

PLANNING COMMISSION
October 30, 2019

Meeting Minutes

The Planning Commission of Monroe County conducted a meeting on **Wednesday, October 30, 2019**, beginning at 10:00 a.m. at the Marathon Government Center, 2798 Overseas Highway, Marathon, Florida.

CALL TO ORDER by Chair Werling

PLEDGE OF ALLEGIANCE

ROLL CALL by Ilze Aguila

PLANNING COMMISSION MEMBERS

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

STAFF

Emily Schemper, Senior Director of Planning and Environmental Resources
Cheryl Cioffari, Assistant Director of Planning
Steve Williams, Assistant County Attorney
John Wolfe, Planning Commission Counsel
Mike Roberts, Senior Administrator, Environmental Resources
Bradley Stein, Development Review Manager
Devin Rains, Planning and Development Permit Services Manager
Liz Lustberg, Planner
Brittany Burtner, Senior Biologist
Ilze Aguila, Planning Coordinator

COUNTY RESOLUTION 131-92 APPELLANT TO PROVIDE RECORD FOR APPEAL

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

SUBMISSION OF PROPERTY POSTING AFFIDAVITS AND PHOTOGRAPHS

Ms. Ilze Aguila confirmed receipt of all necessary paperwork.

SWEARING OF COUNTY STAFF

County staff was sworn in by Mr. Wolfe.

ANNOUNCEMENT

Chair Werling announced that next month's Planning Commission Meeting would be held on Tuesday, November 19, 2019, in Key Largo at the Murray Nelson Government Center as the Commission Chambers in Marathon will not be available.

CHANGES TO THE AGENDA

There was a request by both parties to continue Item 7 to the January 29, 2020 meeting.

Motion: Commissioner Scarpelli made a motion to continue Item 7 to the January 29, 2020 Planning Commission Meeting. Commissioner Coward seconded the motion. There was no opposition. The motion passed unanimously.

APPROVAL OF MINUTES

Motion: Commissioner Wiatt made a motion to approve the September 25, 2019 meeting minutes. Commissioner Coward seconded the motion. There was no opposition. The motion passed unanimously.

MEETING

1. ROBERT AND LOURDES VILA, 27146 SHANNAHAN ROAD, RAMROD KEY, MILE MARKER 27: AN APPEAL, PURSUANT TO SECTION 102-185 OF THE MONROE COUNTY LAND DEVELOPMENT CODE, BY THE PROPERTY OWNER TO THE PLANNING COMMISSION CONCERNING THE DENIAL OF AN ADMINISTRATIVE VARIANCE TO THE FRONT YARD SETBACK, BY THE SENIOR DIRECTOR OF PLANNING & ENVIRONMENTAL RESOURCES. THE SUBJECT PROPERTY IS LEGALLY DESCRIBED AS LOT 12, BLOCK 5, RAMROD SHORES MARINA SECTION ACCORDING TO THE PLAT THEREOF, AS RECORDED IN PLAT BOOK 6, AT PAGE 22, OF THE PUBLIC RECORDS OF MONROE COUNTY, FLORIDA, HAVING PARCEL ID NUMBER 00210811-005800. (FILE 2019-111) **(Continued from August 28, 2019)**

(10:04 a.m.) Ms. Liz Lustberg, Planner, presented the staff report. The property owner has applied for a front setback variance which was denied by the Planning Director and they are here appealing this denial. Ms. Lustberg presented photos of the property, explaining that when the residence was first built, it had a front deck which complied with the setbacks. Since that time, the house was expanded without permits into the setbacks. The property owner then applied for an after-the-fact permit which failed due to being within the setbacks, and the variance applied for was denied because it did not meet five of the eight criteria. The appeal for this variance addressed only criteria number five, and the applicant has stated there are nine parcels in the neighbourhood that are also within the setback. A review of these parcels indicated four were permitted to be within the front yard setback under the prior code that had a twenty versus twenty-five foot setback. Two parcels appear to meet current code. Three parcels were expanded into the setback without benefit of permits. Staff recommends upholding the decision of the Planning Director.

Chair Werling asked for questions or comments from the Commission. There were none. Chair Werling then asked if the applicant would like to speak.

Mr. Jim Reynolds of Reynolds Engineering Services stated the Vilas have lived in this house since 1992, and Mr. Vila, in his younger years, had made a number of improvements to the house. Now that he's older and wiser, he wanted to come clean with the County and hired an engineer to work with the Building Department to get the improvements approved per the Florida Building Code. While working through these issues it was discovered that the front of the house encroached into the setback. Mr. Reynolds believes the wraparound balcony with a covered roof is beneficial for maintaining the house and hanging hurricane shutters. This is the last issue that needs to be resolved. The property across the street is owned by the County and there are many vacant lots in the area. Mr. Reynolds does not believe this setback encroachment is an issue with the neighbours and no one complained when the variance was advertised. Relief is sought on the front yard setbacks.

Ms. Lourdes Vila first thanked the Commission for allowing her the continuance to today's meeting. She supplied photographs which included the front deck where the 5.5 foot setback variance is being requested and the front of the house with all of the vegetation preventing the house from being seen from the road. Ms. Vila presented Monroe County Property Record cards for other properties also encroaching into setbacks due to work done without benefit of a permit. Ms. Vila previously had submitted a two-page letter requesting the variance be allowed dated September 27, 2019, with a response to each of five items not in compliance, and is requesting this variance be granted.

Commissioner Miller asked if Ms. Vila's argument for the variance was that there were other homes in the neighbourhood that also didn't comply. Ms. Vila stated she was not aware that these homes had not applied for a permit. Commissioner Miller responded that four of the nine homes had been allowed prior to the 1986 code. Three were expanded without permits and, unfortunately, she was one of those. She wanted to make this right, but the permit is being held up because of the variance. Commissioner Coward asked where exactly the 5.5 feet runs to. Ms. Vila responded with the photograph indicating it was at the face of the balcony. Ms. Lustberg explained that the original permit that was approved shows the twenty-five foot setback so if there was an overhang six inches into the setback it was not clear on the permit. Commissioner Miller asked if the owners of the other three homes that were built into the setbacks were to come in and want the same thing, what would be the procedure. Ms. Lustberg responded that the permit would be failed and they would have the option to bring the house into compliance with the setbacks or apply for a variance.

Commissioner Scarpelli asked why after four and-a-half years Ms. Vila decided to get an after-the-fact permit. Ms. Vila stated they wanted to make this right after doing the renovations. She realizes they are at fault for not doing it with a permit but that is why they've applied for permits now. Commissioner Wiatt asked if Ms. Vila had discussed this with any of her closest neighbours. Ms. Vila indicated she had. Three neighbours who have been there since 1992 when she bought the house stated they have no issues or problems. This block is now more developed than it had been. Ms. Vila owns three adjacent lots and four of the five lots across the street are owned by the County. Ms. Vila stated the heavy landscaping would be maintained and the house cannot be seen from the road. The wraparound deck helps protect the house and through all of the past hurricanes they have not had any damage to their home.

Commissioner Coward asked if Ms. Vila had an estimate of what it would cost to come into compliance. Mr. Steve Williams, Assistant County Attorney, interjected that considerations for a variance do not include cost estimates and what the neighbours think. The property owner had skipped the permitting process and so the hardship is of their own imposition. Mr. Williams read from the Code, “Financial difficulty hardship does not qualify as exceptional hardship.”

Mr. Scarpelli noted that he was very familiar with the street and knew that the house could not be seen from the road at all. Ms. Vila responded that she understands what Mr. Williams stated, but her understanding was that when she applied for this variance, the County had sent letters to all of the neighbours saying there was a hearing, and asked why that letter would be sent to the neighbours if what they thought didn’t apply. Ms. Vila admitted she and her husband had made a mistake by not getting permits to begin with but they have now to make this right and to keep the house as it is. Commissioner Miller responded that if the Commission were to allow this, they would essentially be “making it wrong” based on the regulations. There may be no harm to the neighbourhood but the law is the standard set for everyone to live by. Ms. Vila asked if she had applied for a permit initially for this deck whether she would have been granted a variance. Ms. Schemper responded that she could not answer that hypothetical as staff would need to have the application in front of them. Mr. John Wolfe added that Ms. Vila would be going through the same thing she is going through now. Commissioner Miller noted that these other homes would probably be in the same boat. Chair Werling then asked for public comment.

Mr. Rolf Thorson of Big Pine Key stated that he was present today for a similar item. When the rules say “one way, do not enter” and you’re aware of it, you go down that street at your own risk. The reason for getting clean or straight is only for possible resale on a house. Something shouldn’t be issued because everyone has a kind heart and says we wish you didn’t do it. The law is for everyone to follow and it should be applied equally.

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

Commissioner Scarpelli again stated that the house could definitely not be seen from the road, but he had had a similar situation where he had to remove a platform that was in a setback. Commissioner Wiatt added that this is not the way to go about this, after the fact, even if the work was performed properly. There are multiple requirements within the code and it doesn’t hinge on just one. He does not see much for a justification to grant this. Chair Werling asked for a motion.

Motion: Commissioner Scarpelli made a motion to uphold the Planning Director’s decision and deny the appeal. Commissioner Wiatt seconded the motion.

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

Mr. Wolfe stated that Items 2 and 3 would be read together, requiring separate votes, and these being legislative items, there would be no requirement for speakers to be sworn in.

2. AN ORDINANCE BY THE MONROE COUNTY BOARD OF COUNTY COMMISSIONERS AMENDING THE MONROE COUNTY FUTURE LAND USE MAP FROM RESIDENTIAL MEDIUM (RM) TO MIXED USE / COMMERCIAL (MC), FOR PROPERTY LOCATED AT 1668 BOGIE ROAD, BIG PINE KEY, APPROXIMATELY MILE MARKER 30.5, AS PROPOSED BY BARLOW BUILDING CONTRACTOR, LLC; 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 2019-037)
(Continued from September 25, 2019)

3. AN ORDINANCE BY THE MONROE COUNTY BOARD OF COUNTY COMMISSIONERS AMENDING THE MONROE COUNTY LAND USE DISTRICT (ZONING) MAP FROM IMPROVED SUBDIVISION (IS) TO MIXED USE (MU), FOR PROPERTY LOCATED AT 1668 BOGIE ROAD, BIG PINE KEY, APPROXIMATELY MILE MARKER 30.5, AS PROPOSED BY BARLOW BUILDING CONTRACTOR, LLC; 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 2019-036) **(Continued from September 25, 2019)**

(10:29 a.m.) Ms. Cheryl Cioffari presented the staff report. These proposed amendments are for the FLUM and Land Use Zoning District Maps. The application was received on March 1, 2019, to amend the FLUM from Residential Medium to Mixed Use Commercial, and amend the Land Use Zoning District Map from Improved Subdivision to Mixed Use. The property is located at 1668 Bogie Road on Big Pine Key. The current use is a nonconforming institutional use, The Lower Keys Construction Workers Association. Adjacent land uses include single-family residences and a marina with a motel. The property was within the RU-1 Residential Single-Family Zoning District prior to 1986, and then was re-designated as Improved Subdivision with the final adoption of the Land Use District Map in 1992. With the adoption of the County's Comp Plan and FLUM in 1997, the property was given its current designation of Residential Medium. The applicant states that the reason for the proposed amendment is to allow the club to earn enough to be self sufficient, with the full justification provided within File 2019-037 and 2019-036. A community meeting was held for both items on May 28, 2019. Issues identified by those in attendance included traffic concerns, concern about the connection of the subject property with the fishing camp, reason for creating a social center, parking, historical uses, flooding, profits, a desire to convert this into a residence and potential for a pocket park, and the necessity for a greater justification for the application. The items went before the Development Review Committee on August 27, 2019.

The table on page three of the FLUM staff report, and on page three for the Land Use Map Amendment staff report, shows the change between the Residential Medium FLUM to Mixed Use Commercial, as well as in the LUD application for improved subdivision to Mixed Use. For the FLUM, the proposed changes would result in a decrease in .81 units in permitted allocated

residential development potential, an increase of 2.7 units of max-net residential development for market rate units with the use of TDRs, an increase in 2.7 units of affordable housing, a potential increase of 2.85 rooms or spaces for transient units, and an increase of 3,731 square feet of non-residential square footage under the FLUM or 3,300 square feet under the Zoning. The proposed FLUM and LUD amendment would introduce new non-residential and commercial areas to a residential area. The Big Pine Key and No Name Key Livable CommuniKeys Plan which is adopted and incorporated into the County's Comp Plan prohibits the designation of new commercial land use districts beyond that contained in the plan in order to protect the existing viability of the U.S. 1 Corridor area and Community Center Overlay, and to prevent the perpetuation of sprawl for strip commercial zoning, and that's pursuant to Action Item 12.1.3. Therefore, the proposed FLUM and the proposed LUD amendment is anticipated to adversely impact the community character of the surrounding area and is inconsistent with the Comp Plan. As to the concurrency analysis, the proposed FLUM is not anticipated to have an adverse impact to traffic circulation. There are sufficient trips available within Segment 10 as well as U.S. 1 as a whole. It is not anticipated to adversely impact the potable water, solid waste or sanitary sewer levels of service. The main driver is the inconsistency demonstrated within the CommuniKeys Plan, which is quite clear, and which prohibits the establishment of new commercial areas. Additionally, the proposed amendment is not consistent with the Big Pine Key Conservation Plan or the incidental take permit, and that's shown on page eight of the FLUM staff report which mimics the same language in the CommuniKeys Plan, which limits new commercial development and infill areas to be among existing commercial areas and on Tier II and Tier III lands. Staff is recommending denial of both the proposed FLUM and LUD amendments.

Commissioner Miller asked if only the Habitat Conservation Plan were available to be relied on whether that would be sufficient to deny this. Ms. Cioffari responded that it would need to be looked at in totality and it would be hard to answer that hypothetical, as it is adopted and incorporated into the Comp Plan.

Mr. Kevin Barlow, applicant, stated that the building itself has always been nonconforming and had been a social center for the Lower Keys Property Owners Association, which failed because people didn't use it. He thought getting the social center up and running would be beneficial to everyone. He has found that without making money to pay staff, he was constantly paying the people to open the door. He came to the Planning Department to get an alcohol license as that would generate profit to keep the place running. He was told by that the Planning Department that they were required to do everything in their power to keep social centers open, so he followed this path based on the Planning Department's advice, and he was led to believe that this would be a slam dunk. He does not plan to change any physical aspects of the building, inside or out, and wants to keep it as a social center. He is asking for the ability to have the building support and finance itself. It is currently commercial not-for-profit and with that impediment it is difficult to finance itself. At the moment, it's closed more often than it's open. He did not think this was a difficult request, though acknowledging that he was running into the same difficulties the previous owners had. He is confused and doesn't understand why anyone would say no to this request.

Commissioner Miller responded that the implication is that with a FLUM change, density and everything on the property would be increased. Mr. Barlow stated that the building has always

been nonconforming since constructed. Commissioner Miller asked Mr. Barlow if his reason for being here was solely to keep the social center open. Mr. Barlow responded that he would like the social center to be profitable. Commissioner Miller suggested Bingo. Commissioner Scarpelli suggested fifty-fifty raffles or having the membership pay fees. Mr. Barlow stated he had membership cards printed and had the doors open. Commissioner Scarpelli stated that what Mr. Barlow was asking for was a much bigger request than for a social center. Changing these maps would allow him to knock the building down and build whatever he wanted in accordance with that new Zoning and there would be nothing to stop him. Mr. Barlow reiterated that he had originally requested an alcohol license much like the Moose or Lion's Club and he had been advised to take this route by the Planning Department. It was very easy and they had even waived the fee for his application. Commissioner Scarpelli responded that he understands the Planning Department was trying to help him out, but as a business owner himself, he suggested hiring a professional for advice before doing something like this. Mr. Barlow stated that he had he known there would be resistance of this magnitude, he wouldn't have considered it. He doesn't doubt that he will be denied but he wanted to make it clear that he was led down this path and was not informed that there would be any objection, but rather that this would be a slam dunk.

Commissioner Miller asked him if he was unaware that this amendment was inconsistent with the Big Pine Key Habitat Conservation Plan. Mr. Barlow responded that he was aware now. He did not see this as knocking the building down and building whatever he wanted, and that wasn't his intention. Commissioner Wiatt responded that the Commission must look at that and Zoning changes outlive the building. Mr. Barlow submitted a printout showing existing commercial property, stating that the piece he is asking to change protrudes into that, and there is commercial on two sides of this lot. Commissioner Coward asked if he could have gotten a liquor license without going this route, if he would have done that. Mr. Barlow responded that this was the route he was advised to take.

Chair Werling then asked for public comment, noting the number of speakers present, and explained that each speaker would be allowed three minutes, and five if speaking for an organization. Mr. Wolfe reminded everyone to state their name at the podium, but that they did not need to be sworn in.

Mr. Grant Wilson, an immediate neighbor of this property, stated he was representing the neighborhood. He feels strong opposition has been voiced about this. He has a membership card given to him by Mr. Barlow when he attempted to do the social club. It was given out only as a card. He is retired military and loves the quiet neighborhood. There is a marina next door and No Name Pub around the corner. There are enough businesses in the neighborhood. This is a nice, quaint, comfortable community. This property is literally a chokepoint to the entire neighborhood. His feeling is that Mr. Barlow has run this as a construction business with his employee crews. There is outside storage that needs to be cleaned up and there were people living there at one point. Mr. Wilson is not trying to rat anybody out and he thanked Mr. Barlow for his help in the neighborhood after the hurricane, but the residents want to keep this area as a nice, quiet neighborhood. No one wants to see it turned into a business or a bar, but rather turned back into a social club or into a residence. Mr. Wilson agrees with the denial and would appreciate Mr. Barlow ceasing attempts to turn this property into a business.

Ms. Hareen Gershman has been a property owner in Big Pine and business owner for over twenty-six years. She is also a board member of the Key Deer Protection Alliance. Ms. Gershman asked the Commission to accept the recommendation of the Planning Department to deny the proposed amendment. She also requests denial of an alcoholic beverage permit if it is still out there as this is not located in a proper land use district. This is a residential community that has already been impacted by the fishing camp and No Name Pub. The fishing village applied for an alcohol permit back in 2017 and was denied. Mr. Barlow had a community meeting on March 28, 2019, and he was not expecting the turnout that was there against this change and he stormed out of the meeting very belligerent. On August 27, 2019, at the DRC meeting, Mr. Barlow stated that the proposed change to commercial was to combine this as a social center and something with profitability such as a bait shop or ice cream shop to create revenue. Now he's changing what he wants to do because he knows this is going to be denied. There is no place to park vehicles for a private club and right now he's using a parcel owned by someone else. Ms. Gershman added that Mr. Barlow only pays the sewer assessment on the Monroe County taxes because he formed a non-profit Lower Keys Construction Workers Association, so he doesn't pay property taxes on this building. She personally would like to do a non-profit so she doesn't have to pay taxes on her house. Ms. Gershman asked this Commission to deny this change.

Ms. Kathleen Collatica (phonetic) recently purchased the property adjacent to Mr. Barlow's property. In the several years that she has been coming back and forth to the Keys in the winter, she has seen the Barlow property seriously deteriorate. Right now, there are three-foot-tall weeds around the property and he is not bothering to mow his lawn. There have been numerous abandoned vehicles on the property, an old camper was there for a long time, and she also believes someone was living in the building. There have also been obnoxious smells coming from the building and construction debris dumped in the yard and behind the building. She believes this building is being used as a workshop. During the public meeting that was held at the building she had asked, if this building was supposed to be not-for-profit, for Mr. Barlow to produce the records of meetings, the minutes, and a list of the members, and she was told they do not have that. Her understanding is that a not-for-profit needs to maintain these records for tax purposes. As to the area, there are children living in the area, walking from the bus every day, and the Key deer are everywhere. There is enough traffic flow now during the tourist season, and there are no outlets on any of the streets in the two area subdivisions. Having another bar would create more traffic and disturbance to the residents. As the one Commissioner said earlier, rules are rules, laws are laws, and they can't be changed for one person's benefit. In this situation, if this were to be changed and Mr. Barlow decided to sell the building it would be definitely to his benefit. Right now, the Old Wooden Bridge Fish Camp is buying up all the property it can get. He already purchased one house in the neighborhood and is in the process of purchasing another one on Oettly. This will open the door for Mr. Barlow to make a profit by having this pass and turning around and selling it to the Old Wooden Bridge so they would then have their liquor license.

Ms. Joanne Thorson of Big Pine Key stated that this is basically a proposal to put a bar at the end of a dead-end street. The commercial properties present are No Name Pub and Old Wooden Bridge which were grandfathered in as they were established pre-1930. Regarding Mr. Barlow's

statement that this was supposed to be a slam dunk, on the Planning Department site under the MC-eSearch which shows all permits, and since 2015 which is when Mr. Barlow purchased the property there have been several, the caveat on each one of these permits states the Planning Department did not review this application. There may be developmental and/or land use issues on the site that are no longer in compliance with the County regulations or established unlawfully without the benefit of proper approvals. With these permits that were provided, the County warned him and this should not be considered as a slam dunk.

Mr. Rolf Thorson of Big Pine Key stated that he looks upon all of his neighbors and sees the faces that bought into a proposition where this would be our community. Things that were there were there. Let them go on as they are and the residents are happy for them. This is something where a gentleman has come in and has pretty much shaken his fist at the residents and said, it's going to happen and that the Commission will all be in his back pocket, which he's just explained. The rules are set. If we start breaking them, next we'll be in here with the Big Pine Fish Camp asking for a liquor license. Mr. Thorson requests the Commission uphold the denial.

There was no further public comment. Public comment was closed. Chair Werling asked for questions, comments, or a motion.

Motion: Commissioner Wiatt made a motion to uphold the Planning Department's recommendation to deny Item 2. Commissioner Scarpelli seconded the motion. The motion passed unanimously.

Motion: Commissioner Wiatt made a motion to uphold the Planning Department's recommendation to deny Item 3. Commissioner Scarpelli seconded the motion. The motion passed unanimously.

4. MOBILE HOMES HOLDINGS COCO, LLC, 21585 OLD STATE ROAD 4A, CUDJOE KEY, MILE MARKER 21.6: A PUBLIC HEARING CONCERNING A REQUEST FOR A MAJOR CONDITIONAL USE PERMIT. THE REQUESTED APPROVAL IS REQUIRED FOR THE DEVELOPMENT OF AN ADDITIONAL SIXTEEN (16) MULTIFAMILY EMPLOYEE HOUSING DWELLING UNITS IN AN EXISTING MOBILE HOME PARK. THE SUBJECT PROPERTY IS LEGALLY DESCRIBED AS 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 PARCEL ID NUMBER 00174960-000000. (FILE 2019-057)

(11:01 a.m.) Mr. Bradley Stein, Development Review Manager, presented the staff report. This is for additional development to an existing mobile home park. Mr. Bart Smith is present for Mobile Homes Holdings Coco, LLC. Mr. Stein presented photos of the site and site plan explaining that this project has a Subarea Policy, had done a Comp Plan Text Amendment and a FLUM and LUD amendment, all of which were approved by the BOCC. The Text Amendment and the FLUM became effective on March 22, 2019, and the LUD became effective on May 6, 2019. The Major Conditional Use is compliant with the Comp Plan and LDC. To achieve this, the developer requested an administrative waiver of ten feet to the primary setback. That waiver

has been processed and is recommended for approval, with the required notification to the neighboring properties being done on October 16, 2019. Staff recommends approval with conditions listed in the staff report.

Commissioner Miller asked if the variance for the setback was included on page 17. Mr. Wolfe interjected that it was in condition two and does not require a community meeting as it is an administrative waiver. Commissioner Coward noted that notification went out on October 16, 2019, and asked whether there was a development agreement reflecting the types of affordable ROGOs involved. Ms. Schemper asked if he was referring to reservation of the affordable ROGO units. Commissioner Coward clarified the reservation of the affordable ROGOs and the classification of those ROGOs. Ms. Schemper responded that there is no reservation.

Mr. Bart Smith, on behalf of the applicant, interjected that the site-specific policy has the specific breakdown for this property. Commissioner Coward asked what the 33 units would be, and Ms. Schemper referenced page six of the staff report. Mr. Smith explained that the breakdown on the additional units is five moderate, five median and six low. The entire property is nineteen moderate, seven median and seven low. The site-specific policy that was adopted provides this breakdown. ROGOs must be obtained for those additional sixteen units. Chair Werling thought the number that had been arrived at, at the last meeting, was pretty much the max the property should now have. Mr. Smith stated this is the site plan that was before the Commission at that time. Commissioner Miller asked if there was enough room why the variance was needed. Mr. Smith stated that the variance is not before this Commission. Mr. Wolfe clarified that the variance must be received to get this approved. Mr. Smith stated he could relocate one of the affordable housing units elsewhere on the property, but the site meets the criteria for the administrative variance, which means someone will not need to be removed from their home to get this project done. Mr. Wolfe further clarified that there is room for all of these units, but the variance is being requested to place the units in a better location. If the variance is not approved, then this won't be able to be done. Mr. Smith then reviewed the site-specific policy containing the unit breakdowns, which is already in the Comprehensive Plan. As to the variance, this is the best location on the property to locate the units.

Commissioner Miller questioned the variance. Mr. Stein clarified that this is an administrative waiver to setbacks and not a variance. Ms. Schemper cited the Code under Section 102-186. "Variances and waivers granted by the Planning Director." Subsection (g) Front yard setback waivers. "The Planning Director has the ability to grant a waiver reducing the front yard non-shoreline setback requirement by up to ten feet, with or without conditions, if and only if the applicant demonstrates that all of the following standards are met." There are three standards and Ms. Schemper has determined all three criteria have been met. At the conclusion of the thirty-day noticing period, Ms. Schemper then decides whether to sign the waiver approval. This is not part of the application before the Commission today. If today's item is approved today, the Chair will not be able to sign the resulting development order until the waiver is approved. If the waiver falls through, then it's back to the drawing board. Ms. Schemper then read the three criteria from the Code. Mr. Wolfe reiterated that if this conditional use is approved today, it cannot be signed until the waiver period has passed. Mr. Smith continued explaining the unit breakdowns, that the ROGOs would be obtained as part of the application, and this property is being deed restricted to employee housing requiring seventy percent of tenant income to be from

employment in Monroe County. Chair Werling asked where the units were going. Mr. Smith presented the landscape plan reflecting unit placement and buffer landscaping. Chair Werling stated she had originally thought the additional units were going to the rear, but Mr. Smith stated this had been the design since the beginning. Mr. Smith added that no landscape or parking lighting was planned and he was requesting approval.

Chair Werling then asked for public comment.

Ms. Jan Edelstein, after being sworn in, stated that she was speaking on behalf of Cudjoe Gardens Property Owners Association which supports affordable workforce housing for the Lower Keys that is consistent with the rural character and scenic beauty as laid out in the Lower Keys CommuniKeys Plan. She had thought this was a redevelopment plan and was surprised when the site plan showed up after the last hearing before the BOCC. She had believed the old trailers would be removed, but rather the new buildings are going to the front. Ms. Edelstein also objected to the setback waiver. Mr. Wolfe responded that that was not before the Commission today. Ms. Edelstein stated that to the extent that the Commission has the authority to issue conditions upon the issuance of this approval to add another sixteen units, she would encourage the Commission to include a condition that the applicant has a twenty-five-foot landscape buffer as required by the rules for the following reasons: As you look around the road, the existing building is a ten-foot tall house and the applicant is proposing to add a twenty-first century big-box development. Given the scenic beauty of this area and the natural hammock area, the twenty-five-foot buffer is needed. Ms. Edelstein feels the community has been snookered as to the affordable housing and being told that the rental amounts would be taken care of later. Now, she hears it sounds like nineteen moderate, which can charge close to \$3,000 per month for a two-bedroom, and that is more than half of the units and is worse than it used to be. The seven units at median is about \$2,500 and the seven low are at \$1,722. There is an existing deed restriction on this property that gave an average of higher than \$1,722 but is not what it is now. Ms. Edelstein has not seen where the deed restrictions have been made a condition of this permit, but it should be ninety-nine years, rental only, and for employees only. Commissioner Miller noted that it was noted in number four of the requirements. Ms. Schemper also clarified that this was already in the adopted Comp Plan Policy for this site. Ms. Edelstein then moved to the older units being tied down to current standards, and even the modern units could use a check. Certificates of Occupancy should not be given to the new units until the old units have been checked. Additionally, with the one unit in front that is in the twenty-five-foot setback, there are twelve other units that existing tenants could be moved into while one new unit replaced older units rather than using the setback. Ms. Edelstein presented photographs demonstrating her dislike of the sable palm landscaping without filling in the bottom areas with dense screening landscape, which would also protect the residents. Ms. Edelstein then discussed lighting and protecting the rural nature of the scenic beauty.

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

Commissioner Miller asked if the nineteen moderate had already been decided. Mr. Wolfe stated that there are currently fourteen and five new moderate. Commissioner Miller also confirmed that the existing properties were deed restricted.

Mr. Smith stated that he had never heard as many patently false statements made by a person about what happened at the County Commission meeting than what had just occurred. The site-specific policy says nonconforming mobile homes existing as of the date of this policy may remain so long as they are not substantially damaged or destroyed, all of which was addressed at the BOCC meeting. Mr. Smith had been very clear that the existing mobile homes would not be removed or the project would be dropped. To state that the site plan did not show the four-plexes at the front of the property was also patently false. This type of misinformation is dangerous. Thankfully there is a site-specific policy that identifies what was stated at that meeting.

Commissioner Coward asked what could be voted on here and what conditions could be placed on this or if they were locked in. Mr. Wolfe responded that conditions could be added but he would caution the Commission not to add things that are under the Building Department's purview. Mr. Williams added these would be things such as CO's and construction requirements. Commissioner Scarpelli noted that there were already ten conditions provided by staff that he believes are pretty good. More affordable housing is being provided creating more units on an existing site which is what they've been asking for. Commissioner Miller discussed the moderate not being over fifty percent, and Mr. Scarpelli responded that it was a third, third and a third. Commissioner Miller indicated he was speaking about the whole development, and Mr. Williams clarified that the whole development is not in front of the Commission, nor is the variance/administrative waiver. Commissioner Wiatt asked if these sixteen had already been accounted for in the affordable housing ROGO bank. Ms. Schemper responded that this project does not have a reservation. They would apply for their building permits and ROGO allocations. Ms. Schemper added that the Comp Plan Policy specifically lists the number of units in each category for this property. Commissioner Coward stated that he likes the project though he struggles with the setback waiver versus a variance. Mr. Williams stated he shouldn't be unless he wants an invalid vote that subjects the County to wrongdoing as it is not before the Commission. This is an administrative waiver and within the purview of the Planning Director.

Motion: Commissioner Scarpelli made a motion to approve. Commissioner Wiatt seconded the motion.

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

5. AN ORDINANCE BY THE MONROE COUNTY BOARD OF COUNTY COMMISSIONERS ADOPTING AMENDMENTS TO THE MONROE COUNTY LAND DEVELOPMENT CODE TO AMEND SECTION 138-22(b) AND SECTION 139-2(b) TO REVISE THE RECEIVER SITE CRITERIA FOR THE TRANSFER OF MARKET RATE EXEMPTIONS TO ANOTHER LOCATION, INCORPORATING THE BOCC DIRECTION WITHIN INTERIM DEVELOPMENT ORDINANCES ADOPTED VIA ORDINANCE 011-2017, ORDINANCE 020-2018 AND CLARIFIED VIA RESOLUTION 203-2018; 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 AND

INCORPORATION IN THE MONROE COUNTY LAND DEVELOPMENT CODE;
PROVIDING FOR AN EFFECTIVE DATE. (FILE 2019-114)

(11:41 a.m.) Ms. Cheryl Cioffari presented the staff report. This proposed amendment incorporates BOCC direction to establish the interim development ordinances just referenced which include a temporary moratorium differing the approval of new private applications or applications that are not yet received proposing to utilize Section 138-22(b) or 139-2 to transfer market rate units to another location. A resolution was adopted in 2018 that provided the outline of exceptions to that moratorium, and the proposed amendments before the Commission today would enact that. A community meeting was held on July 30, 2019, where no public attended. The Development Review Committee heard the item on June 25, 2019. Currently, there is an Interim Development Ordinance 026-2019 which is set to expire July 17, 2020, if the relevant amendments are not adopted or made effective before that date. The proposed amendments are specific to the transfer of market rate units and begin on page five of the staff report. The changes are to limit or set criteria for what the receiver site can be. The direction of the BOCC, which originally started as a suggestion from the Affordable Housing Committee, is to limit receiver sites to legally platted lots within IS or URM Districts, within the same planning area as the sender site except for transfers which can occur from Big Pine and No Name Key to the Lower Keys subarea, and the receiver site cannot be a recreational or a commercial working waterfront. Those revisions have been put into subsection 138-22(b)(4)(c). Those same conditions are under Chapter 139-2(b)(3) under the development agreement requirements. The proposed criteria is consistent with the direction provided by BOCC and the Land Development Code. Specifically, new issues are recognition for additional detail or comprehensiveness. The proposed amendment provides the ability to transfer market rate ROGO exemptions and redevelopment of units with deed restricted affordable housing while maintaining community and economic character of the Florida Keys. Staff recommends approval.

Commissioner Miller asked if the receiver site on page five being limited to IS or URM would rule out a Tier I property. Ms. Cioffari responded that the Tiers are related to habitat type, which is an overlay district and limited to Tier III property. Page six of the staff report lists general receiver site criteria specifying the FLUM map must allow residential single family, must meet adopted density standards, include all infrastructure, and be located within a Tier III designation, not within a V-Zone or CBRS.

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

Motion: Commissioner Coward made a motion approve. Commissioner Scarpelli seconded the motion. Motion passed unanimously.

6. AN ORDINANCE BY THE MONROE COUNTY BOARD OF COUNTY COMMISSIONERS AMENDING THE MONROE COUNTY TIER OVERLAY DISTRICT MAP FROM TIER III-A TO TIER III FOR TWO PARCELS OF VACANT LAND LEGALLY DESCRIBED AS BLOCK 8 LOTS 17 & 18 CUTTHROAT HARBOR ESTATES CUDJOE KEY PLAT BOOK 4-PAGE 165 HAVING REAL ESTATE NO'S 00178450-000000 AND 00178460-000000; AS PROPOSED BY AS REQUESTED BY DANIEL IARROBINO; 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 TIER OVERLAY DISTRICT MAP; PROVIDING FOR AN EFFECTIVE DATE. (File #2019-138)

(11:48 a.m.) Ms. Brittany Burtner, Senior Biologist, presented the staff report. This proposal is to change the Tier Overlay District for two parcels of land on Cudjoe from Tier III-A to Tier III, adjacent to Cudjoe Sales. The existing habitat on site is a mix between some native vegetation, cleared areas, and a good amount of invasive exotics. These sites have had permits in the past for invasive exotic removal but it's been a long time and they have filled back in again. Ms. Burtner presented some current photographs. These parcels do not meet Tier I or Tier III-A criteria, and should be quantified as Tier III. This change is consistent with the Code and the Comp Plan. Staff recommends approval.

Commissioner Miller asked what doing this accomplishes. Ms. Burtner responded that it would not change anything materially about how the site could be developed, but could result in receiving either a ROGO or NROGO allocation sooner. The Land Use District is Suburban Commercial. Ms. Schemper interjected that this would also qualify the parcels for affordable housing ROGOs. Chair Werling added that it was a pretty consistently developed area.

Van Fischer, attorney for the applicant, stated that he agrees with staff's decision that this had been incorrectly designated as Tier III-A, and should be properly designated as Tier III.

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. Motion passed unanimously.

8. KEY'S CLASSIC CAFÉ, LLC, 99411 OVERSEAS HIGHWAY, KEY LARGO, MILE MARKER 99.4, OCEAN SIDE: A PUBLIC HEARING CONCERNING THE REQUEST FOR A 2COP ALCOHOLIC BEVERAGE USE PERMIT, WHICH WOULD ALLOW FOR BEER AND WINE SALES FOR ON PREMISES CONSUMPTION AND IN SEALED CONTAINERS FOR PACKAGE SALES. THE SUBJECT PROPERTY IS LEGALLY DESCRIBED AS LOTS 39, 40, 41, 42, 43, 44, 45, 46, 47, AND 48, BLOCK 11, SUNSET COVE, ACCORDING TO THE PLAT THEREOF, AS RECORDED IN PLAT BOOK 1, AT PAGE 165 OF THE PUBLIC RECORDS OF MONROE COUNTY, FLORIDA HAVING PARCEL IDENTIFICATION NUMBERS 00505210-000000 AND 00505270-000000.(FILE 2019-150)

(11:52 a.m.) Ms. Devin Tolpin, Senior Planner presented the staff report. This is a request for a 2COP Alcoholic Beverage Special Use Permit by Keys Classic Café, LLC, which will allow for beer and wine sales for on-premises consumption and for package sales. The property is located in the SC Zoning District, formerly known as DJ's Diner. Ms. Tolpin presented photographs of the building from the roadway. This building also contains an office and a commercial retail store. This permit, if approved, would only apply to the restaurant portion of the building. Staff finds the application meets all necessary criteria and recommends approval.

Commissioner Coward confirmed with Ms. Tolpin that six-packs would not be able to be purchased from the other commercial entities, only the restaurant.

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

Commissioner Miller asked if a traffic study would normally be done for a request like this. Ms. Tolpin responded that it would not as this is an existing restaurant. Commissioner Miller commented that this is an interesting corner and kind of limited, and he could not figure out how people would egress back onto U.S. 1 due to the turn off from U.S. 1. Chair Werling reiterated that the restaurant exists already. Mr. Mark Paveler, the applicant, stated that he maintains three driveways all around the arched side so there are three ways for automobiles to get in and out. He has re-graveled the parking lot behind the building and most people park back there. Commissioner Miller added that he likes a beer with breakfast once in a while.

Motion: Commissioner Scarpelli made a motion approve. Commissioner Coward seconded the motion. Motion passed unanimously.

BOARD DISCUSSION

There was no further Board Discussion

ADJOURNMENT

The Monroe County Planning Commission meeting was adjourned at 11:59 a.m.