

DEVELOPMENT REVIEW COMMITTEE

Tuesday, April 27, 2021

MEETING MINUTES

The Monroe County Development Review Committee conducted a virtual meeting on **Tuesday, April 27, 2021**, beginning at 1:00 p.m.

CALL TO ORDER by Emily Schemper

ROLL CALL by Ilze Aguila

DRC MEMBERS PRESENT

Emily Schemper, Senior Director of Planning and Environmental Resources
Mike Roberts, Assistant Director, Environmental Resources
Bradley Stein, Development Review Manager
Devin Tolpin, Senior Planner
Rey Ortiz, Assistant Building Official
Cassy Cane, Deputy Fire Marshal
Justin Stiell, Department of Economic Opportunity
Barbara Powell, Department of Economic Opportunity

STAFF MEMBERS PRESENT

Peter Morris, Assistant County Attorney
Ilze Aguila, Senior Planning Commission Coordinator

APPLICANTS & PUBLIC PRESENT

Jess Goodall
Bart Smith, Esq.

CHANGES TO THE AGENDA

There were no changes to the agenda.

MINUTES FOR APPROVAL

Approval of the meeting minutes for Tuesday, March 23, 2021, by Emily Schemper.

MEETING

1. FLORIGAN GROUP, LLC, CAPTAIN HOOK'S, 29675 OVERSEAS HIGHWAY, BIG PINE KEY, MILE MARKER 29.7: A PUBLIC MEETING CONCERNING A REQUEST FOR AN AMENDMENT TO A MAJOR CONDITIONAL USE PERMIT FOR THE REMOVAL OF THE RESTRICTION OF FUEL SALES TO MARINE VESSELS, THE AMOUNT OF FUEL TO BE STORED AND THE ADDITION OF NONRESIDENTIAL FLOOR AREA TO BE USED FOR RETAIL SALES; TO BECOME EFFECTIVE ONLY UPON AMENDMENT TO THE ASSOCIATED SETTLEMENT AGREEMENT WITH THE FLORIDA DEPARTMENT OF ECONOMIC OPPORTUNITY (DEO), IF DETERMINED BY

DEO TO BE REQUIRED. THE SUBJECT PROPERTY IS DESCRIBED AS A PARCEL OF LAND IN SECTION 27, TOWNSHIP 66 SOUTH, RANGE 29 EAST, BIG PINE KEY, MONROE COUNTY, FLORIDA, HAVING PARCEL ID NUMBER 00111720-000000. (FILE 2019-223)

(1:03 p.m.) Mr. Bradley Stein presented the staff report. This is a request for an amendment to a major conditional use permit in order to sell fuel, expand the fuel tank size restriction from 500 gallons to 5,000 gallons, and to allow the use of approximately 1,737 square feet of permitted retail storage area that was approved under the amendment in 2004 to now be additional retail sales floor area. The previous approval restricted it to 700 square feet of retail sales floor area. The amendment is required because of the original major conditional use approval from 1994 and the settlement agreement both state that those conditions still apply.

The use is a marina with a restricted use to dive boat and fishing charters. The residential vicinity and another marina use is to the south, commercial uses to the east, vacant land to the west, and then to the north is a residential canal with residential development and homes. A major conditional use was originally approved in 1994 and was challenged or appealed by the DCA at that time. The settlement agreement was the option chosen to compromise and the agreement was between DCA, the County and Strike Zone Charters. The conditions of approval from the original conditional use stated that any change would need to be applied for and done through another conditional use, hence this application. For any other development wanting to do a change like this, if it did not trigger a deviation, it would be approved as of right because the floor area was already established and fuel sales was something they already had. But because of the conditions of the original major conditional use and settlement agreement, this request requires an amendment or a new major conditional use. In the settlement agreement and original conditional use, with the original code, 60 parking spaces would have been required. For some reason, that was reduced down to 32, with two of those being ADA spaces. The 1,700 foot expansion of the retail would trigger five parking spaces, so it is suggested that the applicant apply for five additional parking spaces to reach the original 32.

Ms. Schemper asked Mr. Stein to further explain the square footage requested to be used for retail sales within the already permitted building space. Mr. Stein responded that in 2004, application was made for a conditional use to demo a portion of the building, establish any existing floor area to make sure that it was lawful, and then to change and add a new building. The new building was approximately 2,450 square feet, but due to the original agreement, it was limited to only 700 square feet for retail with the additional 1,700 square feet to be used as storage for the marina and dive operations of the company. This request is to take the already-approved lawful non-residential square footage and convert the 1,700 square feet into retail square footage. The request is pursuant to Condition 14 of the original approval which was Exhibit A under the settlement agreement, and states that any changes would require amendment to the development agreement. Commercial retail requires three spaces for every 1,000 square feet, which would equal 5.1 spaces. Considering there was already a reduction applied, staff concluded five spaces should be required for the additional retail floor area.

The 2004 amendment included a loading zone which was 25 by 10, and does not meet the current code. The site can accommodate an 11-by-55 space which would be required for 2,500-

plus square feet, as the site has 3,566 square feet which includes other additional storage area, so one 11-by-55 loading zone should be incorporated into the amendment. Under the non-conforming sections of the landscaping code, it says that the landscaping should be brought into conformity to the extent practicable. It is recommended that under this requested amendment, a new landscaping plan be shown to meet any deficiencies under the current landscaping parking lot. The buffers appear to be in compliance. Due to 130-96 (c)(5)(e) buffers are required in the side yard. Under the original agreement and amendment, there is an easement with the neighboring property to the south which is owned by the state. That easement is still in effect and effectively becomes the side yard. There is a 10-foot buffer remaining today in that side yard and additional plants have been planted to meet the requirements of the original approval.

Ms. Schemper asked Mr. Stein to review the solid waste and recycling. Mr. Stein responded that under the current code, 82 square feet of closed recycling and trash area is required and the site could accommodate that. Staff is requesting the applicant come into compliance with the recycling and solid waste collection area requirements. Pursuant to LDC Section 110-70(b) amendments to a major conditional use are requested prior to being brought before the Planning Commission. Staff requests that the comments and required information as stated in the staff report be addressed. Pending review of what has been submitted staff reserves the right to schedule a second DRC meeting if necessary for further review of the application.

Ms. Emily Schemper, Senior Director of Planning and Environmental Resources added that with a new major conditional use permit, a new community impact statement is required specifying the impacts to public facilities such as water, sewer, etc. In this case, that was not a relevant item in terms of what is being proposed, but Ms. Schemper is requesting that the applicant submit some sort of statement or analysis regarding how the proposed change to open up fuel sales to members of the public, rather than being restricted for use of the charter boats on site, on how this will impact boat traffic and the community character specifically along the canal to aid staff in evaluating the effects of this proposed change.

Ms. Schemper then asked for staff and DRC member comments or questions. There were none. Ms. Schemper asked if the applicant wished to speak. Mr. Bart Smith stated he would continue to work with staff to address all remaining issues, including providing the impact statement. Ms. Schemper then asked for public comment, reminding everyone to state their name and address for the record.

Mr. Ron Cheston, 29560 Constitution Avenue, Big Pine Key, a resident and homeowner on this canal stated that he was unsure if anyone on this committee had even been by to see that this is a 30-foot navigational canal. There is no direct access to this establishment which is at the very end of a dead-end canal. There is no possible way to turn the dive boat around in the canal under its own power. It has to be tied off to turn it around. During the short time they were open for fuel sales they almost had an accident at the end of the canal, and they ran into the seawall of the residents at the end of the canal and smashed the front of their boat, which was not reported to the Coast Guard as required for a commercial vessel. There was a huge oil spill and several fuel spills. This is a canal with almost zero flow. We are not looking to destroy our neighborhood or our canal. There are manatees in this canal all the time and it is illegal to harass manatees with the noise and vessels coming up and down this canal. Grass beds at the end of the canal have, at

this point, 12 prop marks all the way across them from vessels trying to come into this establishment. There is already a fuel dock directly across U.S. 1 that does have the T-dock, the turnaround and the staging area. There has been one boat hit three times during the short time that they were open. People scream and yell at him from the canal. People working at the facility tell customers that the reason they can't pump fuel is because of the residents. People on boats are yelling and shooting birds at the residents who are not the reason they can't pump fuel. On the parking, staff says only five spots need to be added for almost tripling the size for the retail sales. Saturday there were 37 vehicles parked in the parking lot with only 700 square foot of retail. There is a major problem getting out onto the street. This is one of the most dangerous intersections in Big Pine Key. Key deer are getting killed and traffic accidents occur there all the time. The last thing needed is more vehicles coming in and out of this. A six-unit building recently built down the street required a traffic evaluation which stated additional traffic could not come in and they were required to dump out the back of the building and go around to one of the other main streets. There is no reason for this fuel and this is not the place to put a marina.

Ms. Schemper reminded everyone of the three-minute time limit. Mr. Peter Morris, Assistant County Attorney, reminded speakers to identify themselves by their name and address for the record.

Mr. Scott Tafferty (phonetic) of 193 West Cahill, which is directly across U.S. 1 from the dive center, stated he had gotten fuel at that dock and the people were very humbling and gracious for his business and he likes the competition. The Sea Center is very rarely open for fuel and never after 4:00 p.m. He sees boats come up and down the canal and they turn around immediately on Saturday and Sunday afternoons because they are out of fuel. There will be boaters going up and down the canal for the dive center, but those people must be responsible for their own actions and that's what DNR is for. If they are violating laws by tearing up seagrass and hitting manatees, they should be prosecuted. This dive center is a great place where he has been treated very well, and he loves the competition. For the people living on the canal, that dive center was there a lot longer than most of the people who live on the canal and everyone can get along by understanding each other's priorities.

Ms. Sheila McGinty Gillroy of 1021 Eleventh Street in Marathon stated she is an experienced, active boater speaking strongly in favor of this application to dispense fuel and expand their retail space. Captain Hook's is a family-owned business that has very effectively served the Monroe County community, and has now expanded to three locations in Big Pine, Marathon and Key West. This business provides full and part-time employment for many Lower Keys people, all of whom are extremely loyal to Captain Hook's as it is well run, safe, and an exemplary workplace. The ability to dispense fuel is of tremendous importance at the Big Pine location as the area does not presently provide enough capacity to service the boating needs in the community. The boating community in the local neighborhoods bring in fuel by the tanker load which is an unsafe practice and increases truck traffic carrying a hazardous material load through neighborhood streets. Sea Center dispenses fuel but has only a 500-gallon capacity with limited service hours and is closed on Sunday. Captain Hook's for many years has dispensed fuel at its Marathon location. Safety procedures are followed and strictly enforced. The Big Pine staff would also adhere to these procedures. The Big Pine canal is 60 feet wide which is more than enough for the 45-foot dive boats to maneuver in. Recreational vessels would absolutely be

capable of transiting this canal safely, unlike the configuration that exists on the main canal in Key Largo. The Big Pine canal is residential on the north side but the south side is uninhabited so the homeowners impacted are only those on the south side of Constitution Avenue. Captain Hook's has been an engaged community partner in the Middle and Lower Keys for years. They have been partners with Mote Marine Labs, Force Blue, and other marine restoration groups, and are featured this month in the business section of the Key West Citizen newspaper highlighting their Mote-On-The-Boat programs. This is a committed, diligent and safety-conscious business whose very livelihood depends on the cleanliness, health and stability of our marine environment.

Ms. Joyce Newman of 163 Cunningham Lane in Big Pine spoke in opposition of the proposed changes based on fairness, consistency and maintaining the protections of the law. To grant these changes would change community character, compromise public safety and adversely impact the federally listed endangered Key deer. When someone buys a piece of property for their home as fourteen people on the Constitution canal did, they perform due diligence, ask around, and find out what zoning and other laws affect the quiet use and enjoyment of their property. These people knew there was a 1994 settlement agreement, and something else happening in 2004 and 2006, and made investments with their life savings knowing they would have these protections, that the adjacent commercial property was family owned and adhering to all of the rules. The Florigan Group property occupies a unique location sharing a canal with fourteen single-family residences that lacks an adequate turnaround basin at its east end. Inasmuch as they have ingress and egress from Ships Way, that intersection with U.S. 1 on Ships Way is already problematic. Ms. Newman has lived on Big Pine since 1975 and is unaware of any improvements or changes to that canal location during this time. She is also concerned that many of these requested changes have already been implemented without the benefit of permits.

Mr. Greg Watrobka of 29570 Saratoga, an active boater for many years, took advantage of the fueling service when it was briefly open at Captain Hook's. Previous to Hurricane Irma, he used the Dolphin Marina. This location seems like a very viable option. This is a commercial canal at 60 feet wide and a boat can be easily pivoted. He pivots his 27-foot boat with no problem at all. The staff is very courteous and knowledgeable and prepared for any possible incident. (Intermittent internet connectivity.) Mr. Watrobka's concern is that every day he sees residence driving up and down the street with four to six five-gallon gas tanks in the back of their car because they have no place to put fuel, and many put 50-gallon tanks on trailers. These are untrained people transporting fuel in the neighborhood and spilling fuel into the canals while trying to fill their boats. There are many senior citizens who struggle to do that. This location provides a very safe, controlled environment and if there is an incident, they are prepared to handle it immediately. Mr. Watrobka suggested putting a streetlight at the end of the street and strongly requests approval of these changes. Mr. Bradley Stein interjected that Mr. Watrobka could submit his comments by email as a portion of his presentation was very broken up due to internet connectivity.

Mr. Brett Forbes of 2954 Constitution stated that there are 14 residential properties on this canal. These property owners have enjoyed a relaxed Keys community character since the inception of this residential community. The conditions of the settlement agreement were put in place to preserve the way of life for the residents living along this shared canal. Nowhere does it state

that this is a commercial canal. Yes, it is a 60-foot canal, and property owners of both sides share 25 percent of the canal for their use, boats, boat lifts, et cetera, and the 30 feet in the center is for navigation. During the time Captain Hook's sold fuel, the operation intended to control the canal and did so without regard for the neighboring properties or safety. There were numerous boats of all sizes coming down the canal for fuel, some small, but some as long as the 45-foot dive boats excluding engines. Those boats cannot turn under their own power. There is only 30 feet of turnaround space, no boat basin, and it is almost impossible, especially with other boats coming down the canal behind them and no staging areas. During the time fuel was being sold, scuba diving classes were being conducted which is a safety issue. Mr. Forbes is against the fuel sales and the other violations of the settlement agreement.

Ms. Kim (no last name given) of 2798 Constitution stated has lived there for 12 years. The dive shop was there when she moved there and she enjoys the dive shop and hearing the tanks clanking, but does not enjoy the fuel sales. During the period of fuel sales there was a non-stop parade of boats up and down the dead-end canal with no place for boats to turn around or maneuver. She has had to stand on her boat to keep other people from bumping into her boat when maneuvering to get to the fuel dock, all while listening to commentary from the Captain Hook's people that she should not have to put up with. She teaches her kids to respect the environment and that can't be done with all of these boats coming up and down the canal, and it is not safe for anyone to be in the water. She has also seen people drinking on the boats, people that can't operate their boats bump into other peoples' boats, destroying the environment, and this is a safety hazard. The blaring noise from these boats can be heard from her front yard. It's inconsiderate and is not what the settlement agreement states is allowed. She does not mind the dive shop, but is vehemently opposed to the selling of fuel.

Mr. Vinny Marcharano who resides in the third house in from the entrance of the canal explained there is a 45-degree immediate turn required, regardless of boat, to get into the canal. Flats run parallel with three access entryways that are marked channels. If you don't know that those are there and you get to that corner, you realize that you are either going to run aground or hit the boat in front of you. There are prop marks. This is dangerous when you make that corner and realize there's a dive boat heading your way or someone who just got fuel. His boat gets smashed against the seawall. The other boats in the water, not on davits, are also getting smashed against the seawall. A swimming hole on the opposite side will cause additional kayaks, parking, and he has heard there will be wave runner rentals. So on top of the already extra amount of kayaks up and down these canals, there will be more boats, kayaks and parking there as it is advertised as the last spot you can enjoy as you're heading back to Miami. You have 15 to 30 boats on an average every day that have been out and realize they need fuel. They will not stop drinking to do that. They will go to the dive shop and be handed a fuel line and hopefully they won't spill more than the two or three drops as you might do with a five-gallon container. The enjoyment is being sucked out of the canal residents. The one good thing about renting a place down here is you can leave. He has a lot more to say but will stop.

Ms. Marge (no last name given) from West Palm Beach, whose son spent a small fortune to purchase a home on Constitution, expressed great concern for her grandson who did a science project on the manatee where he learned the extra noise stresses them. The manatee feed on the

growth in the water which will not be there due to the boat traffic, all for one man's profit. Ms. Marge hopes the laws and environment will prevail and this change will not be allowed.

Mr. Shannon Steele of 237 LaFitte on Little Torch Key spoke in favor of the proposal. With the loss of Dolphin Marina due to Hurricane Irma, that leaves only the Sea Center for fueling. This proposal won't change anything with regard to the environment if the same number of boaters who are now going to Sea Center, go here. This reduces the traffic on a much longer canal system with many more homes on both sides where the manatees do not seem to be affected. This should not be looked at as one entity's profit, rather as a benefit to the entire community. Mr. Steele empathizes with the people on Constitution, but there's a wide neighborhood of boaters in the area and everyone needs a place to get fuel. Carrying fuel in five-gallon containers especially for a larger boat is not a good solution. This should be analyzed in terms of the overall benefit to the community as opposed to someone's profit. Mr. Steele does not believe it will affect the manatee population. He does not know how someone can make the statement that drunken people will come into the canal. The bottom line is another fuel facility is needed there and he is in favor of allowing the use.

Ms. Hareen Gershman of 79 Freedom Lane on Big Pine Key spoke in opposition to any change in the MCU permit and the settlement agreement previously issued on this property. The intersection of U.S. 1 and Ships Way has been deemed by the USFWS as a hot spot for Key deer road kill. Adding additional redevelopment to this area would increase the road kill. There has not been a traffic study done in this area since 2004. This cannot be granted without a true and complete traffic study. The one page in the County file from KBP Consulting dated 10/21/19 is not a traffic study. This property abuts federal land and a residential neighborhood in Pine Channel Estates. The canal is thriving with marine life. Additional boats and any fuel spill would have a major impact on marine life. There was already an oil spill from one of Captain Hook's boats that took a toll on the canal and cost to clean it up. Captain Hook has not complied with issues per the Special Magistrate's Final Order, which they have requested extensions three times and which will expire May 31, 2021. Captain Hook's has no regard for the neighborhood and neighbors residing across the canal. These homeowners bought homes on a canal where they could enjoy boating, fishing and swimming. Allowing this request will destroy their pleasures. The retail sales space has been increased by converting permitted storage area to non-permitted retail space. Exterior storage has been added. Additional parking is being done on state-owned land. Employees of Captain Hook's have been feeding the Key deer and posting same on their Facebook page, which they may have deleted at this time, but Ms. Gershman has a copy on her phone. When their customers see that they feed the deer, they will do the same thing. We cannot feed the deer, period. There was a reason for the original settlement agreement, the biggest being that this canal does not warrant additional boat traffic being a dead end and 50 feet wide. Captain Hook's cannot turn their boats around under their own power and must use ropes to turn them around. When they were selling the fuel to the public for about five weeks, there were backups of boats, boaters holding onto neighbor's boats until they could get fuel, damaging the boats moored in the canal. To add selling fuel is a total disaster and not needed on this property, along with the other items in the settlement agreement. This is a dive boat operation, not a marina. Ms. Gershman asks the County to deny any updates to the Major CUP and settlement agreement for this business.

Ms. Suzanne Forbes of 29450 Constitution Avenue addressed safety issues. She has witnessed Captain Hook's boat hitting her property. The kids had been in the water and when they saw the dive boat coming they made the kids get out of the water. The boat hit the rocks and had her boat been on the lift, it would also have been hit. This was an accident and she does not believe they meant to do it, but the more boat traffic coming into the canal, the more likely there will be accidents. When Captain Hook's goes in and out of the canal, they have lookouts to indicate when it's safe to turn in or out, but she has yet to see a recreational boater do the same. During the time they were selling fuel there was boats, loud music, dogs barking, and no peaceful enjoyment of their property. The addition of retail sales will affect car traffic and boat traffic. Sea Center is not the only other place to get fuel. There are two other marinas on the island, No Name and Fish Camp. At Sea Center, yes, you come down a canal, but there is a large "T" to turn a boat around in. This canal may be 60 feet wide but each property owner is allowed 15 feet, so there is only 30 navigational feet. There are dive classes held in the canal and there are issues with that as you cannot be 100 feet away from divers in a 60-foot-wide canal. Florigan bought the property knowing about the restrictions. She purchased her home knowing that the dive boat would be going out twice a day. There is no way to limit the size and number of boats if this is allowed and it will impact the value of her home. This is a shared canal. The man from LaFitte empathizes with the residents on the canal because he recognizes this will have a negative impact on the residents, yet promotes it. The intent of the Land Development Code is not to disenfranchise the members of the community in the immediate vicinity on the canal.

Mr. Les Gorsky of 29642 Constitution Avenue is almost directly across the canal from Captain Hook's and completely opposes this. As a father and grandfather, his kids like to swim in the canal. There is environmental risk here. He heard some people had a problem with older guys spilling fuel from a five-gallon can. So it is no good to spill fuel in the other canals, but here on this canal there is no problem spilling fuel. He has pictures of spills. We all go from meeting to meeting, but there was never a meeting held before Captain Hook's put the gas tank in. No one was ever told. It's easy for guys from a different area to promote Captain Hook's because they don't live here and haven't seen what was happening during the five to six weeks they were selling fuel. This was total disrespect to the community, and these canal residents are part of the community too.

Ms. J. Hugo of 29446 Saratoga Avenue, speaking for herself and her partner, is in support of Captain Hook's being able to sell fuel. After Hurricane Irma, there are few choices to purchase fuel especially with Dolphin Marina being destroyed and not replaced. She has seen numerous people in the neighborhood utilizing makeshift gas tanks to fuel their boats which will lead to extensive spills including one observed several weeks ago where her entire canal was covered in fuel and she could not walk outside without having trouble breathing. Lugging large gas tanks to boats at each person's property is a less-safe option than having a professional dive shop that regularly fuels their boats monitor the sale of fuel in a cost-effective and controlled manner. Having lived here 15 years, she has never observed a large number of boats using any on-water fuel locations outside of the local population. She has observed bad boating behavior by the monthly renters in the neighborhood. There are 14 rental units, two on the canal in question, along with multiple duplexes on the canal that are rented, mostly flipped monthly. That's 14 new boats each month. If the concern is around boaters coming into the canals that do not know the area then monthly renters should not be allowed. Ms. Hugo proposes proper signage in the

canals rather than denying Captain Hook's the ability to offer a valuable service to the community. There is a need for a marina other than Sea Center which charges extremely high prices for gas and has limited hours. This canal is 30 percent larger than other canals in this neighborhood with houses on only one side of the canal. Captain Hook's and Strike Zone before has been in place and operated as a business here for approximately 30 years. There is a middle ground here and rules can be put in place to make this safe and beneficial for all in the area.

Ms. Allison Delashmit spoke on behalf of Mote Marine Laboratory in support of Captain Hook's as an ecosystem champion. They are a blue-star operator and leader in responsible tourism and ocean stewardship. She has worked with them and they have supported the efforts to restore the reef. She has consistently only witnessed positive behavior on their end.

Mr. Joe Lloyd of 96678 Constitution Avenue stated he is a big fan of the dive shop but is against public fuel sales. He purchased his home with the confidence that there would not be a fuel dock operating in this canal after doing his due diligence. In the short time they did sell fuel, there were many boats at a time trying to get fuel in this small canal. There is no room for the boats to park and wait to get fuel when the dive boats are parked there. The boats have to swirl around and around waiting, or grab onto other peoples' boats while they wait. He has been yelled at, cursed at, and shot the bird because he dared to watch the circus that was going on from his own private seawall. All of this happened when there were very few people who knew about the fuel sales. He can only imagine what would happen if this was common knowledge or during events like lobster mini season. When the large boats are trying to turn around in the canal, it's obvious to see the prop wash just blast the seawall from the canal. What used to be rich in growth prior to the fuel sales along his canal wall was almost wiped completely clean with boats coming in close proximity to the seawall. Mr. Lloyd is very much against fuel sales in this canal.

Ms. Judy Collins of 29431 Constitution Avenue is opposed to this proposal. She and her husband purchased their home twenty years ago in October of 2001, after searching for several years. They had researched the business to be sure that it wasn't going to be a problem for them and they were told there were only two dive boats allowed per day, so four times a day there would be big dive boats going by. She has lived with that for years, it wasn't a problem, and they were good neighbors. Other than the dive boats, the canal is very quiet and peaceful where children can swim off the dock and enjoy the nature. Boat traffic has only been the neighbors going in and out occasionally, obeying the no-wake sign and waving. Two years ago for a short period of time, Captain Hook's bought Strike Zone, added a 5,000 gallon fuel tank without anybody knowing and began selling fuel from their dock. Suddenly, the canal became very, very busy. Boats are in and out, sometimes way too fast, not paying attention to the no-wake zone. There was a serious oil spill in front of Captain Hook's and the company was not prepared to handle it. In the short time of the fuel sales, the peaceful life around her home was seriously disturbed and it was no longer safe for her grandsons to fish and play out front. Ms. Collins asks that Captain Hook's remain the good neighbor they agreed to when she purchased her home and not add all the things they are proposing that can damage the environment and destroy the quiet community of this neighborhood. She fears the line of boats in front of the house, especially during mini season and other times, theft from strangers roaming up and down the canal, and loss of property value. Ms. Collins asks this proposal be denied and the dangerous 5,000-gallon fuel tank be removed so as to not threaten the neighborhood in the future.

Ms. Nicole Cline of 28571 Maricabo Road across the bridge from Captain Hook's, stated that this is a family-owned and operated business that dispenses fuel at their Marathon location so they have experience with doing so. They do a very good job in Marathon from a safety perspective. Vaca Cut at that particular location is not the easiest place to navigate in and out of as well so there is not a tremendous difference. There probably should be signage and navigational help in the area to help address some of the concerns. Captain Hook's has tons of signatures in support collected from the community expressing the overwhelming need since there is definitely restricted fuel capacity at Sea Center accompanied with limited hours. Some of the other fuel locations are not easily accessible. The closure of Dolphin Marina has severely restricted the residents in this area. This family has made significant monetary investment to support the surrounding community and will continue to do so with fuel sales in an environmentally-conscious manner. This has been demonstrated by their continuous support of the community, the reef systems, reef restoration and care programs. Previously mentioned was Force Blue and administering the antibiotics to the Lower Keys reef system for the stony coral disease. They have the Mote-On-The-Boat program and are very active in taking care of the community. Their very livelihood depends on the health and safety of the reefs and canal systems. Ms. Cline is in full support of this amendment.

Mr. Collin Forbes is not in favor of Captain Hook's selling fuel. He kayaks down this canal and seeing the amount of traffic that Dolphin Marina had on Little Torch would make this canal completely unnavigable and unusable. Not every boater will play bumper boats but you only need a couple of boats to do considerable damage. He has seen countless boats run around on the flats in front of this canal and this number will only increase. There is an existing marina within viewing distance of Captain Hook's on the opposite side of U.S. 1. Another water-access gas station is not needed with one so close by. People bought property with existing conditions in mind and knowing how the traffic of the boats would affect their quality of life. Mr. Collin strongly opposes this as it will be detrimental to life, both human and animal.

Dr. Matt Welder of 505 Wood Forest Trail stated that he is a retired Army colonel, and it's been interesting listening to the sensational descriptions and emotional opinions in terms of the family-run business at Big Pine, Marathon and Key West. Dr. Welder has worked with this family while on active duty and developed the first dive medicine program, water rescue program for military medical providers in existence. This group has wholeheartedly supported the military. He has witnessed the boats safely go in and out, turning under their own power, hundreds of times. The measures that Florigan Marine and Captain Hook's have taken for rescue in the community include teaching commercial fishermen and other dive operations safety measures, use of tourniquets, medical interventions, they do quarterly training with their own staff for safety and rescue, and maintain QAQI projects within the business. As a combat veteran, listening to some of the homeowners describe the character of the family that owns this business is a little disheartening, knowing what they've done for the community and what they say on their boats to ensure the safety of the waters, the marine life and the coral. What could happen, can be described all day long. This is a family that bought a business in a commercial location. Dr. Welder assumes the 5,000-gallon tank didn't appear overnight and had to go through a process to get a permit to place it there. Dr. Welder asks that for the service Captain Hook's does for the community, local, state and federal, that this family be allowed to continue with their business. Dr. Welder is in strong support of allowing fuel at the location, use of their

locations to provide federal service, and increase the retail space for the military members that come down and enjoy the Captain Hook's location. He believes you won't find a more safety-conscious family than the family that owns this business.

Mr. Bill Gillroy of 1021 11th Street Ocean in Marathon stated that he frequents both the Big Pine and Marathon stores. He has observed the fueling in Marathon which is conducted in a safe manner and those observations stand on their own merit and he would not envision a different experience for a proposed fueling operation on Big Pine. However unlikely, the risk of fuel spilling and a fire exists at all fuel docks in the Keys, but the physical installation, the materials of construction, inspection and fuel handling procedures must meet all technical and regulatory requirements which become more stringent as time goes by. If a compliant operator is insured and responsible, and fueling personnel are properly trained, then safety is served. Captain Hook's has shown itself to be a responsible operator while notably providing much needed full and part-time employment. Serving the Keys community and garnering 5,600 Facebook likes and 6,000 followers is impressive. Captain Hook's is a quintessential successful Keys business and he sees no reason to deny the amendment. Approval will serve the greater good.

Mr. Jeff Wright of 4158 Dorn Road, Big Torch Key, was born and reared in the Florida Keys and is for selling fuel at Captain Hook's, for better hours, seven days a week access, and competitive prices. Mr. Wright has been through this canal many times. There is plenty of room to turn around. Everywhere else that sells fuel close to the area is a dead-end canal, every single one of them. It's easy to turn around. Just because these guys can't, doesn't mean anyone else can't. Sixty foot should be plenty of room.

Mr. Walt Collins of 29431 Constitution Avenue is opposed because this is not a safe application. The canal that feeds the 60-foot canal is maybe 40 feet wide. The turn to come in is right in front of his house and he actually thought about filming bloopers because people sometimes can't even make that turn in a boat. The dive shop does it but it takes every bit of their effort to make that corner. It's also hard for two boats to pass each other at times. Mr. Collins is opposed to this for safety reasons and the County should look at this for liability reasons.

Ms. Valeria Reyes Ponce, an employee of Captain Hook's for over four years, is in full support of the sale of fuel at Captain Hook's. Her address is 27963 Dixie Avenue. Ms. Ponce is proud to work for this family because they fully commit to compromising any situation. That being said, the crew and the family in Captain Hook's fully commit to take responsibility to go on following on the sale of this fuel and anything that would happen in any oil spill because it had happened in the past, but she has seen them actively working on it and cleaning the canals. She personally has free dove this canal to pick out trash from it. She does this anywhere she goes. This brings jobs, feeds her family and puts bread on her table. Ms. Ponce is in full support of Captain Hook's selling the fuel.

Mr. Max (no last name given) of 708 Emma Street in Key West is in support of Captain Hook's putting in a fuel dock because the community support Captain Hook's offers is second to none. The Constitution Avenue employees complaining are the same people who have asked Captain Hook's to help tie up their boats during stores, and benefitted from the cleanup of the canal after Hurricane Irma. Captain Hook's is trying to provide yet another valuable service to the

community. They are the best suited, the safest, and the emergency action plan they have in place is second to none.

Mr. Brian (no last name given) is a full-time resident in the neighborhood and fully supports Captain Hook's. During the small amount of time they were open selling fuel he was able to come over and use their services twice. Both times he did not see a lot of people or the chaos people are describing, though he does not live on that particular street. The staff was very responsible, professional, and made sure they did not spill any fuel. It was a great service.

Mr. Ron Cheston of Constitution Avenue, (2nd time speaking was asked to keep it very short) stated he wanted to make sure it is known that there are six fuel stations within five miles of Captain Hook's, four on the water and two on land. There are plenty of places to get fuel.

Mr. Kevin Calhoun of 29544 Constitution Avenue opposes the fuel sales, and is not saying anything about the owners' character, as they seem to be fairly nice people coming up and down the canal. As far as the dive shop goes, he appreciates what they do. He recently purchased his house, is also a Navy veteran, has lived here for three years, and has sunk his whole life into fixing his place up. All of that will be cast aside by the increased traffic in the canal. He agrees with almost all of the homeowners that actually live on Constitution Avenue.

Mr. Jamel Weatherspoon spoke in support of Captain Hook's. Safe boating is required on all waterways. None of these boats [sic] have designated waiting areas. Boats pass in much narrower canals up and down the Keys without incident. Maybe having Captain Hook's pay for and maintain signage or limiting boat size to less than 32 feet in length would be an option. Mr. Weatherspoon is not sure how a 45-foot boat can get over on this side coming underneath the bridge so some of the sizes of the boats may be overstated. Mr. Weatherspoon has only seen them being very professional and is in support.

Ms. Barbara Jean of 29624 Constitution Avenue is concerned with the boats that would come to fuel up at the gas pumps. According to Boat US, the majority of fires begin in engine cavities where the gas and ignition join together. Captain Hook's and the residents that live in Pine Channel Estates, especially on Constitution Avenue, would have to process every boat that comes in the fuel docks to be properly maintained. For example, the boat engine cavity where gas and ignition combine, and another area is boat ventilation. According to boatexam.com, it's a fact that gas is heavier than air. Captain Hook's and all of us would have to put faith into every boat owner's conscientious effort to maintain their boat's engine and all the components that could easily start a fire with one spark. Do all boaters, especially innocent tourists, know what to do should a fire occur? Would they remain calm? Ms. Jean would say no. So if a fire should occur, her concern is not with Captain Hook's expertise but in the boat owners themselves. That leads to the question is there enough space to get out fast at the dead end of the Constitution canal should the panic from a boat fire occur. There would be boats lined up for fuel coming and going, and also resident boats parked in the canal in front of their homes. A panic like that and the congestion it would cause would easily result in death, injury and damage to residents' property and boats in the canal.

Mr. Ralph Brooks, Esquire, who is board certified in city, county and local government law, has served as a Deputy County Attorney for Sarasota County, is currently City Attorney for the City of Naples, was City Attorney for Saint Pete Beach, Medeira Beach, and the small town of Yankee Town in Levy County, and was formerly the land use litigation attorney for Monroe County. Mr. Brooks is speaking on behalf of the resident property owners along the canal where the sale of fuel is being proposed. Under the DCA settlement agreement, which was a recorded agreement, on page two it notes that fuel storage of less than 500 gallons and accessory structures all serving a maximum of four dive fishing charter boats was a limitation of this conditional use at the time. Rebecca Jetton from the DCA was involved in the DCA ORC report as well as the filing of the petition challenging Monroe County's original approval. One of the concerns was trying to have conditions that would ensure compatibility with the surrounding residential canal, whether or not this facility would have adverse impacts on the surrounding land uses, and whether they met the state definition of compatibility. Compatibility as defined by the state can be summarized as two uses that can coexist in perpetuity over time without one use unduly impacting the other use. While the residential property uses for single-family homes on the canal don't adversely affect, at that time, Strike Zone Charters and now Captain Hook's, the expansion of fuel storage of less than 500 gallons to retail fuel sales would make this a destination fueling marina for recreational boaters and change the uses of the canal such that it would unduly and negatively impact the surrounding residential single-family homes. Mr. Brooks asks that Barbara Powell, who is still on this DRC meeting, uphold the settlement agreement and not amend the settlement agreement that is recorded in the property records of Monroe County at Book 1424 and begins on page 934, and notes on page 935, page two of the settlement agreement, that fuel storage would be limited to 500 gallons. Expanding that tenfold for fuel sales drastically increases the incompatibility of this use and should be controlled. We'd ask Monroe County to uphold Condition 14 of the original conditional use and not allow retail fuel sales. The retail aspect of the fuel sales is even more troubling than the size of the tank. Mr. Brooks also pointed out that the residents' testimony heard today can be considered competent substantial evidence if it's a fact-based observation regarding compatibility and regarding the suitability of the canal for retail fuel sales and how boats coming in and out all day long to obtain fuel for their recreational vessels would adversely impact their single-family use of the canal. And as you've heard, many of the residents have children and kayak, and we would ask that you deny that aspect of the conditional use. Mr. Brooks also pointed out that the reason we're here began as a Code Enforcement case. Rather than bringing the property into compliance, we've allowed them to apply for a conditional use, but we certainly do not have to approve that conditional use. We are not compelled to approve it and if you have a legitimate public purpose for maintaining the settlement agreement, we hope that DEO now standing in the shoes of the old DCA will uphold that settlement agreement and ensure the compatibility, and that you would recommend the denial of this to the Planning Commission and the County Commissioners. Thank you.

Mr. Peter Morris, Assistant County Attorney, interjected that another reason this meeting is occurring is not because of a Code Enforcement case, it's a result of a development application. There may be reasons that settlement agreement was entered into between DCA and the predecessor in title, but the reason this meeting is occurring is by virtue of an application. Beyond that, the reference to competent substantial evidence, just to make clear to everyone attending, this is not a quasi-judicial hearing. There is no approval or denial of conditions of any

application. This is simply a scoping session to sound out comments from the community and the applicant.

Ms. Carole Sutton, who has lived on Constitution for over 20 years, stated that this has always been a peaceful family and pet oriented canal which is threatened by Captain Hook's selling fuel. The amount of boats that came in through here during that time was just appalling and noisy. She is definitely opposed.

Ms. Schemper reminded any public speaker that could not get through could submit their comments by email, and posted the appropriate email addresses. Public comment was then closed.

Ms. Barbara Powell, Department of Economic Review, stated that she had been present at the site during the time public fuel sales were occurring, and in the middle of the week, in the middle of the day, there were three boats that came in, one being rather large that had a difficult time turning around, and residential boat owners had their boats docked. There certainly needs to be some limits because it is close quarters despite the 60-foot canal. One large boat that came in came right across the area of seagrass and you could see the silt stirred up as it came through. There are concerns about the traffic in the canal itself, but the original concern that prompted a settlement agreement and appeal of the conditional use from DCA was the vehicle traffic on the road and how that would affect the Key deer. Ms. Powell asked if there had been any comments from Fish and Wildlife in conjunction with the trip analysis that this would generate, and whether there was any way of knowing how many boats would actually be coming in and out of the canal if fuel service is approved and advertised. This was a very small window of limited knowledge and it seemed there were quite a few boats coming in to get fuel.

Ms. Schemper responded that this is why she had asked for a statement from the applicant with analysis in terms of what this is going to do to boat traffic so that topic can be discussed further once something is submitted. In terms of the impact to the Key deer, the proposal doesn't actually trigger any additional review. They have existing non-residential floor area that is officially approved as commercial retail space, but the conditions of the previous conditional use permit got more specific than the actual Land Development Code. Normally, a storage portion for retail space can be shifted within between sales floor and storage use. Ms. Powell added that the previous floor space had limited use, and there was also a limit on number of boats going out, boats under their control, and a limited number of trips. This is almost a change of use as well as the other conditions changing. Ms. Schemper agreed this is a unique situation because the settlement agreement was more specific than the normal development code regulations. Mr. Michael Roberts added that there was nothing under the proposal to trigger any evaluation under the HCP by Fish and Wildlife. Not speaking to the Land Development Code nor the Comp Plan, but under the HCP the proposed activity was not an expansion of use and there wasn't a change of use. That being said, Fish and Wildlife could be requested to provide technical assistance under the Endangered Species Act if it is deemed necessary.

There being no further questions or comments, Ms. Schemper stated staff would get back with the applicant on this and proceed to Planning Commission after getting more information, unless it is deemed necessary to come back to DRC again.

2. AN ORDINANCE BY THE MONROE COUNTY BOARD OF COUNTY COMMISSIONERS AMENDING THE MONROE COUNTY LAND USE DISTRICT (ZONING) MAP FROM MIXED USE (MU) TO DESTINATION RESORT (DR), FOR PROPERTY LOCATED AT 6000 PENINSULAR AVE., STOCK ISLAND, MILE MARKER 5, MONROE COUNTY, FLORIDA, HAVING PARCEL ID NO. 00127480-000000, AS PROPOSED BY SMITH / HAWKS, PL ON BEHALF OF SH MARINAS 6000, 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 2020-037)

Ms. Devin Tolpin, Senior Planner, presented the staff report. This is an ordinance by the BOCC to amend the Land Use District Map from Mixed Use to Destination Resort on the property located at 6000 Peninsula Ave on Stock Island. This application was submitted by Attorney Bart Smith on behalf of SH Marina 6000, LLC. The subject property is roughly 13.14 acres, is located within the Mixed Use Commercial FLUM, is designated as Tier III, and the community character in the immediate vicinity is a mixture of land uses including marina, commercial, retail, office, light industrial and residential. The applicant is proposing to amend the zoning district from Mixed Use to Destination Resort. For reference, the purpose of the Mixed Use district is to establish or conserve areas of mixed uses including commercial fishing, resorts, residential, institutional and commercial uses, and preserve these as areas representative of the character, economy and cultural history of the Florida Keys. The purpose of the proposed zoning district Destination Resort is to establish areas that are suitable for the development of planned tourist centers providing on-site residential, recreational, commercial and entertainment facilities of the magnitude sufficient to attract visitors and tourists for tenancies of three or more days. Destination Resorts are contemplated to contain single-family homes as of right or one or more hotels as the principal use. It should be noted that this property is located within the Military Installation Area of Impact Boundary where residential uses are allowed within this boundary though it is discouraged. Measures to achieve outdoor to indoor noise level reduction should be incorporated into individual approvals. Both the MC FLUM designation and the current Mixed Use zoning currently allow for residential uses as does the proposed zoning district. The Comp Plan allows for properties located within this overlay to be recognized and allowed to develop to their maximum development potential.

Throughout the application the applicant states that the reason for the proposed amendment is to allow for the applicant to achieve the highest possible use of the property. That's included in the utilization of 80 market rate ROGOs eligible for transfer from Wrecker's Cay and 24 market rate ROGOs eligible to transfer from Banyan Grove, while maintaining the current marina dry rack use and wet slips. There are two concurrent applications with this property, one being a development agreement between Stock Island Harbor Marinas and Monroe County, and another being an amendment to a development agreement between Banyan Grove and Monroe County, both of which will be heard following this application. This application has been heard at the DRC before, the first time being on August 5, 2020. At that point, it was determined that this

application should be put on hold and heard with the rest of the previously-mentioned development proposals for the property.

Two community meetings have been held on this proposed amendment. The full list of concerns are in the staff report which include reasons related to density, potential impacts within the Military Installation Area of Impact, concern about traffic, increase of density or rooms over time, and local use of the property and access to water. The list of permitted and conditional uses within both MU and the proposed DR are included as an attachment to this staff report. An analysis of the maximum allocated density and intensity by land use district is included for both the existing and proposed zoning. The proposed zoning amendment would not result in a change to the residential allocated density, the TDR market rate max net density, the affordable residential max net density or the transient allocated density. However, the proposed change would result in a net change of potentially an increase of 52 transient max net spaces or rooms as well as a decrease of 85,569 square feet of potential non-residential commercial floor area.

The proposed zoning amendment is not anticipated to adversely impact the community character of the surrounding area and is consistent with the Mixed Use Commercial FLUM designation of the property and the surrounding area. A traffic impact study was submitted with the concurrent development agreement between Stock Island Harbor Yacht Club and Monroe County which was reviewed for traffic circulation as a part of the concurrency analysis of this application. As of April 15, 2021, according to the County's database of remaining capacity by segment, the number of trips remaining on Segment 1 is only 14. Any trips beyond 14 will reduce the level of service to below C and will require mitigation. The submitted traffic impact statement for the development as proposed through the associated development agreements that are not actually proposed through this zoning map amendment includes the transfer of up to 131 market rate units that will be used as vacation rentals. The submitted traffic impact statement only addressed the potential trips generated of vacation rental units evaluating them as if they were resort hotels, which if that is the way the development remains in perpetuity, that appears to be accurate, but it seemed necessary to also review the proposed traffic as if vacation rental uses are not occurring and the dwelling units end up being used as permitted, permanent market rate dwelling units. If that is the case, 134 market rate units on the property could result in potentially an increase of 737 additional trips on the property.

At time of development approval, mitigation or sufficient evidence acceptable to Monroe County that the potential trip generation does not exceed a Level of Service C must be provided prior to issuance of a building permit for development. The proposed amendment is consistent with the goals, objectives and policies of the Comp Plan and the Stock Island Livable CommuniKeys Plan as well as the Land Development Code. Staff recommends approval of the proposed zoning amendment based on consistency with the MC FLUM, and it is subject to demonstration of traffic concurrency at time of development approval and the requirement for a final concurrency determination in accordance with the Comp Plan.

Ms. Schemper asked for questions or comments from staff or DRC members. There were none. Ms. Schemper asked if the applicant or their representatives wished to speak. Mr. Jess Goodall stated he had no comments and looked forward to working with staff as they moved forward with this item. Ms. Karen Taporco, Community Planning and Liaison Officer at Naval Air

Station Key West, pointed out that the U.S. Department of Defense initiated the AICUZ program to assist governments and communities in identifying and planning for compatible land use and development near military installations. The goal is to protect the health, safety and welfare of the public while also protecting the operational capabilities of the military. The study evaluates historical and projected accident potential zones and noise contours to make up the AICUZ footprint. This property is located within the AICUZ footprint and falls within the 70 to 74 DNL noise contours. Residential development is not a compatible land use within these contours and it's strongly discouraged. If the County determines that residential uses must be allowed on this property, the Navy recognizes and appreciates the items in the development agreement intended to mitigate potential concerns such as measures to achieve outdoor to indoor noise level reduction of at least 30 decibels, noise disclosures as part of the leasing process, and signage addressing unmanned aerial systems or drone activity on site.

Ms. Schemper then asked for public comment. There was none. Public comment was closed.

3. SH MARINAS 6000, LLC., 6000 PENINSULAR AVENUE, STOCK ISLAND, FL 33040 MILE MARKER 5 OCEAN SIDE: A PUBLIC MEETING CONCERNING A REQUEST FOR A DEVELOPMENT AGREEMENT BETWEEN MONROE COUNTY, FLORIDA AND SH MARINAS 6000, LLC. AS IT RELATES TO THE REDEVELOPMENT OF A MARINA WITH ONE HUNDRED AND THIRTY-ONE (131) MARKET-RATE DWELLING UNITS, UP TO SIXTY-SIX (66) TRANSIENT HOTEL DWELLING UNITS AND ACCESSORY STRUCTURES/USES THERETO, ON THE PROPERTY. NO STRUCTURES WILL BE HIGHER THAN 40 FEET PURSUANT TO SECTION 131-2(B) OF THE MONROE COUNTY LAND DEVELOPMENT CODE. THE SUBJECT PROPERTY IS DESCRIBED AS A PARCEL OF LAND IN SECTION 36, TOWNSHIP 67 SOUTH, RANGE 25 EAST, STOCK ISLAND, MONROE COUNTY, FLORIDA, HAVING PARCEL ID NUMBER 00127480-000000. (FILE 2020-047)

Mr. Bradley Stein, Planning and Development Review Manager, presented the staff report. This is a corresponding item with the LUD amendment. The applicant is requesting the density of 131 attached residential dwelling units to be used as vacation rentals, and up to 66 transient hotel dwelling units. Everything previously covered by Ms. Tolpin is the same regarding traffic and AICUZ. There are already some provisions being associated with the development agreement that address that. This development agreement would not become effective until the LUD amendment became effective, so they will be sister items going forward. The current existing non-residential floor area and proposed density, if it were to max out with this development agreement, would be slightly over at 102 percent. That can be adjusted through a proposed development when the major conditional use comes in to show that it's in compliance, either by a reduction in residential floor area or a reduction in units to show compatibility. Some other issues are the amount of TDRs required that would be beyond any additional allocated density that would be permitted on this site. There has been some discussion with the applicant in that there is another potential request to have existing density on the site which is already allocated as a max net. Staff does not necessarily agree that a portion of the previously-associated live-aboard density would count as upland units. Another issue would be the need for a conceptual site plan to go along with this development agreement to show what a site would look like for the associated agreement.

Staff does not currently recommend approval of the proposed development agreement and requests revisions to address the cumulative density and intensity not exceeding 100 percent, and that the TDRs are required beyond the allocated density, that the use of live-aboard units would not be previously approved density, and the need to present a conceptual site plan.

Ms. Schemper asked for any questions or comments from staff or DRC members. Ms. Karen Taporco asked that her comments on the previous agenda item be incorporated into this item. Ms. Schemper asked if the applicant wished to speak. Mr. Jess Goodall stated that a revised development agreement will be forthcoming reducing the number of market rate and transient units on the property, and thanked staff for working with him. Ms. Schemper asked if the cumulative density would be reduced to 100 percent, and Mr. Goodall indicated that it would be reduced beyond that. Ms. Schemper then asked for public comment.

Ms. Dottie Moses stated that she is surprised. The County has always had a policy that they do not allow ROGOs to be used for transients in order to provide residential workforce housing and residential use of ROGOs. This whole plan looks like that's exactly what is going on, that residential units are being moved to a destination resort to make vacation rentals out of them, which in essence turns them into transient units and further compromises the ability to provide residential housing for the workforce. Ms. Moses does not understand why this would be allowed. They are residential units in the end, even though they will be used for transient, and will be in violation of the residential development which is not compatible with AICUZ. This does not seem to be compatible with the policies.

There was no further public comment. Public comment was closed. Ms. Schemper noted that this may come back to DRC prior to Planning Commission depending on the extent of the changes. But this will go before the Planning Commission, and a development agreement ultimately goes to a public hearing before the BOCC, so there will be at least two more public hearings on this item.

4. BANYAN GROVE RESIDENCES, LTD., 5455 MACDONALD AVENUE, STOCK ISLAND, FL 33040 MILE MARKER 5 OCEAN SIDE: A PUBLIC MEETING CONCERNING A REQUEST FOR AN AMENDMENT TO A DEVELOPMENT AGREEMENT BETWEEN MONROE COUNTY, FLORIDA AND BANYAN GROVE RESIDENCES, LTD. AS IT RELATES TO A TIME EXTENSION OF THE AGREEMENT AND TO CLARIFY THE TRANSFER OF MARKET-RATE DWELLING UNITS, AS WAS PREVIOUSLY ALLOWED UNDER LAND DEVELOPMENT REGULATIONS AT THE TIME OF THE ORIGINAL AGREEMENT. THE HEIGHT OF THE STRUCTURES IS NOT AMENDED WITH THIS REQUEST. THE SUBJECT PROPERTY IS DESCRIBED AS LOTS 5 THRU 16, AND A PORTION OF LOTS 4 AND 17, SQUARE 29, AS SHOWN ON THE PLAT OF "STOCK ISLAND MALONEY SUBDIVISION" AS RECORDED IN PLAT BOOK 1 AT PAGE 55, OF THE PUBLIC RECORDS OF MONROE COUNTY FLORIDA, HAVING PARCEL ID NUMBER 00124140-000000. (FILE 2021-027)

Mr. Bradley Stein, Planning and Development Review Manager, presented the staff report. This is another corresponding item except that this is an existing development agreement that was

already in place. The previous agreement allowed for a one-to-one transfer of the units to IS lots. This request is for the existing development agreement to get the ten-year time extension and allow for the transfer of the market rate ROGO exemptions at a one-for-two basis to properties other than approved subdivision. This means that fifty percent could be transferred to sites other than single-family lots in not approved subdivision districts. This code language is being requested to be added to the development agreement which was previously permitted under the previous code, Section 131-161.1. At the time of the approval and effectiveness of this development agreement, that was the code that was in place. The agreement was originally approved by the BOCC on January 19, 2011, and became effective on March 16, 2011.

Under executive order there is a time extension that has been requested for this development agreement. Due to the tolling period the development agreement isn't scheduled to expire until late 2022. Staff does recommend approval for the ten-year extension to the development agreement, but does not recommend the approval of the proposed change to allow the transfer of the TREs to multi-family projects. This is based on the inconsistency with the current Comp Plan and Land Development Code, recent policy direction by the BOCC, and the limited number of ROGO allocations remaining compared to the number of vacant privately-owned parcels within Monroe County.

Ms. Emily Schemper elaborated further on this item, stating that the proposal here is what was in the previous development agreement to transfer 48 market rate permanent residential ROGO's to individual single-family lots in the Lower Keys. Under the code at the time of that development agreement there was also an option to transfer market rate ROGO exemptions to multi-family projects. It required a two-for-one replacement of those ROGOs with affordable housing. So, in this case, 48 affordable units were built. Under that code at the time they would have been allowed to transfer 24 market rate ROGOs to a multi-family project. Since the time of that development agreement, the code has been updated to not allow that anymore as an option. The ordinance that changed the code was adopted in January of 2020. It amended the code to only allow TREs to go to receiver sites within approved subdivision or urban residential mobile home districts, and also amended the mobile home transfer provision which is what the old code was referencing and the development agreement was referencing. It amended that section of the code 139-2 under today's section numbering to only allow the one-for-one transfer program with receiver sites within improved subdivision or urban residential mobile home land use districts.

One of the questions that arose was whether or not that's a legal possibility to amend the development agreement based on the code that was effective at the time of the original development agreement. Attached to the staff report is a memo written by County Attorney Bob Shillinger where he opines that it is legal for this change to take place, though he notes that the Board is not obligated to agree to the amendment proposed. It is an option that the parties are free to avail themselves of but the Board retains the discretion to not consent to the amendment.

Staff's recommendation to not recommend approval of that portion of this request is based upon the recent Board policy direction that resulted in that code amendment last year to disallow transfers to multi-family sites. That stemmed from recommendations by the Affordable Housing Advisory Committee back in 2016, and then direction in 2017 from the BOCC to update the code and impose a moratorium on transfer of ROGO exemptions until that code amendment was

processed. Based on that current policy direction, staff has not been given different direction by the Board at this time, and staff does not find that this is consistent with the Comp Plan, LDC, recent policy direction, and it does not further the policy direction to try to support more development of affordable housing while also addressing the issue of the limited number of ROGO allocations compared to the amount of vacant land within the County. That is the basis for staff's recommendation to not approve that portion of the development agreement.

Ms. Schemper asked for comments or questions from staff or DRC members. There were none. Ms. Schemper asked if the applicant wished to speak. Mr. Bart Smith stated he understands where this issue is coming from. Ms. Schemper stated that this item will go to a public hearing before the Planning Commission and the BOCC for the final decision. Ms. Schemper then asked for public comment.

Ms. Dottie Moses stated that she supports staff as this is not compatible with the code and the policy direction that the BOCC has been advocating for over the last many years, especially after the one hotel that was built with the extra units that everybody said would never happen again and that this abuse of our market rate ROGOs would not be allowed.

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

5. DICKERSON GROUP, INC., BIG COPPITT KEY, MILE MARKER 9.5: A PUBLIC MEETING CONCERNING A REQUEST FOR A MINOR CONDITIONAL USE PERMIT. THE REQUESTED APPROVAL IS REQUIRED FOR THE DEVELOPMENT OF TWENTY MULTIFAMILY DEED-RESTRICTED AFFORDABLE DWELLING UNITS. THE SUBJECT PROPERTY IS DESCRIBED AS TWO (2) PARCELS OF LAND WITHIN SECTION 21, TOWNSHIP 67, RANGE 26, BIG COPPITT KEY, MONROE COUNTY, FLORIDA, HAVING PARCEL IDENTIFICATION NUMBERS 00120940-000000 AND 00120940-000301. (FILE 2020-056)

Ms. Devin Tolpin, Senior Planner, presented the staff report. This is a request for a minor conditional use permit to develop 20 deed-restricted attached multi-family residences. This property is located at mile marker 9.5 on Big Coppitt Key, and is comprised of two parcels that are aggregated for the purposes of development. These parcels are located within the Commercial Fishing zoning districts. They are also located within the Industrial Mixed Use FLUM and Mixed Use Commercial Fishing areas, and are designated as Tier III. The proposed 20 affordable dwelling units will be located only on the industrial portion of the property. The development proposal has been reviewed for compliance and consistency with the LDC and Comp Plan. Overall, the development is for the most part in compliance. There are two items of note, one being that access to the property is by means of a roadway that has been built and is anticipated to be dedicated to the County known as Betty Rose Drive on the southern portion of the property. Based on a preliminary traffic concurrency review, the proposed development exceeds the Level of Service C by 62 trips. At the time of building permit review, sufficient evidence or mitigation will need to be proposed in order to ensure the development is consistent and does not go below the Level of Service C. Ms. Tolpin presented a site plan with the five structures, each with four dwelling units. Three issues will need to be corrected prior to signing of the development order. Although the development is in compliance with the maximum

density and intensity standards, the actual table on the submitted site plan itself is not accurate accounting for enough density for habitat type. The access road that is going from the southern access to the units themselves is located primarily within the ten-foot setback from the shoreline for accessory structures so that will need to be relocated. Additionally, the entire southern property line along that shoreline is inadvertently labeled as a front setback and should be relabeled as a shoreline setback. Those three issues must be corrected. If the site plan is revised to address all three of those issues, then staff does recommend approval of the minor conditional use permit with conditions.

Ms. Schemper asked for staff or DRC questions or comments. Mr. Rey Ortiz asked to see the site plan again and what the distance is between the structures. Mr. Bart Smith responded that it is five feet, which is the required distance for fire. Mr. Ortiz stated the required distance is ten, and asked if he had talked to fire about the five feet. Mr. Smith stated that this was not the first project where they had done this exact building at five feet. Mr. Ortiz stated that he understands that, that five feet seems a little close, and there are ways to mitigate that by structural design, which was all he was bringing up. Mr. Ortiz then asked if any of these units were ADA. Mr. Smith responded that they were not and were not required to be. Mr. Ortiz stated that since that wasn't required, he had no problem with the parking layout or access to the structure, and had no further questions.

Ms. Tolpin added, on that note, that about thirty minutes prior to the meeting she had received a voice mail from an individual who claimed to not have a computer or the ability to submit written comment within the time frame, who expressed concerns about the ADA access.

Ms. Karen Taporco stated this property is also located within the MIA, and incorporated her prior comments from the other two items. Ms. Schemper then asked for public comment. There was none. Public comment was closed. Ms. Schemper thanked everyone for attending and the meeting was adjourned.

ADJOURNMENT

The Development Review Committee meeting was adjourned at 3:35 p.m.