

PLANNING COMMISSION  
December 18, 2019

Meeting Minutes

The Planning Commission of Monroe County conducted a meeting on **Wednesday, December 18, 2019**, beginning at 10:00 a.m. at the Murray E. Nelson Government Center, 102050 Overseas Highway, Key Largo, Florida.

**CALL TO ORDER** by Chair Werling

**PLEDGE OF ALLEGIANCE**

**ROLL CALL** by Debra Roberts

**PLANNING COMMISSION MEMBERS**

Denise Werling, Chair	Present
Tom Coward	Present
Ron Miller	Absent
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 & Development Permit Services Manager  
Tom Broadrick, Senior Planner  
Devin Tolpin, Senior Planner  
Debra Roberts, Senior Coordinator Planning Commission

**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. Debra Roberts confirmed receipt of all necessary paperwork.

**ANNOUNCEMENT**

Mr. John Wolfe announced that due to the absence of one Commissioner, a continuance would be granted to any applicant requesting one. There were no requests.

**SWEARING OF COUNTY STAFF**

County staff was sworn in by Mr. Wolfe.

## **CHANGES TO THE AGENDA**

Ms. Emily Schemper stated that Item 1 had been withdrawn.

## **APPROVAL OF MINUTES**

**Motion: Commissioner Wiatt made a motion to approve the November 19, 2019 meeting minutes. Commissioner Scarpelli seconded the motion. There was no opposition. The motion passed unanimously.**

## **MEETING**

### **NEW ITEMS:**

#### **2. WRECKERS CAY APARTMENTS AT STOCK ISLAND, 5700 LAUREL AVENUE, 6325 FIRST STREET AND 6125 SECOND STREET, STOCK ISLAND MILE MARKER**

**5:** A PUBLIC HEARING CONCERNING A REQUEST FOR A DEVELOPMENT AGREEMENT BETWEEN MONROE COUNTY, FLORIDA AND WRECKERS CAY APARTMENTS AT STOCK ISLAND, LLC. THE REQUESTED AGREEMENT RELATES TO THE PROPOSED REDEVELOPMENT OF MOBILE HOME PARKS TO TWO HUNDRED EIGHTY (280) DEED-RESTRICTED AFFORDABLE DWELLING UNITS, AT A DENSITY OF 40 UNITS PER BUILDABLE ACRE. NO STRUCTURES WILL BE HIGHER THAN 38 FEET FROM GRADE, MECHANICAL EQUIPMENT AND ARCHITECTURAL FEATURES UTILIZED TO HIDE MECHANICAL EQUIPMENT, INCLUDING PARAPETS, MAY BE UP TO 44 FEET ABOVE GRADE, AND SUCH STRUCTURES MAY CONTAIN THREE (3) HABITABLE FLOORS. THE SUBJECT PROPERTY IS DESCRIBED AS THREE PARCELS OF LAND IN SECTION 35, TOWNSHIP 67, RANGE 25, STOCK ISLAND, MONROE COUNTY, FLORIDA, HAVING PARCEL ID NUMBERS 00124540-000000, 00124550-000000 AND 00124560-000000. (FILE 2018-147)

(10:05 a.m.) Mr. Bradley Stein, Planning and Development Review Manager, presented the staff report. This is the development agreement between Monroe County, Wrecker's Cay Apartment and Stock Island, LLC. The agent for the applicant is Bart Smith. The location is an aggregated three parcels, formerly a mobile home park, approximately 7.75 acres. There is a proposal for road amendments which would increase the area to approximately 9.1 acres. Currently, the Land Use District is Urban Residential and Urban Mobile Home. A Map Amendment has been submitted to change that. The former use is Mobile Home Park and Mobile Homes. Currently, the majority of the site is vacant. At a regularly-scheduled BOCC meeting, a transmittal was done for a Comp Plan Text Amendment for Policy 101.525 pertaining to density and the creation of Goal 111. The Comp Plan Text Amendment would permit higher density and change several factors under Goal 111. In addition to this item for today, there is a Land Development Code Amendment, a Land Use District Map Amendment, two road abandonments and the ROGO reservation which has just come in.

The purpose of the development agreement is to lock in the rules at this time between the County and the developer to provide assurance that nothing will be changed. Under the Statutes, a development agreement is allowed for up to ten years, which is the request for this item. Mr. Stein reviewed the requirements for a development agreement being discussed today, the

majority being as to compliance. Land Development Section 110-133(b)(1) lists the requirements of a development agreement. Subsection (c) discusses permitted uses on the land including population density, building intensity, height, etc. If the proposed amendments become effective and are approved, then the development agreement would move forward. There is a request for a height of 44 feet which varies from what was transmitted to the DOE from the BOCC in August 2019. The original request was for three habitable floors over parking with up to 38 feet in height. The 44-foot request is to allow for decorative parapets to screen mechanical equipment on the roof. Staff is requesting the development agreement be changed to match the transmitted Comp Plan Amendments regarding height. Under Subsection F, a conceptual site plan would typically be reviewed for compliance with the LDC. Section III.K of the development agreement is requesting the County to accept the conceptual site plan for the Wrecker's Cay property. The current plan has not been reviewed for compliance with the LDC and Comp Plan. As written, staff would not recommend approval and requests that either (a) the statement, Monroe County is hereby accepting the conceptual site plan of Wrecker's Cay Property be removed from the Development Agreement; or, (b) a complete submittal is provided for approval of a Conditional Use Permit as required by the Land Development Code and is determined to be in compliance prior to approving the Development Agreement as written. Subsection G, a finding that the development permitted or proposed is consistent with the local government's Comp Plan and Land Development Regulations. The proposed development is not consistent with the current Comp Plan and Land Development Code, but may be pending the adoption and effectiveness of the proposed Text and Map Amendments. Until all of these things happen, the County cannot enter into this agreement.

Staff recommends approval of the proposed development agreement if it is updated to be consistent with the Subarea Policy as approved by the BOCC transmittal to DEO, and pending approval of the associated Comp Plan Subarea Policy Text Amendment, Land Development Code Amendment and Land Use District Map Amendment.

Mr. Bart Smith, agent for the applicant, stated that since he had last been before the Commission, the Comp Plan Amendment for Goal 111, Objective 111.1 and Policy 111.1.1 went to the BOCC for review prior to transmittal. Prior to the transmittal, slight adjustments were made. The recommendation for approval was to allow for transference of the market rates to anywhere on Stock Island, as well as to allow for the transfer of the density that was in excess of the allocated density for the parcel to be transferred anywhere on Stock Island to the extent legally permissible. The BOCC transmitted the DOE the Comp Plan Amendment with the allowance for transference of the market rates anywhere on Stock Island, but not allowing for transference of any density. That would allow, if approved at adoption, the transfer the 80 market rate units, which the identification has been the Stock Island Yacht Club, formerly Yacht Clubs of America, over on Peninsular Avenue. Needing to be approved by the County Commission is the Zoning change from Urban Residential Mobile Home for two parcels, as well as the abandonment of Laurel Avenue. What will go before the BOCC is the adoption of the Comp Plan Amendment, the Land Use District Map Amendment, two road abandonments, and the Development Agreement. Mr. Smith added that it is difficult and complex to get affordable housing built.

Mr. Smith presented the current design of the project. Due to height, some of the buildings would not be able to have the mechanical equipment remain under 38 feet which eliminated parking underneath the buildings, and parking was a concern of the Commissioners. In order to get more parking on site, the buildings would all need to be elevated with parking underneath. There are 280 units and a total of eight buildings that will house employee housing. Unlike the LIHTC project where employee housing is not allowed, this project requires residents to make 70 percent of their income from Monroe County. The County is very good at enforcing this ordinance and it works. These are garden-style apartments with one, two and three-bedroom units, three floors over parking. Total habitable height remains under 38 feet, and the parapets on the top of the buildings are a decorative feature to screen mechanical equipment on the roof. Mr. Smith pointed out that the location of the development along Maloney is near one of the best primary access points throughout Stock Island, and one of the most accessible areas to get either north or south. From a traffic standpoint it is a perfect location for a development of this nature. There are 96 one-bedroom, 160 two-bedroom and 24 three-bedroom units, totalling 488 bedrooms with 491 parking spaces. The amended breakdown of the units is 25 percent low/70 dwelling units, 25 percent median/70 dwelling units, and 50 percent moderate/140 dwelling units.

One of the target objectives were to ensure that the 55 people living in mobile homes at low would have the first right to come back. Several were placed at Quarry, but some of those would prefer to be on Stock Island. So the applicant wanted to be sure those were covered along with some additional units. Mr. Smith then explained the LIHTC requirements in detail. These are very nice, brand new units meeting all current codes and amenities. Mr. Smith presented layouts of units and elevations. As to parking, there is a parking space per bedroom and an extensive parking study was done which found the actual parking was about one space per unit versus bedroom. Additionally, there is intermodal transportation readily available on Stock Island and this location is one of the most central with access to buses. There are a significant number of ways to get to and from employment, grocery stores and everything else. As to height, the applicant would request approval contingent upon the Comp Plan Amendment allowing for six feet of non-habitable architectural feet for mechanical, for a total height of 44 feet. Mr. Smith mentioned similar projects that had been approved and their similarities to this project and requested the Commission allow the increased height. This project is an outstanding fit for the area and does not use any governmental funding with the sale of the ROGOs offsetting the land cost. The applicant is fine striking the language in Section III.K.

Ms. Schemper pointed out that in the Commissioners' packet there is the older draft of the development agreement, and at the bottom footer there is Version 11 with the most recent draft. The updated proposed income categories are on page fourteen of Version 11.

Commissioner Coward asked if the density was based on total acreage including road abandonments. Mr. Smith responded that that was correct.

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

Commissioner Wiatt asked if this project had the same type and level of tax credits as the Quarry project. Mr. Smith responded that there were no tax credits for this project. Tax credits would require five percent more moderate. Commissioner Scarpelli asked if any coordination had been done with the sustainability coordinators at the City of Key West as far as public transportation and bike parking spaces. Mr. Smith stated that the intention was to have substantial bicycle parking on the site, but there is no bike parking substituting out car parking spaces, it is in addition to. Chair Werling asked about boat and boat trailer parking and Mr. Smith stated that would be up to the management and whether they would allow that but it would likely not be allowed. In the future, there will be a dinghy dock for a mooring field to also allow for a pumpout boat which is currently being discussed with the County.

Commissioner Coward stated he likes the project but has serious issues with breakdown of the income levels for the units. He believes moderate is market rate and the remaining affordable housing ROGOs are being given out to allow half of the project be market rate. Commissioner Wiatt added that given the level of density and height concessions he also was disappointed that the ratio for low income wasn't better. Recognizing very low is unattainable without significant government subsidies, he has been trying to get fifty-fifty with low, median and moderate combined and this falls short of that, especially giving the concessions. Mr. Smith responded that the height was simply for the mechanical equipment to be put on the roof. Commissioner Wiatt pointed out that that concession provided the parking benefit. Mr. Smith explained that the cost of land and construction is exorbitant and mentioned a prior project, Coco Palms, that was having a difficult time making the numbers work, and there are a large number of people that need moderate. Commissioner Scarpelli added that the City and County is lacking qualified professionals for skilled jobs because they can't afford to live here. This will give these 140 people a place to live and is a great mix of community. Mr. Smith reemphasized the need for moderate income level units. Commissioner Scarpelli understood that three stories over parking is the model that makes this work, but just because the City allowed something doesn't mean the County has to allow it. Commissioner Wiatt reiterated that the height increase is a concession that makes the project work. Commissioner Coward agreed that it is a concession and there is really a need for very low, low and median units that don't exist right now. This is an opportunity to put those out into the marketplace for the community and he has a huge problem with choosing to go market rate for half of the project. Commissioner Scarpelli pointed out that there were still 70 low income units. Commissioner Coward added that 55 of those were already allocated. Commissioner Scarpelli stated that was 55 people that aren't moving. Commissioner Wiatt reiterated his disappointment when allocating this many ROGOs, and significant concessions need significant returns. Mr. Smith stated that today, there are only 20 people expecting to move back because some like where they've already moved to at the Quarry project. There was continued discussion regarding the unit breakdowns.

Mr. Wolfe suggested that the Commission could approve with staff's conditions and make recommendations or modify the unit breakdowns. Ms. Schemper reminded the Commission that staff's recommendation was approval if modified to match what was transmitted to the DEO by the BOCC. If the Planning Commission is okay with the 44 feet and wants to recommend that,

that's fine, but it is not consistent with what was already agreed to and transmitted to DEO. The income categories have not been transmitted to DEO.

**Motion: Commissioner Coward made a motion to accept the Development Agreement with staff's Version 11 recommendations with two exceptions; 1) allow the 44 feet and 2) modify the income allocation to 120 low, 120 median, and 40 moderate. Commissioner Scarpelli seconded the motion.**

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

**3. RANDOLPH WALL, 178 ATLANTIC CIRCLE DRIVE, TAVERNIER, MILE MARKER 91, OCEAN SIDE:** A PUBLIC HEARING CONCERNING THE REQUEST FOR A VARIANCE OF FIVE (5) FEET FROM THE REQUIRED 25-FOOT PRIMARY FRONT YARD SETBACK AND TEN (10) FEET FROM THE REQUIRED 20-FOOT REAR YARD SETBACK OF THE SUBJECT PROPERTY. IF APPROVED, THE PRIMARY FRONT YARD SETBACK ADJACENT TO THE ATLANTIC CIRCLE DRIVE RIGHT-OF-WAY WOULD BE 20 FEET AND THE REAR YARD SETBACK ADJACENT TO THE NORTHWESTERN PROPERTY LINE WOULD BE TEN (10) FEET. THE VARIANCE IS REQUESTED FOR THE PROPOSED CONSTRUCTION OF A SINGLE-FAMILY RESIDENCE. THE SUBJECT PROPERTY IS LEGALLY DESCRIBED AS LOT 11, BLOCK B, TAVERNIER #2, ACCORDING TO THE PLAT THEREOF, AS RECORDED IN PLAT BOOK 2, PAGE 8, OF THE PUBLIC RECORDS OF MONROE COUNTY, FLORIDA, HAVING PARCEL IDENTIFICATION NUMBER 00556040-000000. (FILE 2019-015)

(11:07 a.m.) Ms. Devin Tolpin, Senior Planner presented the staff report. This item is a request for a variance to the primary front and rear yard setback requirements of a platted lot within the IS Zoning District and is subject to an allocated density of one dwelling unit per lot. This property was platted in its current configuration and adopted by resolution of the BOCC on August 15, 1929. Ms. Tolpin presented slides of the subject property. Section 131-1 of the Land Development Code requires lots within the IS Zoning District to have a primary front yard setback of twenty-five feet and a rear yard of twenty feet. The applicant is requesting a variance of five feet from the primary front yard setback requirement and ten feet from the rear yard setback requirement. The current site plan is in compliance with all other required setbacks as well as the open space ratio. Generally speaking, variance requests to non-shoreline setback standards fall under the authority to be reviewed by the Planning Director as an Administrative Variance, which is how this was first reviewed. On September 23, 2019, the Planning Director determined that the application complied with the requirements and standards of the Code. Notice was sent to all property owners within 600 feet of the subject property as required by the LDC. On October 19, 2019, the first of twelve written requests were received for this application to be heard by the Planning Commission. For the Planning Commission to grant a variance of setback requirements, the applicant must demonstrate that they meet all eight of the required standards which are included in the staff report, with applicant's responses and staff comments. Staff finds the applicant has met all requirement standards and recommends approval of the variance.

Commissioner Coward asked which adjacent lot was also owned by the applicant. Ms. Tolpin presented the site map reflecting that to be Lot 12. Chair Werling asked if the applicant would like to speak, and Mr. Randolph Wall asked to speak at the end. Chair Werling then asked for public comment.

Ms. Michelle King, an attorney representing Mr. Schuler who owns 178 Atlantic Circle Drive, an adjacent property, stated that it is her position that the standards for a variance have not been met. Ms. King asked for a ruling as to the historic designation in Tavernier as the shape and structuring have no relevance in consideration of granting the variance. Chair Werling asked for the lot number Ms. King was referring to. Ms. King responded Lots 8 and 9. Ms. King stated that the Commission has more options that would not infringe on her client's property. There are options for the front and sides of the lot, and it is up to Mr. Wall to prove that he has met all of the conditions.

Commissioner Scarpelli first confirmed that Ms. King was representing Lots 8 and 9, and stated there was no variance request on those lots. Ms. Schemper interjected that this was an Administrative Variance application, and she had sent a 30-day notice letter indicating the intention to grant this variance as she believed all standards had been met. This was sent to the Planning Commission based on surrounding property owners requesting it.

Ms. King again asked for a ruling on the historic designation not having any bearing on the granting of the variance. Chair Werling responded that the Commission does not do that. Mr. Wolfe clarified that this was not appropriate for a ruling as it is an administrative variance where rulings are not made on matters of law. Ms. King then stated there had been fifteen letters of objection from neighboring property owners. Commissioner Scarpelli again noted that the setback adjacent to Lots 8 and 9 is ten feet and is a standard side-yard setback that was not being changed. This is a request for a ten-foot rear setback and a twenty-foot rear yard setback for Lot 12, and a five-foot front-yard setback. Ms. King again stated that the setback was not necessary and it could be a lot lower than that to not infringe on her client's property. Commissioner Scarpelli again reiterated that the requested setback does not affect Lots 8 and 9. There was extensive discussion on which lots were being referred to. Commissioner Coward thought the rear setback butted up against Lot 8, and Commissioner Scarpelli clarified that the rear setback was adjacent to Lot 12, not Lots 8 and 9. The side yard setback abuts Lots 8 and 9 which is the standard side yard setback of ten feet. Ms. Schemper noticed that the adjacent lot on Tavern Drive also has the address of 178 Atlantic Circle Drive, and Mr. Wolfe clarified that these apparently are two different legally-described lots with the same address. Ms. King stated she is objecting to the variance on Lot 11. Commissioner Scarpelli again reiterated that there is no variance request on Lot 11 that is adjacent to Lot 8 and 9.

Ms. King continued, stating Mr. Wall has not shown an exceptional hardship, and cited cases *Auerbach vs. City of Miami*, 929 So.2d 692, Florida District Court of Appeals 2006; and *Miami-Dade City vs. Brennan*, 802 So.2d 1154, Florida District Court of Appeals 2001. Commissioner Scarpelli stated that the triangular-shaped lot without the variances could not be built per the setbacks. Ms. King responded that she was putting her objections on the record and wanted them noted. Ms. Emily Schemper interjected that on a property like this with a strange shape, the main requirements, not regarding the variance, normally the front would be on the road with a

twenty-five-foot setback. Then there would be a primary side, which is ten feet, and a rear which is twenty feet. On a property like this, the property owner can choose which property line will be the rear and which will be the side. Either way there will be a ten and a twenty. Mr. Wall is requesting the rear be ten rather than twenty. So regardless of which property line chosen, with this variance request, both the side and rear property line would be a 10-foot setback. The effect will be that all adjacent properties have a ten-foot setback. Commissioner Wiatt clarified that the property owner had chosen the rear setback to be towards Lot 12, and that he had gotten confused on that as well. Commissioner Scarpelli also clarified that Mr. Wall was asking for a variance along Lot 12, not along Lots 8 and 9. Ms. Schemper stated that that was correct, confirming that this setback variance does not affect Lots 8 and 9, only Lot 12, which is also owned by Mr. Wall. Ms. King stated if there was no infringement or hardship to her client then she didn't know why she was hired to be here. Commissioner Scarpelli thought the note had been put in a bad spot on the diagram. Ms. King restated her client was concerned, along with there being fifteen letters of objection and a safety concern, and the relief should not be at her client's expense. Commissioner Scarpelli pointed to the map and explained it to Ms. King. Chair Werling then asked for public comment.

Ms. Bonnie Baskin, after being sworn in, spoke representing the owners of 186 Atlantic Circle as a she is a part-time resident of that home. Mr. Steve Williams stated that the documents she had just given to the Clerk and Chair Werling were not filed within the prescribed time period so it would take a vote of the Commission to accept them. Ms. Baskin stated they were letters objecting to this variance. Chair Werling explained that during the hearing, the Commission cannot read paperwork and listen to the speakers. Mr. Williams noted the letters were dated the day prior. Ms. Baskin stated that 186 Atlantic Circle Drive was recently under consideration for changing out windows and it took many months of consideration to get the windows approved as it is a historic house in a historic district. Protecting the historic district which is on the National Register of Historic Places is the Planning Commission's responsibility. Mr. Williams interjected that that was factually inaccurate and the Commission is not tasked with that duty. Ms. Baskin believes that granting this variance goes against protecting the cultural and historic value of this district. Chair Werling asked which lot was 186 Atlantic Circle, and Ms. Baskins stated it was Lot 10. Commissioner Wiatt asked if it was the only historical structure. Ms. Schemper clarified that the historic district is not just about individual structures. Someone building a house in this district will have to get the plans reviewed by the Historical Preservation Committee which is a completely separate entity. This property owner is asking for a variance to design a house that will then go before that Committee. Ms. Baskins continued stating she wanted to show pictures of another historical house. Mr. Wolfe instructed her that she could do that but that this Commission has nothing to do with historic preservation. Once the building plans are ready, they would then go before that other board. Ms. Baskins stated that approving the variance would have significant impact to the historical value of other structures. Mr. Williams added that the pictures were as untimely as the other documents, and explained to the Commission that they do not address any of the five factors the Commission must consider for the variance. Ms. Baskins insisted that this was a chicken-or-egg thing and if this variance is approved, they would be able to build on someone's back doorstep and ruin the property value. Mr. Wolfe reiterated that this was for a variance and no house was being approved. There would be a future opportunity to address the historic aspect. Ms. King began speaking to Ms. Baskins from the audience and was stopped by Mr. Williams.

Mr. Gary Mace was sworn in and stated that he lives three blocks from this property. There has been a lot of construction in this neighborhood and it has done nothing but increase the value of his home, which is also a consideration. The variance may be giving a little bit of property to allow a house to be built, but it is also increasing the value of surrounding homes and he is in favor of Mr. Wall building the home.

Mr. John Hoefert was sworn in and stated that he was born and raised in the Keys and lives in this neighborhood. He does not see how this would affect anything in the neighborhood. The variance is adjacent to Mr. Wall's other piece of property and he believes he should be allowed to move forward.

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

The applicant, Mr. Randolph Wall, was sworn in and asked for the slide with the property outlined in blue to be put up on the screen. He gave a history of how he drove through this neighborhood in 2016 and then bought a property in the neighborhood in order to build a historic cottage. His goal was to build the cottage to appear as if it had been there forever. The first home he built on Tavern Drive in 2018 was very satisfactory with the Historic Preservation Board which happily granted that concept. In late 2018, he built another home adjacent to this lot being discussed, that is 560 square feet. There are 37 dry residential lots, 33 of which are 50 by 75 or 3,450 square feet, plain rectangle lots, which are tough to build on. This lot is almost three sided but does have a tiny border with a very old home that has a zero lot line. This is the community character of this neighborhood. Mr. Wall is requesting to leave his ten-yard setback on the side yard and the rear yard setback at the property line abutting his other house. The project he is proposing does not block the rear view of the neighbor's home and he will still be looking out over vacant land. His rear setback is also ten feet. The prior homes Mr. Wall built in the neighborhood met every requirement of the Historic Board and he wanted to design them to fit the community character. Mr. Wall believes his request is reasonable. The lot is in Tier III, has all utilities available and meets all of the criteria. Because it was platted in 1929 and does not meet modern setbacks does not mean he should not be allowed to use his property.

Mr. Wolfe reiterated that the Commission is only granting the variance at this point. Chair Werling reiterated that the setback abuts Lot 12, and asked for a motion.

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

**4. AN ORDINANCE BY THE MONROE COUNTY BOARD OF COUNTY COMMISSIONERS AMENDING MONROE COUNTY LAND DEVELOPMENT CODE CHAPTER 142, SIGNS; 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 2019-100)**

(12:01 p.m.) Mr. Devin Rains, Planning and Development Permit Services Manager presented the staff report. This is a review of Chapter 142 Signs in light of the US Supreme Court Case Reed vs. Town of Gilbert. Ms. Nancy Stroud, a land use attorney and consultant for the County, FAICP certified, specializing in constitutional land use issues was also present. Ms. Stroud then gave the background as to Reed vs. Gilbert and put the proposed changes into context. Ms. Stroud explained that in 2015, the US Supreme Court made a very strict interpretation of the First Amendment emphasizing that sign code regulations need to be content neutral. As a result of that, communities all over the country began looking at their sign codes, including Monroe County. The Gilbert case involved temporary signs regarding church events, but the court said that those temporary signs were treated differently than other temporary signs such as political election signs, and all temporary signs need to be treated the same way. Some problems included definitions that were content based. A few provisions were included to make codes much more defensible, such as a severability section stating any part of the code found unconstitutional shall be severed, and the rest of it can stand. Ms. Stroud stated she would be happy to answer any questions as Mr. Rains went over the new sign code in more detail.

Mr. Rains listed the sections of the new code touching on highlights. There's the purpose and intent and definitions where cleanup was done and changes made to bring it into current technology standards; i.e. Changeable Copy Sign is now Electronic Message Center. Under prohibited signs there is still the prohibition for off-premises signs. Sign permits are still permitted as a building permit. Content related to appeals and variance procedures remain the same. One item not included in this draft, under Section 142-5(1) with regards to permitting, Ms. Stroud has recommended a change to the time frame limitation as time constraints on free speech can be problematic. The General Provisions section covers area, location, structures, illumination, maintenance, and remains essentially unchanged with some clarification related to illuminated signs. Discontinued Signs has some additional language bringing it into conformity. Regarding Reed and free speech there is substitution clause (j) not commercial message if it's a commercial sign or related to the business on that premises; and a new point, (k) neutrality, emphasizing no sign ordinances shall be based upon the viewpoint of the message contained on the sign. Temporary signs have the same provision to allow for temporary signs but are now content neutral. Residential signs still have size, area and height limitations that differ from commercial. Permanent signs based on size, number and Zoning District remains the same other than being content neutral. Flags are no longer defined as signs, however the flagpole is still a structure and is consistent with how they were permitted before and must comply with location on the property. The old Section 142-9 dealing with guidelines on size of lettering, et cetera, has been removed. Staff is recommending approval of the proposed sign code amendment with the changes discussed related to time frame of building permit.

Commissioner Scarpelli asked about flutter signs, which Mr. Rains stated are now prohibited; basically anything that flutters or blows in the breeze are prohibited. Commissioner Scarpelli noted there are quite a few of those all over. Additionally, Commissioner Scarpelli liked the way staff revamped the whole section. Mr. Williams noted this was Ms. Stroud's work. Commissioner Wiatt asked about the variances for Planning Commission and whether there was any thought given to the idea that the Planning Director approving variances that meet certain criteria. Mr. Williams did not believe there would be a legal bar as to why they could not first go to the Planning Director. Ms. Stroud stated there is a provision for certain Administrative

Variations and there were no changes to what historically would come before the Planning Commission. Ms. Schemper added that the signs were set up similar to variations where some go to the Planning Director as Administrative Variations and some that go to the Planning Commission. Commissioner Scarpelli referenced Section 142-5(c) where that had been set out. Ms. Schemper explained that the Planning Commission can grant a variation to any requirement in this Chapter if it meets the standards under Planning Commission standards and goes to public hearing. Commissioner Wiatt was concerned there would be a lot of sign variations that could be better managed by the Planning Director. Ms. Schemper responded that the proposed Sign Code is less restrictive than the current Sign Code and she would not anticipate getting more variation requests, it would probably be less.

Mr. Rains added that the content of the Code is primarily to satisfy Reed vs. Gilbert and consequently, the opportunity is still there to enhance the Code by further revision reflecting changes in technology. One area that has been the subject of variations in the past related to drive-thru signage which has been changed to allow for up to two signs. Commissioner Coward asked if there was anything in this Code that impacts the density of signs as far as the number per quarter-mile or mile, and asked if there was any legal reason that could not be regulated. Mr. Williams stated that the purpose of this revision was for constitutional compliance. The BOCC had not charged staff to address aesthetics or density at this point. Chair Werling stated that this had been tackled a number of years ago and was very painful. Ms. Stroud added that it is also costly not to be compliant. Mr. Williams mentioned a community on the west coast of Florida found in violation where it cost them a million dollars. Ms. Stroud confirmed that, adding that there are also a lot of attorney fees to consider as well.

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

**Motion: Commissioner Wiatt made a motion to approve. Commissioner Coward seconded the motion. There was no opposition. 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 101-1 TO CREATE A DEFINITION FOR PUBLIC INFRASTRUCTURE AND UTILITIES; TO AMEND THE DEFINITION OF PUBLIC BUILDINGS AND USES; AND TO AMEND THE LIST OF PERMITTED AND CONDITIONAL USES WITHIN SECTIONS 130-74 THROUGH 130-103 TO INCLUDE PUBLIC INFRASTRUCTURE AND UTILITIES AS AN AUTHORIZED USE; 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 2019-126)**

(12:26 p.m.) Ms. Cheryl Coffari, Assistant Director of Planning, presented the staff report on behalf of Ms. Mayte Santamaria. This is a proposed Text Amendment to the Land Development Code to create a definition for public infrastructure and utilities, public buildings and uses, and to amend the list of permitted conditional uses to allow for public infrastructure and utilities as an

authorized use. Staff has proposed these Text Amendments after being directed by the Board of County Commissioners. The public infrastructure and utilities is generally proposed as a permitted use except with a Minor Conditional Use in the Conservation Mainland Native, Native Area and Offshore Islands. It is not proposed as an authorized use within a Preservation Zoning District. The reason this item is coming before the Commission is because there are a number of projects the County is undertaking in relation to direction given through the Green Keys Plan, Watershed Management Plan, and the sea level rise which was adopted as a part of the Green Keys Sustainability Action and Resilience Plan. As the County undertakes some of these drainage projects it has come to the County's attention that there is not enough space within the right-of-way to accommodate the required infrastructure and sometimes that infrastructure needs to go onto a property. In some cases it is County-owned property but there was no allowance for this type of use within all of the Zoning Districts. This Text Amendment would allow for the needed infrastructure outside of the right-of-way, particularly for drainage, water quality, flooding and pilot sea level programs that are currently being undertaken. The DRC considered the proposed item on October 29, 2019, and had two recommendations. One, to modify the proposed language to ensure the proposed development of public infrastructure utilities is separated from any residential use by a Class C buffer yard; and as determined by the Planning Director, the buffer yard would be required on all property lines adjacent to an established residential principal use to screen the use from view, and a solid fence may be required. The definition is shown on page three which includes any infrastructure that the County may undertake including water supply systems, electric systems, stormwater management, water quality treatment projects, et cetera. The following pages show the inclusion of public infrastructure and utilities as an authorized use permitted where possible, and then as a conditional use in some cases as mentioned earlier. Staff recommends approval of the proposed ordinance.

Commissioner Scarpelli asked if this addressed the Tier I properties owned by the County. Ms. Cioffari responded that it does not speak to the Tiers at all. Ms. Schemper stated that it was being left open in case they are actually needed, subject to clearing and all other requirements regarding the tier. Tier is mainly based on habitat so if it is something that is not going to impact the habitat, she did not believe there would be a problem with it. Mr. Mike Roberts explained that the Tier designation establishes clearing limits for upland communities. This particular amendment is able to provide areas for infrastructure and utilities as necessary, but he anticipates it would be in or adjacent to a right-of-way or other open areas and wouldn't require clearing. Ms. Schemper added that the IS District already allows for a waste treatment plant and if it was Tier I completely covered with hardwood hammock, other steps would be required to figure out if it could be put there. Just allowing the land use itself is not restricted per the Tier but would be subject to all other requirements. Commissioner Coward asked if this would get into eminent domain. Ms. Cioffari responded that the inclusion of the Class C buffer yard requirement would be for screening with vegetation as much as possible and possibly the installation of a solid fence. Ms. Schemper added that this does not discuss taking someone's private land. Mr. Williams explained that if utilizing this procedure on County-owned land caused water to flow on someone's personal property it would be more along the line of a regulatory taking where it's taken and paid for, and referenced the Climate Summit held in Key West which discussed this as something that will be factored into decision making.

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

**Motion: Commissioner Wiatt made a motion to approve. Commissioner Coward seconded the motion. The motion passed unanimously.**

**A ten-minute recess was held from 12:36 p.m. to 12:46 p.m.**

**6. MCDONALD'S CORPORATION, 91400 OVERSEAS HIGHWAY, KEY LARGO, MILE MARKER 91.4, BAY SIDE:** A PUBLIC HEARING CONCERNING A REQUEST FOR A VARIANCE TO ALLOW FOR ONE (1) 11.4 SQUARE FOOT DIGITAL PRESELL MENU BOARD AND ONE (1) DIGITAL MENU BOARD (19.9 SQUARE FEET) FOR EACH OF THE TWO (2) DRIVE-THRU LANES, AS SET FORTH IN CHAPTER 142, SECTION 142-4(C)(1)G OF THE LAND DEVELOPMENT CODE. APPROVAL WOULD RESULT IN EACH DRIVE-THRU HAVING ITS OWN DIGITAL PRE-SELL MENU BOARD AND DIGITAL MENU BOARD. THE VARIANCE IS REQUESTED IN ORDER TO ALLOW FOR TWO ORDERING POINTS TO ALLOW VEHICLES TO MOVE THROUGH THE DRIVE-THRU PROCESS WITH GREATER EFFICIENCY AND COORDINATION. THE SUBJECT PROPERTY IS LEGALLY DESCRIBED AS A PORTION OF LOT 15 OF "THE AMOS LOWE HOMESTEAD, KEY LARGO, MONROE COUNTY, FLORIDA, LOTS 3 AND 4, AND THE WEST ½ OF THE N.W. ¼ OF SECTION 34, TOWNSHIP 62 SOUTH, RANGE 38 EAST", AS RECORDED IN PLAT BOOK 1 AT PAGE 80 OF THE PUBLIC RECORDS OF MONROE COUNTY, FLORIDA, TOGETHER WITH A PORTION OF LAND IN GOVERNMENT LOT 2, SECTION 33, TOWNSHIP 62 SOUTH, RANGE 38 EAST, HAVING PARCEL IDENTIFICATION NUMBER 00089910-000101. (FILE 2019-171)

(12:47 p.m.) Mr. Tom Broadrick, Senior Planner presented the staff report. This is a request for a variance for the Tavernier McDonald's, having the same owner as the Marathon McDonald's which already has pre-sell menus and a regular menu. This is not allowed under the Land Development Code in Monroe County without a variance. The applicant is proposing to add a pre-sell and regular menu board for each drive-thru, adding a second drive-thru. This will be in compliance with all size limitations on a normal pre-sell menu or vending board.

Mr. Craig McDonald, Corporate Property Services for applicant, McDonald's Corporation, presented a site plan. Mr. McDonald explained that there is a national campaign to revitalize all McDonald's Restaurants on exterior elevations, interior dining rooms and, where possible, to have side-by-side drive-thrus. Seventy percent of their business is done through the drive-thru and this accommodates more cars in the queue and better efficiency in the kitchen. The new signs are 31 square feet where 40 is allowed. They are not for advertising purposes and only for the customers.

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

**Motion: Commissioner Scarpelli made a motion to approve. Commissioner Wiatt seconded the motion. The motion passed unanimously.**

**7. SERGIO & EILEEN VELIKOPOJSKI, 200 POMPANO DRIVE, KEY LARGO FL: AN ADMINISTRATIVE APPEAL BY SERGIO & EILEEN VELIKOPOJSKI APPEALING THE PLANNING DIRECTOR’S DECISION TO DENY A SPECIAL APPROVAL TO REBUILD A NON-CONFORMING DOCK (12’8” WIDE BY 85’ LONG WITH A 6’ BY 25’ ACCESS WALKWAY WITH A TOTAL AREA OF 1,235 SQUARE FEET) ON BLOCK 10 LOT 6 ANGLERS PARK, KEY LARGO , HAVING REAL ESTATE NUMBER 00552660-000000. (FILE 2019-196)**

(12:52 p.m.) Mr. Mike Roberts, Assistant Director of Environmental Resources presented the staff report. This is an Administrative Appeal for a special approval for a non-conforming dock. Photographs were presented. This dock was destroyed by Hurricane Irma and the appellant applied for a replacement permit. Review of that permit found that the proposed repair or replace was a substantial improvement and it was denied because the proposed dock did not meet the Code criteria in terms of the size and width, and setbacks from the side property lines. The applicant then applied for a special approval under Chapter 118-12(o)(2) that would allow the Planning and Environmental Resources Director to approve the design due to unique circumstances. Based on staff’s review of the circumstances the Director denied that request. It is important to point out that the proposed dock, as stated in the application, was entirely destroyed and the replacement of it did constitute substantial improvement. Under existing Code and Policy 101.9.4, replacement of that structure was not allowed. “Nonconforming structures which are damaged or destroyed so as to require substantial improvement shall be repaired or restored in conformance with all applicable provisions of the current Monroe County Code.” Mr. Roberts presented the proposed reconstruction showing the dock is six feet by twenty feet, an access walkway, with a 12.8-foot-by-85-foot-long dock itself angled towards the adjacent property. In accordance with the Code, the appellant submitted an application for special approval. The applicant and his counsel were also available to present their basis of appeal. Staff’s recommendation is the Commission uphold the determination of the Planning Director.

Mr. Williams interjected and confirmed with Mr. Roberts that it is not that the appellant can’t build a dock, but that the dock as proposed does not meet the criteria. Chair Werling asked about a previously issued permit and whether there was an original permit. Mr. Roberts stated there was no original permit and the previously-issued permits for the dock were all for minor repairs.

Mr. Bart Smith spoke on behalf of the appellant. This is all as a result of Hurricane Irma which would justify special circumstances and approval. The Comp Plan has a provision that states if substantial improvements have been substantially destroyed that they should come into compliance with the Code. However, in the Land Development Code there is a provision that provides that you can obtain special approvals that vary the standards for docks. Any time you grant a special approval it’s not going to be in compliance with the standards for a dock, because if you were just going to utilize the standards for a dock you would never need the special approval. In order to read the compliance with the Comp Plan which provides for bringing things into conformity and still allow for special approvals, special approvals have to be something that does not require conformity. Reading those two sections in conjunction, the only

way they make sense is that whenever you're getting a special approval, it's always going to be a nonconformity that you're requesting.

Mr. Smith explained that this dock was constructed in 1937, which is why there was no original building permit. There are concrete pilings and underneath it is caprock. At a certain pre-Code juncture, the owners apply to replace the dock. Mr. Velikopojski bought the property with the existing dock in 2001. In 2015 he applied for permits to replace the wood and stringers on the dock. Permits were obtained from the DEP, Army Corps of Engineers and County removing all wood planks and stringers leaving the concrete piles and rebuilding the dock and LED lighting. What's being applied for now is to put in a concrete dock. The concrete dock at twelve feet wide would be more resilient to hurricanes and is not outside the footprint.

Post-Irma, the concrete pilings to a great extent are still there. The DEP and Army Corps of Engineers issued emergency permitting procedures that allow for replacement of a dock in the original footprint and you can get the permit issued immediately. If you change the footprint at all, smaller or bigger, you cannot get an emergency permit. The material can be changed but not the footprint. The applicant provided the Army Corps and DEP permits and plans to the County. The permit was denied based on the dock repair estimates showing costs in excess of fifty percent. Mr. Smith presented 118-12(o)(2) that provides for the special approvals. The key component is you have to provide unique circumstances. There was a prior hearing where it was concluded that this dock had existed on this property since 1938, and the current dock had been on the property in its current condition since 1967, and it was given authorized structure status by the DEP, at the time DNR, back in 1990. This is not the first time that it's had to have the wood replaced on top, but this time it's using concrete which exceeds the fifty percent. The DEP and Army Corps both issued permits based on Hurricane Irma. The DEP emergency final order that the applicant utilized during DEP permitting expired on January 20, 2018. He complied with it, applied for the DEP permit before that time and received it. Mr. Velikowpojski was called on to explain what he was proposing to do. Mr. Wolfe swore him in.

Mr. Velikowpojski, a high-end residential general contractor, stated he purchased the property in April of 2001 and the dock was in place at that time, with concrete piles, wood stringers and wood planks. In 2015 plans were submitted to rebuild the dock where everything was removed other than the concrete piles, which is how it now looks post-hurricane. The stringers passed inspection but the final permit was never closed. The boat at the end of the dock was destroyed in the hurricane and all of the stringers and planks were gone. After Irma, Glen Boe and Associates drew the plans, to do the same thing as in 2015 but using a concrete perimeter and wood planks for the same footprint. The previous owner was given permission from DEP to put a T at the end of the dock and some of the piles are still there, but he did not submit for that. Mr. Smith asked if the pilings present today could be used again. Mr. Velikowpojski stated he could use those and re-build it the same way as in 2015, which would not be over the fifty percent cost but by using concrete it would be more structurally sound. To put a four-foot dock in, new holes would need to be dug in new places while making sure it doesn't damage natural resources. Mr. Smith added that this would change the entire configuration of what's there now, and will not be in furtherance of Goals 101, 104, 202, 203 and 206 which require the natural resources be

protected. Mr. Smith asked the Commission to find this as a unique circumstance and approve the special approval.

Commissioner Coward asked if the existing pilings would be used or if they would need to be rebuilt to support the concrete. Mr. Smith responded that the pilings would be replaced in the existing footprint. Mr. Velikowpojski responded that the way this dock was built in 1938, they weren't piles that were drilled into the caprock. They built three-foot-by-three-foot blocks of concrete with piles coming out of it, which is why one photo shows where one had slid over by the hurricane. Glen Boe and Associates drew plans to actually drill into the caprock so the dock would be more stable in future hurricanes. However, the existing concrete pilings could be used.

Commissioner Wiatt asked if the dock were reduced to four feet width, if that would prevent getting the emergency permit from Army Corps. Mr. Smith responded that that was correct and they would need to start from scratch in applying for a new permit. Changing piling locations requires a benthic resource study of the new area being used. Additionally, due to setbacks, it would need to be moved and would shade a different area than has been shaded since 1938. Commissioner Scarpelli noted the Army Corps permit had expired in January 2019. Mr. Smith responded that it could be extended. Commissioner Wiatt stated that it boils down to square footage and shade. Mr. Velikowpojski responded that the shade doesn't affect anything as everything under the dock is rock and is always filled with lobster, crab and fish, with grass and turtle grass on both sides. Commissioner Wiatt asked if going to the four feet would cause any dockage navigational problems. Mr. Velikowpojski responded that he would need to remove a lot of stuff under the dock because the hull of the boat would hit some of the things under there.

Ms. Schemper interjected that if only caprock was under the dock, then that would mean moving one set of pilings over to make the dock four feet wide would solve the problem, and the terminus platform could be modified to meet the side setback requirement. The terminal platform is the only item within the required five-foot side setback from the neighbour's property line. Mr. Velikowpojski stated this would limit the use of one side of the dock. Ms. Schemper asked if the boat lift could be moved to be parallel to the dock. Mr. Velikowpojski stated the minimum four-foot depth was at the end of the dock. Mr. Smith reiterated that these are unique circumstances. Ms. Schemper pointed out that there have been many nonconforming structures destroyed by Hurricane Irma that have had to come into compliance based on the substantial improvement policy. The County has not considered Hurricane Irma the type of circumstance that would qualify someone for a variance or special approval. Yes, it was a unique circumstance and people who lost homes or accessory structures or uses were required to bring primary residences into compliance. Mr. Velikowpojski stated there is very little difference in the condition today as compared to 2015 when the dock was rebuilt. Commissioner Wiatt stated it was likely the fifty percent rule as the money is in the pilings themselves.

Mr. Smith pointed out that primary residences do not have a special approval process such as 19-12(o) and that's the difference here. Based on that standard, Mr. Smith requested approval.

Commissioner Wiatt asked if homes of a certain footprint were being allowed to be rebuilt. Ms. Schemper responded that that was only for things that meet the code, but special variances were

not being given based on that. There are certain provisions within the Code that already give an allowance for someone who cannot build their home back in the same square footage that they previously had, where they can get a relaxation on the setback requirements but that is not specifically a unique-circumstance criteria.

Commissioner Scarpelli stated he can see the point that the dock has been there since 1938 and has always been impeding upon the neighbour's property. Commissioner Wiatt agreed that it had to almost be looked at as lawful conforming in 1938 because there was no law; or, was maybe lawful or unlawful, depending on how you look at it, but it conformed to nothing.

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

Commissioner Wiatt thought it was clear the Planning Director had done the right thing by following the Code and the law and did not question that, but asked whether there was enough latitude within that Code and law to allow for someone to rebuild within a footprint essentially the same structure after it was destroyed by Mother Nature. Mr. Williams stated that he already answered the question, sitting in an appellate capacity, as to whether the Planning Director's decision was correct, not whether other more equitable decisions could be reached. This is an appeal of that decision and once the decision is found to be correct, there isn't much reason to go into the other. Ms. Schemper read the purpose of the nonconformity section. Section 102-54, "The purpose of this article is to regulate and permit the continued existence of uses and structures established prior to the date of the enactment of the original ordinance for which this Land Development Code is derived and prior to the date of the enactment of a subsequent ordinance amending the Land Development Regulations to regulate and limit a continued existence of the uses and structures that do not conform to the provisions of this Land Development Code. Nonconformities may continue but the provisions of this article are designed to curtail substantial investment in nonconformities and to bring about their eventual elimination in order to preserve the integrity of this Land Development Code."

Commissioner Wiatt responded that Hurricane Irma had provided an opportunity to make things better. Chair Werling asked if the appellant could replace the wood and call it a day. Mr. Roberts stated that the 2015 permit was just the stringers and decking and was not deemed a substantial improvement because it did not exceed the fifty-percent threshold, so he could do the 2015 permit again as long as the economics worked out. Chair Werling stated that would get him back what he had before the hurricane. It doesn't let him bury the columns to hopefully not go down that road again, but doesn't take away what was there before the hurricane. Commissioner Scarpelli added to that point, which is what the DEP and Army Corps permits were more aligned with. Commissioner Coward stated he struggled with that because people should be allowed to harden their homes or docks for sea level rise and increasing storms and now that's not being allowed to happen. Mr. Williams interjected that it would be hardening something that the Code is trying to get rid of. Chair Werling added that the dock could be hardened if it met current Code.

**Motion: Commissioner Scarpelli made a motion to uphold the Planning Director's decision and deny the appeal. Chair Werling seconded the motion.**

**Roll Call: Commissioner Scarpelli, Yes; Chair Wiatt, Yes; Commissioner Coward, No; Chair Werling, Yes. The motion passed 3 to 1.**

**8. DISCUSSION BY THE PLANNING COMMISSION** REGARDING POTENTIAL ADJUSTMENT OF THE RATIO OF VERY LOW INCOME, LOW INCOME, AND MEDIAN INCOME ROGO ALLOCATIONS TO MODERATE INCOME ROGO ALLOCATIONS AVAILABLE FOR AWARD, PURSUANT TO LAND DEVELOPMENT CODE SECTION 138-24.

(1:36 p.m.) Ms. Emily Schemper summarized what was put in the staff report to prepare this item for discussion. There is a pool of affordable housing ROGO allocations split into two pools. One pool is very low, low and median income, the other is moderate income. When the current pool of ROGOs was adopted in 2012, the two balances for those categories were 360 for the lower income category and 350 for the moderate. Today, based on what has been given out so far, there is now a balance of 332 affordable allocations available, 107 within the very low, low and median income categories, and 225 are in the moderate category. In Section 138-24 of the Land Development Code, subsection (a)(3) there is a statement that says, “The Planning Commission may amend these proportions for affordable housing during any ROGO quarter.” This has been gone over with legal to determine what that means. It puts that beginning balance of 360 in the lower category and 350 in the moderate category, and those balances are in the Code adopted by ordinance by the BOCC, and are split fifty-fifty. So the legal conclusion at this point is that the Planning Commission can give the ROGOs out at different proportions where in any ROGO quarter it does not have to be that same fifty-fifty proportion. That can be changed based on what is being presented, but the overall balances cannot be changed because that was adopted by a BOCC ordinance. The option today is to discuss if you have a recommendation to the BOCC for them to adopt an amendment that would change those proportions.

Previously, staff thought the Planning Commission could actually do the change, but after digging in and looking at what that means legally, it’s been determined by legal to be an unlawful delegation of authority. So a recommendation can be made to the BOCC, to swap the current balances or make four twenty-five percent categories such as what is in the Code for the mobile home incentive program. However the Planning Commission wants to do it, staff will help to write something up. Mr. Wolfe stated that today was an example of the flexibility the Commission has on a specific application where varying the allocations was recommended. Ms. Schemper agreed, though the item today was not an actual ROGO allocation hearing. The next one would be in February when they are actually allocated. The affordable housing ROGO reservation process goes straight to the BOCC outside of the ROGO orders so the Planning Commission adjustment of any ratios would not have a bearing on that.

Mr. Williams summarized that in paragraph three, highlighted in yellow on page three of ten, there may be ways to read it broadly to say that the Planning Commission can do everything they want in terms of fixing a certain percentage, but looking further, this gives the Planning Commission flexibility when Ms. Tiffany Stankiewicz gives the quarterly allocations to adjust the rankings. Were the BOCC giving the Planning Commission the broad authority to fix those ratios, one would expect to find some criteria in there for doing so, how to go about doing it and

what to consider, which is not contained under subparagraph (3) of 138-24. Not to say it can't be done in the future, but it is not contained here.

Commissioner Wiatt noted that he remembers something about any affordable project with 25 or more units under Major Conditional Use language having to be approved by the Planning Commission. Ms. Schemper stated that is in the affordable housing chapter. Any affordable housing development of more than twenty units must receive Planning Commission approval.

Commissioner Coward stated that this renders the whole conversation moot. Commissioner Wiatt agreed, adding that the Commission could continue to make recommendations to the BOCC, as was done today, and the BOCC would have the final say in that which is probably as it should be.

### **ADJOURNMENT**

The Monroe County Planning Commission meeting was adjourned at 1:46 p.m.