it had not contained affidavits from the prior owner as of 1992, or the neighbor in 1986.

Mr. Smith then explained that the applicant is requesting the Commission find that the second residential unit on this property is ROGO exempt. It is not conforming to Code as it exists today. This is an IS lot with two residential structures, but the test is not whether it is legally

conforming with the Code today, but whether it was a residential structure occupied as of July 13, 1992. The decision must be based upon the body of evidence available at the time the ROGO exemption was applied for. In this case, evidence was provided documenting that as of July 13, 1992, there were two residential structures on the property which meets the burden required under the Code and LDRs to be determined ROGO exempt. The applicant lives in the unit and is also going to testify today. Mr. Smith presented aerials from February 22, 1959 and 1963, demonstrating the structure existed as it does today. Evidence was presented to cover the applicable date of July 13, 1992, and 1986. Going forward after 1963, a building permit was issued for a second single-family residence on this property, which does not indicate that the property was vacant or anything as to whether there was another residential unit on the property. It is simply lawfully issued a building permit for a single-family residence. In 1992, the year ROGO was adopted, there was a property record card identifying two structures on the property, stating the structure at issue was established in 1958, identified in 1992 as a single-family residence with fixtures, floor and baths. The reason it took so long to get before the Commission is due to some back and forth to obtain additional information.

Ms. Ceja obtained information on who owned the property in 1992, Melinda Pampena, who filed an affidavit stating she was the owner in 1992, that it was developed with two structures, each occupied as stand-alone residences with sleeping and kitchen accommodations. The County issued a building permit for repair to this unit in 1996. The Housing Authority provided funding for the repair. Mr. Gregory Watler, a next door neighbor who purchased his home in September of 1986 and has resided there since that time, stated those two structures have always been there and both structures were rented by two separate families at all times with the exception of intermittent breaks. He does not recall the structure being used as a shed or an amenity for the other structure. The structure in question is located less than twenty feet from his home.

Mr. Smith then explained ROGO in detail, referencing 138-22, effective July 13, 1992, which states that the applicant must provide at least two supporting documents from a list, and these documents have been provided by Ms. Ceja; two affidavits, the property record card, and the 1958 pre-code aerial were provided and is sufficient to meet the requirement to be ROGO exempt.

Chair Werling asked Mr. Smith to go back to the second slide with the actual structures, noting the neighbor's property was to the right, and asked about an additional structure which Ms. Ceja confirmed was a shed. Ms. Ceja, after being sworn in by Mr. Wolfe, stated she has resided on the property since 2011 with her sister, brother-in-law and their two children. She needs to repair the home in question to secure it from future hurricanes. This property has always had two homes with shared utilities since she purchased it. She never questioned the validity of the two homes until after Hurricane Irma when she applied for permits to make repairs. The Building Department informed her that if she had to make repairs of more than 50 percent, she would either be required to demolish one of the homes or apply for a second ROGO exemption. She has received permits in the past for repairs, to include two separate sewer connection laterals. Ms. Ceja has been a full-time resident of the Florida Keys for fifteen years, graduated from Marathon High School and Florida Keys Community College. Her sister has also been a full-time resident for the past ten years. Her father helped her purchase the home in 2011, giving them most of his retirement to do so. Her father had been here for eighteen years and had to

move back to Mexico, but he wanted them to have a stable housing situation. FEMA and SBA have both encouraged repair to the homes and have offered a loan to do so. Without the ROGO exemption, she will be left without a place to live, and she hopes the Commission can help her change that.

Mr. Smith summarized that the body of evidence provides that this has been two residences since July 13, 1992, which certainly has been long enough to be counted in the census and any evacuation times that ROGO was based on. Mr. Smith requested the ROGO exemption be granted.

Commissioner Wiatt asked about the septic system. Mr. Smith presumes there was no septic system when it was built as most structures in that era were on cesspits, and when the new home was built in 1974 that a septic was built sufficient for both homes. Today there are two separate sewer laterals, for which permits were granted, connected to central sewer.

Mr. Morris asked to recall Ms. Schemper to address statements made by Mr. Smith. Mr. Morris asked her regarding 138-22(a)(5) which refers to lease records, occupant records, and 138-22(a)(8) which refers to similar supporting documentation not listed above. Ms. Schemper responded that an affidavit was not the same as a rental occupancy or lease record, and an affidavit would not be included under that. Ms. Schemper also stated that the property appraiser classification and a building type are two different items on the property record card. For this property, currently, the property classification is single family which denotes one residential unit on the site. Multiple units get a different classification of multi-family. Individual buildings are then each given a building type of single-family residence, referring to the finishing type or what the building looks like, and does not necessarily indicate the number of units they are assessing the property for. This was the same classification for the property before 1995. Between 1995 to 2011-12, it did have a classification as multi-family, but was reclassified back to single family in 2011-12, around that same time as when the property was purchased by Ms. Ceja, and which was publicly-available information. Mr. Smith asked Ms. Schemper to agree that the 1992 property record card identified two separate buildings and that both were identified as single family residences, which Ms. Schemper agreed to, clarifying that it was for the building type.

Commissioner Miller asked Ms. Schemper if the applicant would be able to receive a second ROGO allocation on this property. Ms. Schemper responded they could not as this is an IS lot. According to 138-22, two items from the list need to be satisfied, and Commissioner Miller asked about the building permits that had been provided. Ms. Schemper stated that the building permits were for other than establishing a residence and could be for repair or remodeling, but there was nothing in the permit to indicate to staff that this was a separate dwelling unit. Commissioner Miller asked about the fact that the two structures did show up on aerial photographs, which Ms. Schemper indicated that would not confirm what the uses are. Commissioner Miller noted that two of the items on the list appeared to be satisfied.

Commissioner Coward asked Mr. Smith to pull up the 1996 permit. Mr. Smith noted that the repair was to the 600 square foot unit, and the other structure that had a building permit was 740 square feet. Commissioner Wiatt asked if the County was challenging the validity of the property record card as of 1992, which indicates there were two buildings in existence as a

single-family home. Ms. Schemper explained that the County acknowledges that the property appraiser lists two separate buildings with a single-family residence building type, but the assessment property class is single family so they are paying property taxes based on the property having one unit. A duplex would be multi-family. Mr. Morris interjected that as a matter of law, mere notice to one independent constitutional office such as the property appraiser isn't treated as imputed to another office which would be the Board of County Commissioners.

Commissioner Wiatt asked if the County was challenging the validity of the affidavits. Mr. Morris responded that the affidavits did not articulate whether their representations were based upon their personal knowledge. Therefore, the Planning Commission doesn't know whether those representations were made to the best of their knowledge and belief, as this was a long time ago. Commissioner Wiatt asked if the neighbor was living on the property in 1992, and Chair Werling asked if Ms. Pampena was an owner or renter on the property. Mr. Smith clarified that the affidavits specifically state she was the owner in 1992, and the neighbor was a neighbor since 1986 to present. Chair Werling asked if Ms. Ceja had researched what she was purchasing. Mr. Morris interjected that that was the issue. Chair Werling's concern was what the listing paperwork indicated had been for sale. Mr. Morris pointed out that the prior ROGO exemption determination was issued in 2007, and this appellant purchased the property four years later. Chair Werling believed that in 2011, people knew they needed to check what they were getting. Mr. Smith added that Ms. Ceja can go back with additional information and apply for a second ROGO exemption, and should not be prejudiced because she has been able to obtain the 1992 property record card and additional documentation necessary.

Commissioner Wiatt added that concerning the property record card, the allotment from a tax standpoint would be an improvement to the lot and taxes would be paid on that improvement. The property appraiser would see what it was being used for. Commissioner Coward asked if the 1992 property record card showed a kitchen in the unit. Mr. Smith responded that it shows two separate sets of fixtures, and that it doesn't say kitchen for either. Commissioner Miller noted that the property record card stated functional obsolescence and location obsolescence and asked what that was referring to. Mr. Smith explained it was for valuation purposes based on whether it's up to modern standards and how much it has been depreciated, and if it is not near a central center. Commissioner Miller asked if staff concurred with that. Ms. Schemper responded that she did not know. Mr. Morris stated it would have helped if Mr. Smith had brought a witness from the property appraiser's office. Mr. Smith stated that the evidence before the Commission supports this property record card, and that a property appraiser would come up here and state that it identifies two single-family residences.

Commissioner Coward asked staff if there was an opportunity, in these situations, for accessory structures that have been used as an in-law quarter for a relative or something for the same family, and if the square footage of the primary residence could be expanded, still considering it single-family, and take away the necessity of an extra ROGO by giving additional square footage. Ms. Schemper stated that the second structure could still be used for residential purposes as part of one single-family unit on the entire property if they removed any kitchen from the building. The kitchen is the key element when determining whether something is a dwelling unit versus an accessory structure. Commissioner Wiatt stated that the evidence he sees shows, in all likelihood, it had a kitchen in 1992, and a septic or cesspit in 1992, and the property

record card agrees with that. The big picture in 1992 with ROGO is evacuation times and whether this was counted, and if someone was living there, it would have been. Mr. Morris added that this is a market rate property and not an affordable property. Commissioner Miller noted that the property record card didn't recognize a kitchen in either structure, but one of the structures was considered ROGO exempt. Ms. Schemper added that staff did not use the property record card to determine whether or not it had a kitchen in the one that is ROGO exempt, and the property record card is not used as a sole piece of evidence for things. Commissioner Wiatt added that it appears the appellant has offered up additional evidence to the property record card in the form of the affidavits, indicating it was occupied and treated as a single-family residence. Ms. Schemper further reiterated that staff does not consider that the property record card supports two dwelling units on the property in 1992. Commissioner Wiatt noted that the aerial photographs indicate there is no question the structure existed in 1992, and it seems like there is more evidence supporting that it was being used as a residence. Chair Werling agreed with that part, but had a problem with it being titled as one single-family property as she's seen sheds rented out, and just because it's occupied doesn't mean that it's ROGO exempt. To give somebody a ROGO is a big deal.

Mr. Morris interjected that the question is not whether it was used as a residence, but whether it was legally used, and the property appraiser's office staff is not charged with the authority to make those use determinations. If this is the direction that the Planning Commission decides to err, then they are potentially skating on thin ice with hot skates because the knowledge of one constitutional office is being imputed to another and vast inferences are being drawn without any direct evidence, documentary evidence or testimony from anyone in the property appraiser's office to articulate that the text means what it is being defined to mean here.

Mr. Smith stated he fully disagrees with Mr. Morris' statement. There is a system in place to determine a ROGO exemption if you don't have the building permit for the residence, and it's two pieces of evidence. There's the aerial photograph, the property appraiser record, not live testimony, identifying two single-family structures, and then the affidavits to support that it was used as a single-family residence. That is sufficient. Asking for additional information above and beyond that is asking for information above and beyond what the Code requires. Mr. Morris added that Mr. Smith is avoiding the fact that the property classification is distinct from the building classification.

Commissioner Miller stated that he was ready to make a motion. Chair Werling added that the biggest issue is the owner of the property wants to repair both properties and can't do that the way things are now, or if the one in question is substantially damaged, she has no benefit to repair it. Chair Werling wanted to know if those two could be tied under the one umbrella since there are not two separate RE numbers for two separate single-family homes, whether they could they be kept as one specific unit with reassurance to the owner to allow repairs to be made to the other structure. Mr. Smith stated that he could not agree to that as it is outside the scope of a ROGO exemption. Mr. Wolfe agreed that fell outside the purview of what is being attempted here. There may be options in that direction, but it is a separate, distinct area that would involve a Building and Planning Department assessment. Chair Werling added that with getting the ROGO, the small structure could be knocked down and the ROGO sold off. Commissioner Coward asked if a dangerous legal precedent would be set by using the 1992 property record

card as a potential piece of evidence for future cases. Mr. Smith objected to him asking about legal precedence and the County's opinion as to the legal effect. Mr. Morris stated the objection was noted. Ms. Schemper responded that this was different than how property record cards are normally considered. If the Commission is asking staff to ignore the property class on a property record card, that deviates from how property appraiser data is normally considered. Commissioner Wiatt noted that the property record card is identified by the Code as being something that can be used so it's not a precedent. Ms. Schemper clarified that it's how the property record card is looked at. Commissioner Wiatt stated that he believes this all boils down to whether or not this was a home being used in 1992. Mr. Morris added that the County's position is whether it was lawfully used. Commissioner Wiatt added that it was built in 1959 or earlier, and back then it was lawless, so how could it be lawful, which is also hard to get past.

Commissioner Scarpelli asked for the County's view of the building permit for the 600 square foot re-roof to an existing SFR. Ms. Schemper responded that the building permit supports the existence of the structure, but there is nothing stating it is a separate residence with a full kitchen. Ms. Sclafani added that there were two permits in 1996, one for the re-roof which did not establish that it had a kitchen, and the other permit for the re-tiling of a bathroom and rotten floor which also did not establish a single family residence but rather an accessory structure which would have been allowed. Commissioner Scarpelli asked about the permit stating SFR, single-family residence. Ms. Schemper responded that a permit does not necessarily include a floor plan.

Mr. Smith added that the low-income finance information was submitted to repair it for the people that lived there through social services. Chair Werling asked about the zoning and whether there was enough property there to construct two single-family homes. Ms. Schemper stated that it was only one platted lot so it could only have one unit. In terms of fitting something on there, though that analysis had not been done, Ms. Schemper does not believe there is nearly enough land, though it is possible prior to the 1986 zoning categories. Ms. Sclafani interjected that prior to 1986, it was stated on several permits that it was in RU-1, which is Residential Single-Family, such as the sewer permit, it was listed as vacant property, and the sewer permit was for a two-bedroom dwelling unit only. Commissioner Miller asked if this had any end. Chair Werling asked if there was a separate sewer and water bill for each unit. Ms. Sclafani responded there was not in 1992, and not that she is aware of currently. Back in 2001 it had been noted that that was due to one electric meter, one water meter and shared septic. Mr. Smith clarified there are two different lateral sewer connections and one water meter, and the reason it went back to single-family from multi-family in 2011 is because there was one set of meters, which is not indicative that it wasn't two separate residences.

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

Motion: Commissioner Coward made a motion to approve and grant the appeal based upon the evidence presented including aerials showing it was there since the 70s, affidavits from witnesses stating people occupied both structures back in the early 90s, and the 1992 record card putting enough uncertainty into the conversation that it warrants granting. Commissioner Miller seconded the motion as stated by Commissioner Coward, adding that it satisfies number one and number three under 138-22.

Roll Call: Commissioner Miller, Yes; Commissioner Coward, Yes; Chair Werling, No; Commissioner Wiatt, Yes; Commissioner Scarpelli, Yes. Motion passed, 4-1.

Commissioner Miller added that considering the fact that the State is talking about 1,300 allocations dropping down out of the blue, he doesn't think giving this appellant one ROGO will destroy the ROGO system.

6. AN ORDINANCE BY THE MONROE COUNTY BOARD OF COUNTY COMMISSIONERS AMENDING THE MONROE COUNTY FUTURE LAND USE MAP FROM EDUCATION (E) TO MIXED USE / COMMERCIAL (MC), FOR PROPERTY LOCATED AT 255 CRANE BOULEVARD, SUGARLOAF KEY, MILE MARKER 19.3, AS PROPOSED BY THE SCHOOL BOARD OF MONROE COUNTY; 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 2018-139).

(11:20 a.m.) Cheryl Cioffari, Comprehensive Planning Manager, presented the staff report. The School Board of Monroe County has submitted an application to amend the FLUM designation for a 2.81 acre portion of the property located at 255 Crane Boulevard on Sugarloaf Key from Education to Mixed Use Commercial. The property currently has a Land Use Zoning District designation of Suburban Commercial, Suburban Residential and Native Area, and a FLUM designation of Education and Residential Conservation. The property is currently developed with the Sugarloaf School and accessory uses and structures. The applicant's reason for this amendment is the increased need for affordable housing options to be made available to district employees. The FLUM designation of Education does not allow residential uses, so to add residential uses at this time would not be possible. The applicant's full justification of the proposed amendment is provided within the file. A community meeting was held on October 22, 2018. Issues identified by the public in attendance included the maximum development potential of the property, the total number of affordable housing units the School Board wished to develop, the development of affordable units in Key West, a potential text amendment to the Comp Plan to limit the total number of dwelling units of affordable housing on the property, and how the units would be managed and tenants selected. The DRC reviewed the proposed amendment on January 15, 2019. The proposed FLUM amendment would result in an increase of three units in permanent allocated residential development potential, an increase of thirteen units in max met density for residential potential for market rate units with the use of TDRs, an increase of forty units in affordable residential development potential, an increase of twenty-eight rooms or spaces for transient units, and an increase in non-residential development potential of 36,738 square feet.

Staff has reviewed the proposed FLUM amendment for concurrency analysis including traffic circulation, potable water, solid waste collection, and sanitary sewer, and has found that the proposed FLUM amendment is not anticipated to adversely affect any of these levels of service. The proposed amendment has been found to be consistent with the Monroe County 2030 Comp

Plan, the Lower Keys CommuniKeys Plan, the Florida Statutes and the Principles for Guiding Development. Staff is recommending approval of the proposed amendment from Education to Mixed Use Commercial. Additionally, the School Board is a public entity and therefore not subject to the discouragement policy, so that is not a part of the consideration for today. Ms. Cioffari stated she was available for questions and that the applicant is present.

Commissioner Miller indicated concern about the market rate increases, though he does understand the forty affordable. Ms. Cioffari responded that under the proposed FLUM category, it allows market rate development. However, the applicant, just prior to the start of this meeting, submitted a sub-area policy which is text amendment to the Comp Plan, which the agent, Mr. Jones, could explain further. Based on discussions with the public, that same concern was raised. So through the FLUM amendment process, market rate units would not be able to be limited, but that was brought up and will be addressed.

Mr. Galem Jones, representing the School Board, stated that he is pleased to say that as of last night's School Board meeting, approval was granted to limit this development to twenty workforce housing units. The text amendment application was submitted this morning to impose the Sugarloaf School Sub-Area Policy which would limit it to workforce housing as allowable under the County Code and would limit the total density to twenty units. There are several members of the Sugarloaf community present to speak on the School Board's behalf.

Ms. Schemper interjected that this application from the map amendment is already at Planning Commission stage, but the sub-area policy, which is a text amendment, had just been submitted and will have to go through community meetings, DRC and Planning Commission. Then, in theory, both the map amendment and the sub-area would go together to the BOCC. One option would be that while the Sub-Area Policy is going back through the steps, this Map Amendment could be brought with it to do both items together to avoid any confusion. Mr. Jones interjected that it was his impression that because this is not a text amendment or FLUM that would affect the entire County, he thought the community meeting would be skipped and this would go straight to DRC. Ms. Schemper agreed that Mr. Jones was correct.

Mr. Jones added that this got started in 2017 when staff advised them to pursue the FLUM amendment, but due to concerns raised by the Sugarloaf community, it was decided to pursue a sub-area policy as well to address concerns raised by the local community. Today is just the FLUM application, but the text amendment will be back before the Commission shortly.

Mr. Bill Hunter of Sugarloaf, after being sworn in, presented slides to the Commission stating that in basic planning, you increase density and units and sooner or later you run out of the square that you can build within and the units get smaller. So this was important in Goal 109 as some pretty high densities were being discussed. Mr. Hunter presented the as-of-right densities across the county, noting that Key West has high densities in all categories, low, medium and high. In Marathon, Islamorada and the County, the low and medium densities are pretty low, with pockets of high. Most of the pockets of high in the County are left over from older developments that were created before the planning smart growth really came into play. Mr. Hunter presented the densities including the affordable housing bonuses for each of the communities, indicating that Key West does not provide anything more than the as-of-right.

Marathon and the County have the highest affordable housing density bonuses, much higher than Islamorada. Mr. Hunter then presented the residential density in the County, which is the Planning Commission's territory and what they speak to. Urban Residential, Urban Commercial and Mixed Use are the commercial parts of Unincorporated Monroe, and Suburban Residential, Improved Subdivision and Suburban Commercial are the more residential areas of Unincorporated Monroe. If you look at Suburban Commercial, it's a big bump and is noticeable. In the commercial, you would expect that kind of density for affordable, but the Suburban Commercial is a bit of a bump. This is one of the areas in Unincorporated Monroe County that the Planning Commission speaks to. It is the Lower Keys LCP area, over 18,000 acres, 90 percent undeveloped, and only 10 percent of that Lower Keys LCP area is developed. These numbers are from the Livable ComuniKeys Plan. Of that 10 percent, 85 percent is residential, and contain more rights of way and utilities than commercial. This is the rural Lower Keys, 14.6 miles of U.S. 1, and these are the zoning for those miles. Suburban Commercial is the vast majority in the Lower Keys. Mr. Hunter explained that this is the purpose of Suburban Commercial, to establish areas designed and intended to serve the needs of the local area, established at locations convenient to the residents and to reduce trips on U.S. 1, which is important. This school serves the needs of the local area. The housing that's being proposed, if indeed it's affordable workforce/employee, would serve the needs of the local area if it were limited. Mr. Hunter stated he supports employers providing either enough money to live here, housing subsidies, or the housing itself, and the School District has chosen to embark on that and he applauds them for it. Mr. Hunter encourages the Commission to approve this if, indeed, the sub-area policy is included, because the density without that sub-area policy is much more than the community will accept or is appropriate for the community. With the sub-area policy and with the plans to limit this and go slowly and see how much they really need, he personally supports this.

Mr. Stuart Schaffer, President of Sugarloaf Shores Property Owners Association, after being sworn in, stated that he would echo what Mr. Bill Hunter stated. Mr. Schaffer supports workforce housing and the fact that it's needed everywhere, but it is needed in an appropriate scale for the location. If simply considering the proposed FLUM amendment, he would be asking the Commission to turn this down. Up to forty housing units plus commercial development is too much for this location which is interior of U.S. 1, behind the school and in a rural community. Commercial development off U.S. 1 should not be created through the FLUM amendment, and a project of forty units, even though workforce housing plus commercial should not be approved here and would violate the Comp Plan, the purpose of the Suburban Commercial Zoning District, the purpose of the FLUM Land Use Category and the Lower Keys Livable Comuni-Keys Plan. He is not here to ask the Commission to deny this application as the School District has worked with the community and approved the resolution to submit the sub-area policy which the community had input into, and he understands it has actually been applied for. It would limit development on the site to only twenty workforce housing units. There may be some technical language down the road to ensure it's for workforce housing in perpetuity. But aside from that, because of eliminating market rate housing, transient and commercial, he appreciates what the School Board has approved and plans to do. He thanked the School Board for its decision to seek the sub-area policy, which was requested by his organization and the Upper Sugarloaf Residents Association. This is a real good story with the local community working with the School District. Synching the two applications up in some way would be good

as he would hate to have to make a record to object to the first one on the hope that the second one doesn't drop out of the process. So if there is a way to do that, he would appreciate it. Aside from that, this is a success story of the School District as a developer working with the community and adopting the request of the community.

There was no further public comment. Public comment was closed.

Commissioner Miller asked whether synching the items would be feasible instead of voting only on the FLUM. Mr. Wolfe responded that the School District as the applicant would have to agree to continue this or otherwise agree to synch it. Commissioner Miller stated that he is not comfortable voting on it and putting it out there that this type of density is allowed. Ms. Schemper suggested recommending approval contingent on adoption of the sub-area policy. Commissioner Wiatt stated that's what he had in his notes.

Mr. Jones stated that what Ms. Schemper had suggested was what the School Board had hoped for to keep things moving along as quickly as possible, and that they are trying to get the sub-area policy in front of the Commission ASAP. A contingent approval today would be acceptable.

Motion: Commissioner Miller made a motion to approve contingent on the sub-area policy limiting it to twenty workforce housing units. Commissioner Scarpelli seconded the motion. There was no opposition. The motion passed unanimously.

7. AN ORDINANCE BY THE MONROE COUNTY BOARD OF COUNTY COMMISSIONERS AMENDING POLICY 101.5.25 OF THE 2030 MONROE COUNTY COMPREHENSIVE PLAN TO ADDRESS DENSITY ISSUES ON PARCELS OF LAND WITHIN THE RESIDENTIAL MEDIUM (RM) FUTURE LAND USE MAP CATEGORY AND THE IMPROVED SUBDIVISION (IS) ZONING DISTRICT THAT ARE NOT PLATTED LOTS; 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 2018-19

8. AN ORDINANCE BY THE MONROE COUNTY BOARD OF COUNTY COMMISSIONERS AMENDING MONROE COUNTY CODE SECTION 130-157, MAXIMUM PERMANENT RESIDENTIAL DENSITY AND MINIMUM REQUIRED OPEN SPACE, TO ADDRESS DENSITY ISSUES ON PARCELS OF LAND WITHIN THE IMPROVED SUBDIVISION (IS) ZONING DISTRICT THAT ARE NOT PLATTED LOTS; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL OF CONFLICTING PROVISIONS; PROVIDING FOR TRANSMITTAL TO THE STATE LAND PLANNING AGENCY AND THE SECRETARY OF STATE; PROVIDING FOR INCLUSION IN THE MONROE COUNTY CODE; PROVIDING FOR AN EFFECTIVE DATE. (File 2018-197)

(11:41 a.m.) Ms. Emily Schemper, Senior Director of Planning and Environmental Resources, presented the staff report. These two amendments were directed by the BOCC following a

request for a beneficial use determination by a property owner with a parcel of land which is not a platted lot but has IS Zoning. The current regulations going back to 1986 for IS Zoning require one platted lot in order for a home to be built for the density requirements and it has to be recorded on a plat. There was an appeal in 2016 for a similar situation and the Planning Commission denied the appeal, agreeing with staff, based on the fact that it was not a platted lot. Last year, there was a beneficial use determination for a different property and different owner, which went to the Board in July of 2018. The BOCC agreed with staff's denial of the building permit, the Special Magistrate's recommendation that there be no relief given for that beneficial use determination, but then separately requested staff draft possible text amendment language that would allow people in a similar situation with a property that seemed like it should be a buildable lot in an IS Zoning category without being properly platted and see what could be done to address infill areas, things that look and feel they should be developable, but that don't meet the requirements. In August, staff brought draft language to the Board to consider. There was public comment and Board discussion. The Board directed staff to proceed with the Comp Plan and text amendments for this.

A couple of years ago, a similar amendment had been done for the Suburban Residential category where there were platted lots without enough land to meet the density requirements in that category. That required them to build a unit if they transferred in a TDR to keep the net density within the County neutral as they would retire development rights off of a different property in the County. The Board, in this case, asked staff to proceed with this amendment but get rid of the TDR requirement. Staff still recommends the TDRs, so two options have been put in the staff report. Option A is what the Board asked be done. Option B recommends the TDR because staff feels very strongly that it is necessary with all of the things the County is working on now to reduce taking liabilities, with the limited number of ROGOs, and making land acquisitions to retire as many development rights as possible. Most of the parcels in IS are platted but there are a few areas where land that was given IS Zoning was not on a plat, or was on a plat of one large tract, or had a designated different use such as park or hotel site.

The IS Zoning began in 1986, but the Zoning Maps became effective August 12, 1992. In '86 when the Zoning Category was drafted the Code became effective and the maps were put together, but there was a window between then and 1992 where they were not final and in effect. The options are basically the same with the exception of the TDR requirement. They look a little different because without a TDR it goes into the allocated density column. With a TDR, it shifts everything over to the max net density column. The criteria for parcels that would qualify for this would be the same for each option except there are two additional requirements for the TDR option. The wording is almost verbatim between the Comp Plan and the Code, except that one references Residential Medium FLUM and one references IS Zoning. Those parcels would get one dwelling unit per parcel if they meet all of the following conditions:

One, The parcel boundaries must have been established in their current configuration prior to September 15, 1986; and after the Board meeting a clarification was added, if adjustments were made, de minimis changes, so no more than ten percent of the parcel area between that September 15, 1986 and the August 12, 1992 timeframe; if de minimis changes were made in that time period but did not create another buildable parcel, that would also be acceptable. Ms. Schemper asked for a slight change from what was drafted, adding, "No more than ten percent of

the parcel's upland area." It does not necessarily have to be the upland. There's a requirement further down for a minimum parcel size so the word "upland" could be deleted. Also, after consulting with legal, the last sentence of criteria number one, "Such de minimis changes must have been recorded in the Monroe County Property Records," that entire sentence would be unnecessary. The applicants would need to provide sufficient evidence of when parcel boundaries were established, how things were transferred, et cetera.

Number two, the applicant must provide sufficient evidence that the parcel boundaries were established before September 15, 1986. This is where latitude of type of evidence is given such as one or more of the following: boundary survey, deed, et cetera.

Number three, the parcel may not be identified for any other use or purpose on a plat, which would eliminate those items specified to be a park, a common area, a homeowners' park, for example.

Four, the subject parcel may not be a fractional portion of a platted lot. So if something was actually a platted lot and got split into two, it would not create an additional lot for development from that. This is specifically for lots that were not platted as lots at all.

Five, the subject parcel must have a minimum of 2,000 square feet of upland that is not reserved as an access easement or designated purpose other than a residential use. The minimum size already in the ROGO Code is 2,000 square feet of upland. This will eliminate little slivers of land that are remnants somehow, not appropriate for development, and wouldn't meet any setbacks. While doing the mapping exercise, there were maybe two parcels found where it's literally the road that accesses the parcels and is being used by six properties already, a long, skinny road that's 6,000 square feet because it's so long. This is not what staff is trying to address.

Number six, the parcel must have a Tier designation of Tier III.

Seven, subject parcel must include all infrastructure, potable water, adequate wastewater treatment and disposal of wastewater, level of service, paved roads, et cetera, which comes verbatim from the existing TDR policy and transfer of ROGO exemption policy. The receiver sites, the area the Board is trying to direct development to, are already restricted and have that requirement.

Then for the TDR option, number eight would be that the maximum net density may only be reached with the transfer of one full TDR to the IS parcel.

Number nine, the TDR must meet all requirements and procedures specified in Section 130-160, or the corresponding Comp Plan Policy.

Number ten, which would apply to both options, the subject parcel must comply with Policy 301.2.5 of the Comp Plan regarding legal access to public or private roads, rights of way or easements, or some access shall be established.

Commissioner Coward asked why the BOCC gave directions to not include TDRs. Ms. Schemper believed it was partially based on public comment at that meeting. Property owners, some present today that are in this specific scenario, requested they not be required to purchase additional land and transfer the TDR. Ms. Schemper also mentioned that the mapping analysis was not conclusive and everything would be reevaluated at the time of application, but to get a rough estimate of how many parcels are effected, staff came up with about 56 parcels, and that was privately-owned vacant Tier III parcels that have IS Zoning, and meet the 2,000 square foot requirement. The analysis of utilities and not designated for another purpose was not done.

Mr. Morris added, just to set the table for public comment, that the scope of public comment should be limited to the proposal under review rather than re-litigating a past adversarial administrative proceeding or case.

Commissioner Scarpelli wanted confirmation that the TDR debate was only for the 56 lots. Ms. Schemper responded that there would be approximately 50 to 60 eligible parcels.

Chair Werling asked for public comment. Mr. Wolfe added that this is a legislative matter and speakers need not be sworn in.

Mr. Van Fisher, the attorney involved in the beneficial use determination and other appeals, stated that he largely agrees with what Ms. Schemper had stated, the key thing being that the BOCC did expressly strike the TDR requirement. He believes it was based on the beneficial use determination and fundamental fairness, given the situation. The language found in (g)(1) is somewhat specific to his client's property that was the subject of the beneficial use determination. It was established prior to '86, but a really small 2,250 square foot piece was sold off to the neighboring property in 1988. It didn't change the property as it is approximately a one-acre property. That gives the context of where that language came from and why it sort of seems odd, because the impression at the BOCC was while they denied the beneficial use determination, the direction was to come up with this as a solution so that similarly situated people could be eligible for a density allocation without the need of having to purchase another property and go through the whole TDR process. The language striking the upland requirement and deleting being recorded in the Monroe County Property Records is good. It helps make it clear, removes ambiguity and makes this happen. Mr. Fisher recommends sticking with the non-TDR as that was the direction of the BOCC.

Mr. John Slattery stated he had appeared before the Planning Commission in 2016, and he remembers Commissioner Wiatt and Chair Werling being troubled by having to turn them down at that time. He had purchased his lot in April of 2015, applied for a permit in December of 2015 and was turned down because the definition of a lot was changed within two weeks of when his lot was purchased, and the Commission had to hold to the new definition of a lot. Today, four years later, he is grateful that the new staff was willing to work with him to come up with this solution. The mindset as to the TDR is that he either gets his property rights back or density is being increased. Mr. Slattery believes density is not being increased, that rather he is getting his property rights back due to an illegal lot definition change.

Mr. Mark Oliver stated he had purchased a lot in 2015 in Historic Tavernier established in 1924, which is older than the Building and Planning Departments and everyone else in this room. The ordinance had been changed in a side yard setback ordinance that went through, which is what he had been waiting for, for his corner lot, for a side yard setback. So what he was waiting for to design his house took away his building rights. The recommendation of the BOCC was to not use the TDR, which he is all for and agrees to it.

There was no further public comment. Public comment was closed.

Commissioner Miller asked if there was any opinion as to how these lots were counted, since they weren't platted lots, as far as hurricane evacuation and where these lots would have stood. Ms. Schemper responded that they wouldn't have stood anywhere because hurricane evacuation only looked at parcels with houses already on them. Vacant lots weren't considered. Commissioner Miller stated that he couldn't remember if he was troubled by his decision back then or not. Mr. Slattery responded he didn't believe Commissioner Miller was present that day. Commissioner Wiatt commented that he got a headache poring over this the day before. He agrees with staff that the takings liability goes up, and he also agrees with the public comments that it's not as fair. So he actually would agree with the BOCC, as painful as it may be down the road. Commissioner Miller confirmed he was meaning to do this without the TDR requirement, though he has a problem with any increased density in this County, but then there's also the human element. This is talking about 56 properties and this is a tough one.

Ms. Schemper interjected that there was a correction needed in Option A for both Items 7 and 8. The date July 13, 1992, is the ROGO date, and it should say August 12, 1992, the effective date of the Zoning Maps.

Commissioner Coward asked, with 55 to 60 properties, roughly what would the takings amount actually be. Mr. Steve Williams responded that in looking at an inverse condemnation situation with Florida Statutes, in 2023 the building permits run out and they are about 1,000 short. When an inverse condemnation case is brought against an entity, they are responsible for their attorney's fees, appraisals, and the difference you're ultimately going to pay. A white paper was prepared and drafted in approximately 2013-14. The estimate at that time, six years ago, the County was looking at a total of $300 to $500 million and 8,000 lots. It's an astronomical figure. The County Attorney himself has been publicly commenting on our potential liability for years now. So, while 56 is not the end of the world, it is 56 that you eventually will have to pay the piper for, whether you defer it or do it now, however you choose to handle it. So wherever density increases, Commissioner Miller is right, we've got to look at it and this is something we're going to pay for by not having these 56 available in 2023 if this is the path we take today.

Commissioner Miller asked if he could sort out how defensible not allowing an allocation on these properties as compared to the defensible position on Tier I and properties like that. Mr. Williams stated that, at this point, he was not going to lay down evidence for what's going to come, but a difference can be made. Commissioner Miller believed these would be more difficult to defend in the takings whereas Tier I, a record was set. Mr. Williams stated these could be problematic from an equity perspective. If it looks like and walks like a duck, has feathers and a beak, at some point you probably need to identify it as a duck. But for reasons

that go back through the County's definition of lot, density caps, where we're going to stop and draw our lines is that this was actually not a duck, it was a goose because it didn't fit. The Board said they did not want the TDR recommendation on those because there are a few lots out there in the County, a handful to a dozen, that really looked in fairness that they ought to get something here. The other thirty or forty, we just don't know much about yet so they will be defended differently, the equity that would go into looking at each one. There is certainly a much different case where someone is under the impression they can develop a piece of land that looks like a lot, that is surrounded on four sides by other houses that look like they had the right to build there, and that is a much different case than someone who has sat on an empty lot and done nothing with it for twenty-five years, who's never pulled a permit or tried to do anything and is resting on their laurels.

Commissioner Miller asked if getting allocations in this County outside of the Rate of Growth Ordinance could hurt the County's takings cause. Mr. Williams stated he was not going to create that kind of evidence here. Commissioner Miller stated that it was very difficult to ambush Mr. Williams.

Motion: Commissioner Wiatt made a motion to approve Item 7, Option A, with the date change to August 12, 1992; to delete the word "upland" from the ten percent change; and, delete the last sentence of number two regarding de minimis changes. Commissioner Scarpelli seconded the motion.

Roll Call: Commissioner Miller, Yes; Commissioner Coward, Yes; Commissioner Wiatt, Yes; Commissioner Scarpelli, Yes; Chair Werling, Yes. Motion passed unanimously.

Motion: Commissioner Wiatt made a motion to approve Item 8, Option A, with the date change to August 12, 1992. Commissioner Scarpelli seconded the motion. There was no opposition. The motion passed unanimously.

9. AN ORDINANCE BY THE MONROE COUNTY BOARD OF COUNTY COMMISSIONERS AMENDING MONROE COUNTY LAND DEVELOPMENT CODE SECTION 130-93, SUBURBAN COMMERCIAL DISTRICT (SC), TO ALLOW PARKS TO BE PERMITTED AS OF RIGHT IN THE SC ZONING DISTRICT; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL OF CONFLICTING PROVISIONS; PROVIDING FOR TRANSMITTAL TO THE STATE LAND PLANNING AGENCY AND THE SECRETARY OF STATE; PROVIDING FOR INCLUSION IN THE MONROE COUNTY CODE; PROVIDING FOR AN EFFECTIVE DATE. (File 2018-208)

(12:14 p.m.) Ms. Cheryl Cioffani presented the staff report. On December 11, 2018, the Planning Department received an application from the Public Works Department on behalf of the BOCC to amend the Land Development Code to allow parks to be permitted as of right in the Suburban Commercial Zoning District. The applicant states the reason for the proposed amendment is that the current Land Development Code does not allow parks as of right, requiring either rezoning and/or restricted conditions to allow the development of public parks. The proposed change would allow parks in Suburban Commercial as of right, making the planning, design and development process more flexible and allowing the County to adapt to

changing conditions, community needs, community input through the process and funding availability. A community meeting was held November 26, 2018, and general feedback was provided. The parks committee had not reviewed the proposed amendment. On January 15, 2019, the DRC reviewed the proposed text amendment, which is shown in the staff report, and the analysis behind it is that there are uses now that are permitted as of right within the Suburban Commercial Zoning District that include public buildings and uses and commercial recreation and uses, including tennis, racquetball courts and swimming pools. So both are permitted uses, function and exhibit similar characteristics to a park, but a publicly-owned park is required to go through Conditional Use approval. Staff reviewed it and agreed with the proposed change.

As noted in the application submitted, amending the Code to allow it as of right, if you look at the uses allowed now and the characteristics of those, and then considering being able to be responsive to the input of community and changing the site plan to add a splash pad or dog park, the Conditional Use process is more vigorous for the applicant to go through and takes more time and effort. Because uses are there now that are similar, staff concurs with the proposed amendment. It is not anticipated to result in an adverse effect in community character or change the planning area, is consistent with the Comp Plan, Principles for Guiding Development and Florida Statutes. A Public Works Department representative is present for any questions.

Chair Werling asked for public comment. There was none. Public comment was closed. There were no questions or comments from the Commission.

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

10. <u>AN ORDINANCE BY THE MONROE COUNTY BOARD OF COUNTY COMMISSIONERS</u> AMENDING MONROE COUNTY LAND DEVELOPMENT CODE CHAPTER 134, TO CREATE ARTICLE III: POST DISASTER PROCEDURES, SECTION 134-26: PURPOSE, AND SECTION 134-27: ACCESSORY STRUCTURES; TO ALLOW ACCESSORY STRUCTURES TO REMAIN IN CERTAIN CIRCUMSTANCES AFTER THE ASSOCIATED PRINCIPAL USE OR STRUCTURE HAS BEEN DISCONTINUED OR REMOVED DUE TO DISASTER-RELATED DAMAGE; AND AMENDING MONROE COUNTY CODE SECTION 102-58, NONCONFORMING ACCESSORY USES AND ACCESSORY STRUCTURES, FOR CONSISTENCY WITH CODE CHAPTER 134; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL OF CONFLICTING PROVISIONS; PROVIDING FOR TRANSMITTAL TO THE STATE LAND PLANNING AGENCY AND THE SECRETARY OF STATE; PROVIDING FOR INCLUSION IN THE MONROE COUNTY CODE; PROVIDING FOR AN EFFECTIVE DATE. (File 2018-212)

(12:19 p.m.) Ms. Cheryl Cioffari presented the staff report. On October 27, 2018, staff was directed to propose amendments to the Land Development Code to allow certain accessory structures to remain in certain circumstances after the associated principle use or structure was discontinued after a manmade or a natural disaster. Currently, the Code requires the removal of accessory uses and structures once the principle use is discontinued or removed. The Code does provide a provision to allow accessory uses and structures to remain when a property owner is moving forward with development, and that would be through demonstration of active

concurrent permits for the redevelopment of that established principle use or structure. If a property owner is not moving forward with those active concurrent permits, then the regulations require those accessory structures be removed or discontinued. A community meeting was held on November 27, 2018, and general feedback included questions about the time frame of implementation, who would benefit, and what criteria would be utilized. The DRC reviewed the proposed amendment on January 15, 2019.

The propose language is within a new Article specifically for post-disaster procedures, which only kick in after a manmade or natural disaster and once a state of emergency is declared by the Monroe County Mayor. The language would allow these accessory uses or structures to continue if the following criteria are met: First, the principal use was lawfully established per Section 138-22; the lawfully established accessory structure is compliant with all other LDC regulations; in the absence of a concurrent permit for the redevelopment of the principal use for the structure on the site, that accessory structure may remain up to five years from the date of the disaster or event. The reason this came before the Planning Commission is after the last storm, there were a number of accessory structures that people wanted to maintain for a variety of different reasons and the Code didn't allow it. Some of the reasons people aren't going to get rebuilt as quickly is limited availability of contractors, design professionals, backlogs on manufactured homes and limited cash funds. Staff found the proposed amendment to be consistent with the Comp Plan, Principles for Guiding Development and Florida Statutes, and staff is recommending approval.

Chair Werling asked for public comment.

Charles Weitzel commended staff for an outstanding job on trying to solve problems resulting from the damage done by Hurricane Irma.

Mr. Bart Smith spoke on behalf of Venture Out, which was one impetus for this issue. Post-storm Venture Out located on Cudjoe Key was ground zero for a significant amount of damage, part of which destroyed many hard model mobile homes on FEMA piers, demolished to the extent they could not be repaired or replaced. When Venture Out was built, each unit had a concrete pad with an electric pedestal, where a travel trailer could be brought in or a mobile home placed. Over time, a lot turned to mobile homes, though some remained as travel trailers. Post-storm, the concrete pad and electric pedestal remained in good and working order. Many people brought in an RV in the interim or don't have the funds to build a new mobile home. Because the principal structures were destroyed, the Code required the pad and electric pedestal be removed. Many people applied for after-the-fact demolition permits to evidence that they had demoed the mobile home, but the permit cannot be closed until the accessory structures are destroyed. Mr. Smith stated the one issue remaining is the five-year time frame. It is already a year and-a-half past the storm and many people don't have the money to proceed. Three years, five years or ten years, the accessory structures should be permitted to remain. The change he recommends is to not put a limitation on how long an accessory structure can remain. The concrete pad can be used again. The electrical pedestals are all tied together. The idea that if you haven't built back within five years, you have to remove it, he believes is unreasonable. Mr. Smith asks the Commission to approve without the five-year time frame.

Chair Werling believed there was another issue. Ms. Schemper interjected that there is another issue with Venture Out regarding the changeability of RVs versus mobile homes. This is somewhat related to the slabs that people want to keep at Venture Out. Some are RVs, some are not. Some are being used, but the opinion of Code is that they should not be being used. Staff's recommendation for the five years is to allow a reasonable amount of time for people delayed in rebuilding with a new manufactured home or new modular would be to secure their permit. There are insurance issues, grant money, and Rebuild Florida is just getting off the ground now. Staff does not recommend it be open ended, allowing the accessory structures forever, and five years is reasonable.

Commissioner Miller asked about extensions. Ms. Schemper explained that the extensions are related to disasters through the State. Commissioner Miller noted there had been building permit extensions over the years for an economic turndown. Ms. Schemper explained that the specific issue for this text amendment is for owners who don't have a building permit yet. For one reason or another, especially when they've had to apply for a demo permit, Code is going out and saying you need to either demolish this structure or you already did it without a permit and you need to get your demo permit, but they don't have a permit yet for rebuilding or reestablishing the principal use on the property. It's basically to fill that gap between the time the principal use disappears and a permit can be obtained, which can be kept alive. Commissioner Wiatt suggested saying within five years you have to apply for a permit and then they wouldn't have to get extensions. This could also alleviate the Building Department getting a wave of permit applications to get approved before the five-year deadline. Chair Werling thought that if someone needs a place to live because they live here full time they wouldn't drag their feet any longer than necessary. A lot of Venture Out is not owner occupied and those people can just bring their RV and rent it out to other RVs. So there has to be a mechanism to work with people to give them time but not allow them to sit back and put their feet up. If they were renting out their double-wide before the storm and can now rent to someone bringing their own RV, there is not a big difference for them. Chair Werling believes five years is sufficient. Commissioner Wiatt noted that this would apply to other places besides mobile home parks. Ms. Cioffari reiterated that the permit for the principal use needed to be applied for within the five years. Commissioner Miller thought the wording allowed people to come in and apply to keep their accessory structure and not get a permit. Ms. Schemper explained that it only states they can remain if they meet the criteria. Mr. Wolfe added that he believed Commissioner Miller was speaking of the language stating, "with the approval of the Planning Director." Ms. Schemper added that staff does not anticipate everyone applying for this. The issue arises when people come in to apply for their demo permit, perhaps to demo a house but the thousand square foot garage or their slab or swimming pool is still there. As a matter of normal practice, if someone comes in for a demo permit of the principal structure, everything must be demolished to get the permit issued unless the house permit has already been applied for and there is an active building permit. This proposal is specifically for after a storm or manmade disaster when the Mayor has declared a state of emergency. This gives people an extra window of time to allow for the volume of rebuilds happening, which make things take extra time.

Mr. John Norton, the new general manager at Venture Out, stated that one of the problems is people have permanent mobile homes that were destroyed. They used to be able to go back and forth between an RV and the more permanent structures. The slabs on the lots were originally

built during development of the park. So the owners owned it, but it was part of Venture Out. The electric pedestals are basically owned, operated and run by Venture Out, Inc. The slabs and pedestals are being lumped in with accessory structures and they're really not. Units destroyed may be trying to go back to a travel trailer and the County is giving a five-year time frame to clear this out, but are including the slabs and pedestals which need to stay regardless. The slab may be separate from the pedestals, but the pedestals are part of the infrastructure. Some folks may never go back to a permanent structure and they are trying to get the interchangeability back. All of a sudden, a hundred new travel trailers have come in and he's been trying to get these removed before a storm. Slowly, more of the high-end permanent structures are being added. If interchangeability is allowed, a travel trailer may be on a lot for five years; but eventually somebody will buy the unit and it will go back to a more permanent structure, which is what the County wants, to eliminate travel trailers going up the road in an evacuation. The pedestals are the big issue at the moment and should not be included in this time frame.

Ms. Schemper explained that if the interchangeability issue does not get resolved the way Venture Out wants it resolved, as staff looks at it today, then the five-year time period would be a limit on the slabs at Venture Out. The electric pedestals have already been addressed by the Building Department and are not subject to this. However, if the interchangeability issue does get resolved where they can switch back and forth, then the slabs are no longer an issue and can stay, depending on how they draft their amendment. Chair Werling noted that this is a County-wide proposal. Ms. Schemper agreed, adding that the BOCC had also directed staff to draft something that would help Venture Out with the concrete slab. Ms. Schemper believes if the interchangeability issue is worked out, this will become a moot point for Venture Out. If not, then the slabs should be removed after the five-year period. This provides a remedy for the concrete-slab issue in the meantime while they work on the interchangeability issue.

There was no further public comment. Public comment was closed.

Chair Werling asked the Commission if they wanted to make it five years from now or from the storm. Ms. Schemper reminded the Commission that this is not specific to Hurricane Irma, rather for any disaster. But if five years is not enough time for Irma, then that would make it true for future storms as well. Commissioner Wiatt suggested changing the language in item three on page three of eight to say five years from the date this amendment is approved for those affected by Hurricane Irma, and for future storms it will be five years from the disaster declaration, as he does not want to penalize the folks affected by Irma because this wasn't in place at the time. Mr. Williams noted that the Irma folks had already had protection for the past year and-a-half. Chair Werling confirmed that the Commission was accepting the language as written.

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

11. <u>AN ORDINANCE BY THE MONROE COUNTY BOARD OF COUNTY COMMISSIONERS</u> AMENDING POLICY 101.5.29 OF THE MONROE COUNTY 2030 COMPREHENSIVE PLAN TO ALLOW EXISTING LAWFULLY ESTABLISHED RESIDENTIAL DWELLING UNITS, OTHER THAN MOBILE HOMES, TO BE CONSIDERED CONFORMING USES REGARDLESS OF FUTURE LAND USE DISTRICT;

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. (File2018-209)

12. AN ORDINANCE BY THE MONROE COUNTY BOARD OF COUNTY COMMISSIONERS AMENDING MONROE COUNTY LAND DEVELOPMENT CODE SECTION 130-163, EXISTING RESIDENTIAL DWELLING UNITS AND TRANSIENT UNITS, TO ALLOW EXISTING LAWFULLY ESTABLISHED RESIDENTIAL DWELLING UNITS, OTHER THAN MOBILE HOMES, TO BE CONSIDERED CONFORMING USES REGARDLESS OF LAND USE (ZONING) DISTRICT; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL OF CONFLICTING PROVISIONS; PROVIDING FOR TRANSMITTAL TO THE STATE LAND PLANNING AGENCY AND THE SECRETARY OF STATE; PROVIDING FOR INCLUSION IN THE MONROE COUNTY CODE; PROVIDING FOR AN EFFECTIVE DATE. (File 2018-210)

(12:50 p.m.) Ms. Cheryl Cioffari presented the staff report. These two items are amendments to the Comp Plan and Land Development Code. The proposed amendment is to amend Policy 101.5.29 to allow lawfully established, non-conforming residential uses, not including mobile homes and transient uses, to allow for repair and replacement of such dwelling units with the same type of dwelling unit and it shall not be considered a nonconforming use. A community meeting was held November 27, 2018. There were questions about the time frame of implementation and who would benefit from the proposed text amendment. The DRC reviewed both proposed text amendments on January 15, 2019, and received public input. This issue arose after Hurricane Irma when people were applying to reconstruct their homes and in some cases, either the FLUM or the Zoning District did not allow property owners to rebuild because that residential dwelling unit was considered non-conforming. So most non-conforming single-family residences can be replaced in footprint, but only if the FLUM and Zoning Districts allow it. The current Comp Plan contains policy that protects non-residential uses and transient uses within Residential Conversation, Residential Low, Medium and High, but these policies do not extend to residential uses. This proposal would allow for the replacement with the same type of residential dwelling unit. The replacement dwelling must comply with the Florida Building and Land Development Codes.

Comp Plan Objective 101.8 requires the County to reduce or eliminate the frequency of non-conforming uses which are inconsistent with the LDRs, Zoning District and FLUM categories, but also recognizes that some non-conforming uses are an important part of the community character. One other fact to note is that our Comp Plan does already protect the residential density. So if someone is in a Zoning District or FLUM Category that does not allow residential dwelling units, the density is actually protected, but in some cases you can't reestablish the use. This proposed amendment would allow you to reestablish that use on the property. Staff recommends approval of both the Comp Plan and LDC text amendments. It is consistent with the County Comp Plan, Florida Statutes and the Principles for Guiding Development.

Chair Werling asked for public comment.

Charles Weitzel, CPA, stated that he has a piece of property on Rockland Key originally zoned Residential and changed at one point to Native Agricultural. During the hurricane, the structure was damaged and he wants to replace it to the same square footage. Under NA, only a 375 square foot home is allowed. He understands the need to elevate and build to current codes, but he needs the same square footage he had and he believes staff is trying to accomplish that with this.

Ms. Schemper clarified that she believed Mr. Weitzel was referring to Item 13.

There was no further public comment. Public comment was closed. There were no questions or comments from the Commission.

Motion: Commissioner Wiatt made a motion to approve Item 11. Commissioner Miller seconded the motion. There was no opposition. The motion passed unanimously.

Motion: Commissioner Wiatt made a motion to approve Item 12. Commissioner Miller seconded the motion. There was no opposition. The motion passed unanimously.

13. <u>AN ORDINANCE BY THE MONROE COUNTY BOARD OF COUNTY COMMISSIONERS</u> AMENDING POLICY 101.9.4 OF THE 2030 MONROE COUNTY COMPREHENSIVE PLAN TO ALLOW RESIDENTIAL DWELLING UNITS WITH LAWFULLY NONCONFORMING OPEN SPACE TO REDEVELOP AT THE PREVIOUSLY APPROVED OPEN SPACE RATIO IN CASES WHERE COMPLIANCE WITH CURRENT OPEN SPACE REGULATIONS WOULD RESULT IN A REDUCTION IN LOT COVERAGE; 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 2018-211)

(12:57 p.m.) Ms. Cheryl Cioffari presented the staff report. This proposal would amend Policy 101.9.4. A community meeting was held on November 27, 2018. General feedback was again, who benefits from the proposed amendment and implementation time frames. This was also heard by the DRC on January 15, 2019. The current Comp Plan and LDRs allow for substantial improvement or reconstruction of single-family homes that are non-conforming to setback requirements where strict compliance would result in a reduction of lot coverage as compared to the pre-destruction footprint of the house. However, there is no similar mechanism for single-family homes that are non-conforming to open space. Setbacks and open space requirements are intertwined but not mutually exclusive. They provide areas on parcels that are unobstructed from the ground to the sky, enhance aesthetics, protect native habitat, provide for open areas, and allow for movement of human populations. In some FLUM categories and associated Zoning Districts, the open space requirements are much greater than any applicable setback requirements. During the 2016 update to the LDC and Comp Plan, the open space requirement was increased in at least one category; however, the LDC and Comp Plan were not updated to allow lawfully-established single-family residences the same flexibility with non-conforming single-family homes to open space as provided for setbacks. Staff finds this to be consistent with

the Comp Plan, Principles for Guiding Development and the Florida Statutes and recommends approval.

Commissioner Wiatt asked about a structure within ten feet pre-destruction that needs to be moved to at least ten feet, and might be another twenty-five from the shoreline. Ms. Cioffari responded that the setbacks for shoreline depend on the type of shoreline, adding that Mr. Mike Roberts could comment further, but it's depending on shoreline type, altered versus unaltered, not the Zoning District. Ms. Schemper pointed out that that language is the existing language and this amendment only adds the open space allowance. Without this exception, someone rebuilding their structure would have to come into compliance with the required shoreline setback. Existing in the Code is language that says setbacks can be relaxed if coming into compliance with your setbacks, including shoreline setbacks, means you can't build the same footprint area. Commissioner Wiatt feels footprint and area are slightly different. Ms. Schemper continued that this does not address changing to multiple stories, but specifically says pre-destruction footprint of the house. If a house is within five feet of the shoreline, it would have to be at least ten, and there is some discretion in the policy looking at what is the maximum extent practicable. If it can be built more than ten, it might be required to get closer to twenty. Chair Werling asked if the house was destroyed if it could be replaced only in the same footprint or if the house could be twice as big. Ms. Schemper responded that if all of the current requirements were met, the house could be built to whatever size. This is an exception to the current requirements if you can't keep what you had before.

Chair Werling asked for public comment.

Mr. Charles Weitzel, CPA, made the same comments as prior, requesting latitude with the accessory units on the property that are within ten foot of the existing property line by not having to tear them down.

There was no further public comment. Public comment was closed.

Motion: Commissioner Wiatt made a motion to approve Item 11. Commissioner Coward seconded the motion. There was no opposition. The motion passed unanimously.

14. <u>AN ORDINANCE BY THE MONROE COUNTY BOARD OF COUNTY COMMISSIONERS</u> AMENDING SECTION 101-1 OF THE MONROE COUNTY LAND DEVELOPMENT CODE CREATING A DEFINITION OF NESTING AREA; 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 LAND DEVELOPMENT CODE; PROVIDING FOR AN EFFECTIVE DATE. (File 2016-123)

(1:06 p.m.) Mr. Mike Roberts, Senior Administrator, Environmental Resources, presented the staff report. Both Items 14 and 15 come from the Comp Plan update and Land Development Code update from several years ago, and have just taken a while to get through the process. This is a change or the addition of a definition for nesting areas. There was much public comment at the time of the Comp Plan on this. A definition is being added for nesting area in the Land Development Code, which is: Means

those nesting areas for birds, means those areas that birds use for nesting. This applies to wading birds, hawks, falcons, seabirds, shorebirds and any bird species federally or state listed as endangered, threatened, or as a species of special concern. This definition does not apply to non-native invasive bird nuisance species. A community meeting was held for both Items 14 and 15 on October 11, 2018, and half of the people that were at that meeting are at this meeting. It was a wild turnout. There were no comments from the public related to this particular item.

Chair Werling asked for public comment. There was none. Public comment was closed. There were no questions or comments from the Commission.

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

15. <u>AN ORDINANCE BY THE MONROE COUNTY BOARD OF COUNTY COMMISSIONERS</u> AMENDING SECTION 101-1 OF THE MONROE COUNTY LAND DEVELOPMENT CODE CREATING A DEFINITION OF OFFSHORE ISLAND; AMENDING SECTION 118-10 OF THE LAND DEVELOPMENT CODE TO FURTHER CLARIFY THE DEVELOPMENT OF OFFSHORE ISLANDS; 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 LAND DEVELOPMENT CODE; PROVIDING FOR AN EFFECTIVE DATE. (File 2016-124)

(1:09 p.m.) Mr. Mike Roberts presented the staff report. This amendment also comes from the Comp Plan and public meetings and discussions occurring at that time. This is an addition of a definition of offshore island, and development design criteria for those islands. The definition proposed by staff is: Offshore Island means an area of land surrounded by water which is not directly or indirectly connected to U.S. 1 by a bridge, road or causeway, which basically means if you can't drive to it, it's an offshore island. The design criteria is provided in Chapter 118 (d) for offshore islands. At the meeting back in October 2018, the only comments of any significance were related to the first criteria under offshore islands which is, development shall be prohibited on offshore islands, including spoil islands, which have been documented as an established bird rookery or nesting area, hence the first amendment, based on resource agency best available data. There was a question at the public meeting as to whether or not that restriction on development would extend to existing development or only apply to new development. As crafted right now, taking into consideration the definition of development that is currently in the Land Development Code, the restriction would extend to existing development because the definition of development in the Code includes redevelopment reconstruction.

Chair Werling asked if an existing developed island gets damaged from a storm, if they are allowed to put back what they had but no more. Mr. Roberts responded that as long as it was lawfully non-conforming. Ms. Schemper added that it would be subject to the non-conforming policy. If something were completely wiped out, it may have extra restrictions about whether or not it can be put back. Mr. Roberts added that otherwise, there was very little public input to this amendment.

Chair Werling asked for public comment. There was none. Public comment was closed. There were no questions or comments from the Commission.

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

ADJOURNMENT

The Monroe County Planning Commission meeting was adjourned at 1:15 p.m.