PLANNING COMMISSION
April 28, 2020

Meeting Minutes

The Planning Commission of Monroe County conducted a hybrid virtual and in-person meeting on **Wednesday, April 28, 2021,** beginning at 10:00 a.m.

CALL TO ORDER by Chair Scarpelli

PLEDGE OF ALLEGIANCE

ROLL CALL by Ilze Aguila

PLANNING COMMISSION MEMBERS

Joe Scarpelli, Chair	Present
Bill Wiatt, Vice Chair	Present
Ron Demes	Present
George Neugent	Present
David Ritz	Present
Douglas Prior, Ex-Officio Member (MCSD)	Absent
Karen Taporco, Ex-Officio Member (NASKW)	Absent

STAFF

Emily Schemper, Senior Director of Planning and Environmental Resources
Mayte Santamaria, Senior Planning Policy Advisor
Mike Roberts, Assistant Director of Environmental Resources
Bradley Stein, Development Review Manager
Devin Tolpin, Senior Planner
Corey Aitkin, Environmental Planner
Peter Morris, Assistant County Attorney
John Wolfe, Planning Commission Counsel
Ilze Aguila, 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. Ilze Aguila confirmed receipt of all necessary paperwork.

SWEARING OF COUNTY STAFF

County staff was sworn in by Mr. Wolfe.

CHANGES TO THE AGENDA

There were no changes to the agenda.

DISCLOSURE OF EX PARTE COMMUNICATIONS
There were no ex parte communications.

APPROVAL OF MINUTES
Motion: Commissioner Wiatt made a motion to approve the February 24, 2021, meeting minutes. Commissioner Demes seconded the motion. There was no opposition. The motion passed unanimously.

MEETING

NEW ITEM:

1. AN ORDINANCE BY THE MONROE COUNTY BOARD OF COUNTY COMMISSIONERS ADOPTING AMENDMENTS TO THE MONROE COUNTY LAND DEVELOPMENT CODE TO AMEND: CHAPTER 114, ARTICLE I, SECTION 114-2 "LEVEL OF SERVICE STANDARDS" TO UPDATE STORMWATER QUALITY PERFORMANCE STANDARDS AND TO CORRECT A SCRIVENER'S ERROR; SECTION 114-3 "SURFACE WATER MANAGEMENT CRITERIA" TO REQUIRE NET IMPROVEMENT IN STORMWATER QUALITY WHILE PROVIDING FLEXIBILITY IN ACHIEVING STORMWATER QUALITY STANDARDS AND PROVIDE UPDATES TO THE STORMWATER MANUAL AND LAYMAN'S BROCHURE TO INCORPORATE NEW APPROACHES FOR MANAGING STORMWATER; SECTION 114-13 "FENCES" TO REFINE CODE LANGUAGE TO BETTER CLARIFY REQUIREMENTS AND PROVIDE CRITERIA FOR RETAINING WALLS; CHAPTER 114, ARTICLE IV "LANDSCAPING" AND ARTICLE V "SCENIC CORRIDOR AND BUFFERYARDS" TO REFINE CODE LANGUAGE TO BETTER CLARIFY REQUIREMENTS, UPDATE LISTS OF SPECIES, AND PROVIDE ADDITIONAL CRITERIA FOR DISTRICT BOUNDARY BUFFERS, SCENIC CORRIDORS AND MAJOR STREET BUFFERS; SECTION 114-163 "WATERFRONT LIGHTING" TO REFINE CODE LANGUAGE TO BETTER CLARIFY REQUIREMENTS; AND, SECTION 114-164 "NONCONFORMING LIGHTING" TO REFINE CODE LANGUAGE TO BETTER CLARIFY REQUIREMENTS; 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 2019-183)

(10:04 a.m.) Mr. Mike Roberts, Assistant Director, Environmental Resources, presented the staff report. This update to the Land Development Code is for Chapter 114 which are the development standards. The first proposed amendment is to the level of service standards for drainage and storm water. This amendment updates for the storm water manual and layman's brochure that was recently updated under a grant from the Department of Economic Opportunity Community Planning Technical Assistance Grant. Within that update, we're focusing on sea level rise and encouraging the use of low-impact development to the greatest extent practicable. There are many instances within the Keys where low-impact development is not as feasible as it

may be on the mainland simply because it is somewhat area intensive. A lot of the amendments to Chapter 114-3 for the surface water management criteria are editorial in nature. The first one is correcting or clarifying the edition of the County's storm water management manual. One of the key additions we're making is clarifying that except as specifically exempted in that chapter, all development that is not conforming to the surface water management criteria shall be brought into compliance with the criteria of Section 114-3. Presently, single-family residents and duplexes within the county are only required to meet water quality criteria in the chapter. Now, we are proposing to add water quantity criteria as well to limit single-family residential and duplex development to their post-development discharge not being greater than their pre-development discharge. With the update to the storm water management manual and the layman's brochure, we're making a shift from pure area calculations to a requirement to meet net improvement in nitrogen and phosphorus loads. Specifically, the goal is to reduce the post-development annual average storm water for both total nitrogen load and total phosphorus load by 95 percent. We do provide for presumptive compliance with that criteria which is essentially that if the project is designed, constructed, operated and maintained in accordance with best management practices that are provided in the storm water management practice and also reflected in the layman's brochure, then those projects are presumed to be in compliance with the requirements of the chapter.

Some of the specific changes within the storm water manual that are incorporated by reference into the code amendment are design criteria for the swales and for the design of the project site. Specifically, runoff from the site must actually be drained to the swale. Amazingly, we frequently have instances where the swales wind up being uphill from the majority of the drainage area. Swale length must be greater than its width. Criteria for the side slopes of the swale must be four-to-one or shallower. Swale must be placed so that any natural areas to be preserved are not disturbed; i.e., no swales in a conservation easement. Swales must be six inches deep and should be vegetated. If swales are not vegetated, then a six-inch layer of swale amendment formulated to reduce nutrient loading must be installed directly below the swale. There are a couple of industry standards or media that can be used for that and those are provided in the code as guidance, not as a recommendation. By switching to a net improvement objective within that presumptive criteria we look first at the effective impervious area to disturbed area ratio, which is the impervious area versus the disturbed area. That comes to a required retention depth by volume, and then when multiplied out by the required retention depth, that gives the volume for the development site. Some sample calculations have been provided in Appendix 6 of the manual itself. Example: An 8,000 square foot lot with a 1,600 square foot house, plus driveway and concrete patio adding up to a total of 3,000 square feet of impervious surface, would end up with a 94 to 95-foot-long swale, which is consistent with current design criteria. After comparing the proposed calculations with current calculations, the vast majority resulted in swales being at or smaller than what current code requires. One proposed addition in the amendments is erosion in sediment control to extend around the perimeter of the construction area, also requiring a de-watering inspection. Since implementation of the 2016 Land Development Code, some contractors are de-watering without appropriate safeguards in place, so this gives an opportunity to inspect those practices prior to water running off into near shore waters, wetlands or other native areas.

One additional proposed change is in Chapter 114-13 for fences and walls. The old code adopted in 2016 inadvertently changed the language for fence height from "to highest finished elevation," which occasionally led to a situation where a property owner on the low side of the fence was looking at two or three feet of fill, plus a six-foot fence, which effectively was a nine-foot barrier. This clarifies that the fence height is taken from the lowest existing adjacent grade. A specific section is being added for retaining walls, defined as a wall or similar structure used at a grade change to hold the soil on an uphill slide from slumping, sliding or falling. This is a functional retaining wall intended to hold back fill. Criteria is provided where no single wall can exceed four feet in height. Where additional height is necessary, additional walls will need to be added. The retaining walls together with any fence shall not exceed the allowable fence height as measured from the lowest adjacent grade. No combination of retaining walls and fences within any setback shall exceed the fence height requirements as specified in 114-13.

Some clarifications are made on street trees in Chapter 114-104, eliminating gumbo limbo and all palms from appropriateness as a required street tree. Gumbo limbos specifically are susceptible to infestation of white fly and tend to not do well in storm events. Staff feels it is an inappropriate tree for a street tree. Criteria has been added for landscape planting for the canopy tree to be at least 12 feet in height or have a calliper dimension of three inches. Calliper is different than diameter at breast height. Calliper is measured at six inches above the ground as opposed to four feet above the ground as diameter at breast height. Species of special concern were eliminated from the plant list, primarily because the Florida Fish and Wildlife Conservation Commission does not have plants in their species of special concern criteria. There are updates to the taxonomic names for the plant list, updates for trees, shrubbery and ground cover that are recommendations or suggestions for storm water landscape areas. Criteria or clarification have been added to non-conforming landscaping specifically. Any change of use, redevelopment or expansion of multi-family units or non-residential use, the site shall come into compliance with the landscaping requirements of this article to the greatest extent practicable. In many instances of redevelopment, the entire landscaping requirement may not be achievable. For non-conforming buffers where a scenic corridor, a major street buffer or district buffer yard are non-conforming, the maximum buffer that can be established shall be required as a condition of the issuance of any permit for a change of use or expansion of development footprint.

Two public meetings and workshops have been held on the proposed code amendments. The comments in addition to the Development Review Committee meeting include a question as to whether or not there was a minimum threshold for exemptions to the storm water and there is not. Any additional impervious surface is required to be treated to meet the water quality criteria. A swimming pool cannot be a swale. Most pools are above grade and the coping at least is above grade. When filling property as to fence height, for a new fence, the lowest side prevails. As to costs of coming into compliance with non-conforming buffers, in some instances the cost may be an additional cost burden on the property owner, but the reason for updating codes is to bring development into the standards of today's environment. A question about DOT access was not addressed in this chapter. There was a request to look at non-native trees and a heritage tree program similar to what the City of Key West provides for in allowing certain non-

natives that have an iconic nature to be preserved. There are no recommended changes of that nature.

Chair Scarpelli then asked for public comment to be held first. There was none. Public comment was closed. Chair Scarpelli then asked for comments or questions from the Commissioners.

Commissioner Ritz stated that he had some pretty extensive comments. First regarding drainage, the big change is adding quantity to the single-family residence, and Commissioner Ritz asked why that is being done. Mr. Roberts explained that there have been a number of instances where in the development of single-family residences, the ultimate solution for the contractor was to discharge whatever water did not make it into the swale into the County right-of-way or into the streets, and the primary impetus behind this is that Public Works, Engineering and Roads and Bridges specifically asked that this issue be addressed with this code amendment. Commissioner Ritz noted that water quality has always been in the code but now water quantity is added, and his concern is that it's already really difficult to build a home now and more things are being added to make it more difficult. There's a balance in burdening the homeowner versus the improvement. Commissioner Ritz asked if the improvement is a justifiable benefit to the burden, because he would like to see what can be done to make it easier to build, not harder to build, and has considered making as part of the plan, that if a rule is added, you must take a rule away, something where these incremental changes aren't constantly being ratcheted up to create a really difficult building process. Every amendment seems reasonable in and of itself and it's a small amendment, but you start adding the small amendments together and then there are books that are inches thick with rules on how to do things. People get so frustrated they give up and just don't pull a permit because it's too tough to comply with the rules. Unless the rule really has a huge impact, he is not in favor of adding more rules, whatever they may be, unless he can be convinced that this is impactful to something or somebody. Commissioner Ritz stated that he didn't know how the rest of the Commissioners felt but he has that same comment on a number of these issues.

Chair Scarpelli asked him to break it down because there is a lot to unpack on this agenda item, and asked if Commissioner Ritz had more to say on the storm water topic. Commissioner Ritz continued, asking if the Planning Director or someone has the authority to waive or interpret a rule as opposed to coming to the Planning Commission to appeal something. Ms. Schemper responded that the Planning Director can interpret, but that is generally when it's a code that's not entirely clear. If there's a clear meaning to the code, there's no room for interpretation, and then it depends on the context. Non-conforming landscaping, things like that, sometimes it's written that things need to come into compliance to the greatest extent practicable which gives the Planning Director extra latitude in terms of what is or is not approvable. So it's only when there's a gray area that it's specifically left up to the Planning Director. Commissioner Ritz said the reason he asked is because he had a friend who had installed a sidewalk and it was through six acres of grass, and they had to do a drainage calculation to prove the runoff from the sidewalk wasn't going to flood anything, and common sense would say a five-foot sidewalk on six acres of natural area isn't going to flood anything, yet he had to hire an engineer to prove it.

Commissioner Ritz then asked if a person has to hire somebody to do the calculations on flooding. Mr. Roberts responded that for single-family residential and duplex development a calculation tool is available online. Any of the Environmental Resources plan reviewers can provide that, and it's designed so the property owner or contractor can easily make that calculation. The same can be done for the proposed amendments for the net improvement. A tool will be generated for the public which will not require an engineer. The goal primarily with the requirements is to generate grading plans that will result in the storm water from the developed site actually going to the swales. That has been the primary problem with regard to the water quantity as well as the water quality, is that a contractor will install a swale, but under the current code there are no guidelines to require the water to go to the swale. That is one of the impetuses behind the proposed amendments is so staff can have adequate information and data that indicates the storm water is actually going to flow towards the swales.

Commissioner Ritz then asked about Chapter 114-105 landscape materials under section (b) and the list of trees, shrubs, and ground covers appropriate for storm water landscaped areas, asking if these are the plant material that can be put into the swale. Mr. Roberts responded that it is material that can be planted in a swale and is there as a suggestion or recommendation. There is other vegetation that would be suitable, but those are plants that staff recognized could tolerate the periodic inundation associated with life in a swale. Commissioner Ritz acknowledged the statement that this is not a complete inventory, but noted that sod was not on the inventory which is typically what one puts in the swale in most of the world, so he wanted to make sure sod and grass is permitted in swales. Mr. Roberts indicated that it is permitted.

Commissioner Ritz then asked about the example used of a home and how it would apply based on square footage, but that the swales are not permitted in a conservation easement. So if a home has a conservation easement requirement, is there room for a swale after the property owner's land has been taken away to put in the conservation easement. Mr. Roberts responded that it would depend entirely on the proposed footprint of the house. If you have 3,000 square feet of developable space left and a 2,900 square foot footprint for a house is being proposed, then perhaps not. Commissioner Ritz stated that he has seen where you have a lot and it's sort of a donut, you plant the house in the middle of the lot and if everything else goes into a conservation easement, there would be no place to put the swale. The house would have to be shrunk down to provide for the swale, so he would be in favor of swales being permitted in conservation areas. Ms. Schemper interjected that the problem with that is the conservation area is conserving habitat that is not necessarily tolerant of the storm water coming into them, and in order to actually make it a swale, you have to disturb the ground, which is not consistent with a conservation easement. Ms. Schemper stated she would not know how to craft the language to allow that because the conservation easement language would also then need to be changed and would likely not meet the intent of conserving the habitat. Commissioner Ritz added that the other thing about conservation easements is many times, no habitat is being conserved, such as when a conservation easement is put on scarified land. When someone thinks of a conservation easement, they think of a lushly wooded area that needs to be conserved but that's not how it's being applied. We can't have regulations trying to squeeze all of this stuff into a small box and still let the guy build a house, so there's got to be some sort of give and take here. Ms. Schemper

responded that she did not believe it was accurate that conservation easements were being imposed on scarified land unless -- unless -- that land was cleared since 1986 without benefit of a permit and it is supposed to be habitat, which is the way the code is written. Commissioner Ritz exclaimed that this now goes back to 1986.

Chair Scarpelli interjected that he thinks what is being talked about is something very specific. Conservation easements are difficult to navigate for anyone, especially when you look at land that's scarified but it's actually a wetland. There are a lot of those issues throughout the County. Conservation easements also require buffer yards which those conservation buffers wouldn't be able to withstand swale volumes either, so you're going to have a bunch of other issues as well. Chair Scarpelli asked if conservation easements were also regulated by the DEP. Ms. Schemper responded that they do, only for wetlands. Mr. Roberts stated that the County has conservation easement requirements for tropical hardwood hammock and other native habitat that is not dictated or required by the Army Corps of Engineers or the Florida Department of Environmental Protection or the Water Management Districts. Wetland preservation areas that go into a conservation easement are typically required by either the District, the Corps, or by DEP. Chair Scarpelli thought it could possibly be done on a case-by-case basis for putting swales in conservation areas but wouldn't know how to navigate that language.

Commissioner Demes stated that he could have spent weeks on this particular action item, but in trying to understand where this comes from, asked if there was any allowance for engineered solutions rather than these calculations. There's things that are done all the time for storm water and depending on what the purpose of it is, whether it's to capture the first two inches of rainfall in a particular storm event, et cetera, what is the basis. He always tries to understand the basis of why something is being done to begin with and then back into whether you can engineer a solution to reduce the area impact on a piece of property. So his question is does the County allow any engineered solutions for storm water runoff that would reduce the swale size. Mr. Roberts responded that the presumptive criteria is voluntary for property owners who do not want to hire a professional engineer to come up with the engineered solution, but engineered solutions that can demonstrate the net improvement criteria are absolutely accepted.

Commissioner Neugent stated this has always been baffling to him due to the geology in Monroe County, the porosity, and how quickly storm water gets into the near shore waters, which creates the halo that can be seen. Commissioner Neugent asked if there was any way of quantifying the amount of treatment that water gets when it runs off. He can understand trying to contain the water from a runoff situation where it creates erosion or runs through somebody else's property from your property based upon the way it's been designed, but what level of treatment actually results from providing these containment areas. After watching the sewer and storm water treatment go through his subdivision in Marathon, and the storm water treatment consists of storm water going into a drain, then into perforated pipe, and then immediately runs through the porous geology right into the near shore waters which can't really be called any type of treatment. Though he is trying to agree with what Commissioner Ritz is saying, the quality attempted to be address has already had billions of dollars spent on providing treatment to waste water and we're already being pushed into doing storm water treatment when there are a lot of

areas that have no treatment; i.e., U.S. 1 on the Seven Mile Bridge runs right off into the ocean. Commissioner Neugent agrees with Commissioner Ritz in that it is difficult to do any kind of building in Monroe County and there's a purpose behind the rules that he respects, but he does not understand the level of treatment is actually attained. There is some uptake if there is grass or sod in the swales, but a lot of people have rock swales. In a particular affordable housing project on Big Pine, swales were required and they were costing about six or seven-thousand dollars apiece, with no idea of what level of treatment was being attained by the water going into the swales but then running into near shore waters. Mr. Roberts responded that he did not have that data relative at hand but there have been studies as to the filtration ability of limestone and keystone and other geologic formations in the Keys. The intent behind swales has always been a vegetated swale. That was not a requirement in the code for one reason or another until this proposed amendment requiring a swale to be vegetated or have a treatment media. This is because of the very situation just described that what you wind up with is basically a shallow trench and a pea rock yard which no one argues that it provides any significant treatment other than what can be derived from storing the water for a small period of time. That being said, the best improvement comes from simply the filtration through the ground in addition to what is removed from the retainage.

Commissioner Demes added along those lines, that he sees the 95 percent removal of total phosphorous and nitrogen in a lot of places, but he doesn't understand how you gauge 95 percent removal when you don't know what you started with. How does this ensure, the 95 percent removal, relate to reality? What was it before and what is it after? Or is it intrinsic in the criteria that has come up and that is being presented on an average? Mr. Roberts responded that that was correct.

Commissioner Wiatt stated that a concern for him, much like Commissioner Ritz, is we're getting to a point where there are lots out there you just can't build on, in this case, because of storm water issues, be it poor percolation rates, because of sea level rise or area, and it gets very complicated. To build some engineering into things, then you get into requiring residents to have storm water management plans by industry and commercial operations, and he does not think it is a good idea. Building in some level of exemption for smaller lots that are difficult to develop even before you get into the storm water management process might make sense. It says here, single-family and duplex residences built on individual lots can be exempt if you've got Monroe County Growth Management Division and South Florida Water Management District in place. Commissioner Wiatt asked if there was any opportunity to address this issue of square footage through some level of exemption, making it a little bit easier, making it a little more reasonable, or making it possible to actually develop some of these smaller lots. Mr. Roberts responded that the problem is cumulative effect. Say within a UR or URM subdivision where you typically have lots of 6,000 square feet or less, one lot being able to be exempted from the storm water management criteria is probably no big deal, but if you've got 45 lots all discharging to the same roadway or the same near shore water, that's a different story all together. Commissioner Wiatt believes that in Monroe County with ROGO and everything, there will not be that number of new lots coming on line.

Mr. Roberts wanted to clarify that the proposed amendments really only affect the design in terms of the grading. In many instances the new swale criteria results in a smaller footprint or smaller square footage of swale required. The difference is that now it's required that they be actually graded. As far as the water quantity criteria is concerned, the vast majority of that is addressed through the water quality swales. The only difference would be is at the foot of a sloped driveway where some sort of interceptor device may be needed to make sure the water isn't flowing down the driveway into the road. Other than that, in the vast majority of instances, this proposed amendment will be more or less invisible to the homeowner.

Commissioner Ritz added that the other problem with this whole discussion is people envision this relating to a vacant lot and you're building a new house on it. There are triggers in the code where these swales are required for a variety of changes such as pools, sheds, a small addition, anytime you change your footprint or do anything. There are oftentimes where a home has been there for a long period of time and they do a relatively minor addition or improvement and it gets triggered and suddenly, all of these things start happening to them, when this is contemplating new construction as opposed to renovation. That is the other problem with all of this, and it happens more often than you think in retrofitting.

Chair Scarpelli agreed, adding that the whole storm water situation is interesting and he deals with it almost daily on a professional level so it's almost always in his head. He has done calculations both ways and in reality, the way that it's being changed will make it easier for people to do it, as long as the County is providing a simplified calculation sheet for them to use it. That was his biggest question because he didn't want to see where a person who already had to hire an engineer to design a renovation or a pool, and now they have to hire a civil engineer to design their storm water, which would be egregious. But this provides the similar calculation sheet that any pool or home engineer can follow the bouncing ball to fill it out and provide the plan they were already going to have to provide anyway, as the current code is written. A positive thing is this addresses the roadways specifically in minor storm events. With some of the deluges we get he has seen, specifically on Big Pine, roads get flooded out because most of these properties are gravel drives and everything is running off into the roads and making them harder to navigate overall. However, he is concerned with the overreach of the storm water manual that has just been created that is not included in the documents. Although it's outlined throughout this whole thing, he hasn't looked at it. Ms. Schemper apologized, indicating that it should have included, adding that it had already gone to the BOCC last year. It is available on the website but should have been included in the backup. Chair Scarpelli noted that it is now being implemented via this change and this is one problem he is having right now, is they will be voting to implement something that they didn't get to see. It was mentioned that swale length must be greater than width, and that was an excerpt from that manual, which doesn't make sense. Swale length greater than width means I have to design a rectangular swale. A planner five years from now reviewing the plans is going to say that swale length is not greater than its width, and it will cause a re-do or a delay, or to pay an engineer to have that conversation. Commissioner Demes commented that if he did anything where the width was longer than the length, the width would become the length. Chair Scarpelli asked what if he needed it to be square or oblong. With that kind of wording, if you have a square, you're in trouble because it's equal. Another

question concerns gravel swales no longer being allowed. Mr. Roberts responded that the intent, even under the old code, was always to have a vegetated swale. There is little or no treatment value to a gravel hole. It doesn't do anything other than meet minimum code criteria. Chair Scarpelli thinks the overall idea of this change is good, but he needs to look at the manual. Commissioner Ritz asked if that meant it was not ready for today. And Chair Scarpelli believed this portion may not be, but they would continue down the list.

Next is fences and retaining walls. Commissioner Ritz first referenced 114-20 regarding the recommended change to go from highest finished grade to the lowest existing grade. He understands looking at it from the neighbor's standpoint, but the guy putting up the fence is the owner, and from the owner's standpoint the owner may have a three-foot fence if he's got a three-foot retaining wall or it slopes down, and a three-foot fence won't give a lot of privacy. Commissioner Ritz would look at it from the owner's standpoint, not the neighbor's, and keep it at the highest finished elevation so the owner can have privacy as that's usually why you put a fence up. Chair Scarpelli asked if anyone else wanted to comment on the fence and retaining walls topic, noting there are two things to look at. You can have someone who puts two feet of fill on their property and then puts a fence up, or you can have someone build a retaining wall right along their property line, essentially, and then put a fence up. The first instance, if they're just putting fill on their property, they have to provide the grading slope. The problem he sees is he has a gradual increasing grade happening from the neighbour to the property, so he loses that bit of property to get to that grade by code. To now put the fence up, realistically it's the same grade, but it's higher than the existing grade. That seems to be a little bit of an overreach. It limits someone's ability for privacy or security. Understanding the neighbor's argument as well, he doesn't want to be looking at four feet of fill and then a six-foot fence and feel like he's in a prison. The general intent of this revision is good because you don't want everyone to have giant walls all around their property and everyone having their own private compound, which isn't good for the community overall. But where people are trying to fill their properties and elevate their land for the idea of rising sea level, and now the carpet gets pulled out from under them and they can't have the fence they want when they're being forward thinkers by filling their property, limiting the fence height based on existing grade is a poor choice there when you're not dealing with a retaining wall because you have to gradually slope your grade anyway. Which this then creates another issue for implementing the new storm water stuff because now you've got a property that's running of onto a neighbor's property. Chair Scarpelli would agree that if limiting the fence height off the top of a retaining wall, because the retaining wall will count as a wall towards the neighbour. The problem with the retaining wall height restriction is the way that it's written it is almost getting into engineering the retaining walls for the owner.

Commissioner Ritz added that the other thing about implementation is he believes he should be able to go to Home Depot and buy a six-foot fence and install it without worrying about lopping off a foot or eighteen inches. A six-foot fence is a six foot fence, just go buy it and install it. Practically speaking, that's what people do. Chair Scarpelli agreed. And with the retaining wall scenario, the way it's written is playing out the worse-case scenario. You're playing out the person who bought this lot and is throwing four feet of fill on it, and is building it out to the

property line and making the neighbour have a ten-foot wall to look at when a six-foot fence is added, but that's very unlikely to happen anywhere in the Keys.

Ms. Emily Schemper presented a current example that would possibly help the Commission in their discussion, adding that this is what is trying to be avoided. This is a six-foot fence with a six-foot person standing next to it. Because there is fill on the other side of that, it is now six feet on top of about five feet of fill, so there is now an 11-foot concrete wall. Commissioner Ritz added that he appreciates the extreme example, but unfortunately, that's not what it normally looks like, and we don't know what it looks like from the other guy's point of view. Ms. Schemper responded that from the other guy's point of view it looks like a six-foot concrete wall. Ms. Schemper understands both sides of the argument as well, but presented the extreme example to answer the question whether something needs to be done to avoid these examples. Chair Scarpelli asked how accesses his property for a driveway, and there are certain code requirements to even get up that high. Ms. Schemper added that this was a side property line. This is an extreme case on a large property and is not a single-family home example. People may start to fill their properties even more and in most zoning districts, if you want to have a solid wall on your front property line it's limited to four feet, though there are a few areas where you could go up to five or six feet. A less extreme example is people end up with a six-foot solid wall which does create a very different feel on the street. Fence codes are about the property owner's privacy, but they are also about aesthetics from the street, the affect on the neighbours, and safety when you have properties that are completely enclosed with solid walls which is considered less safe than having transparent fencing.

Commissioner Neugent asked if this wall under the existing rules was even permittable. Ms. Schemper responded that the current code reads from the highest adjacent grade. On the other side of this wall, the grade is higher because this wall is acting as a retaining wall for the first four-plus feet, and the fence is on top of that. Chair Scarpelli suggested a solution of average adjacent grade from both sides of the fence. But the other problem with the terminology, adjacent grade, you want your fence to all be the same level so if a property has ups and downs in it, it's limited to a weird looking fence. The issue is from one side to the other side, so it should be the average elevation between both sides. Commissioner Ritz stated that he understands the logic behind that but for ease of implementation he still believes it's reasonable to go buy a six-foot wood fence and put it up in your yard without having to do any calculations. This guy here could have a two-foot fence on his side, that's all he could have is a two-foot fence, so in other words he can't have a fence. Chair Scarpelli noted other safety concerns in this case, that a two-foot fence wouldn't stop a kid or dog from falling off the edge, so that needs at least a three-foot rail which was just prohibited. Commissioner Ritz stated that there are lots of extreme examples and County Code shouldn't be created to fix the outliers. The County Code should be aiming at the center of mass, not trying to hit someone's fingernail. Don't penalize the 99.9 percent of the other people. Commissioner Ritz doesn't believe this item is ready for prime time, either. Chair Scarpelli asked for any further comment on the fence and retaining walls. There was none.

Next up is trees and buffer yards. Commissioner Ritz asked about the list of native trees and plants and whether, if he presented a landscape plan to the County, he could present any plant desired as long as it's not on the list of invasive exotic species under 114-102(h). Mr. Roberts explained that the required landscaping has to consist of native vegetation. Any vegetation or landscaping that is above and beyond the code's minimum requirement is whatever you want that is not either a category one or two invasive exotic. Commissioner Ritz wanted clarification on what is required. Mr. Roberts responded that parking lot landscaping, a street tree, and buffer yards is what is required, whether it's a scenic corridor, a major street buffer, or a land use district boundary buffer. Commissioner Ritz explained that when he came down to the Keys in 1992, he bought a book called Florida Native Trees, and he used that book to decide what his native landscaping would be because he's cheap and he didn't want to spend a lot on the irrigation system. Now instead of a book there is one not-even-complete page of trees. For street trees we're taking away gumbo limbos and mahogany which everybody in the world has and can't be more native than those two trees, but can't be used as street trees according to the new rules. He is of two minds on the required landscaping. On the one hand he loves landscaping and the requirements are pretty minimal to begin with. But with this he wouldn't be able to thicken up his buffer yards with anything not on this list. Ms. Schemper indicated that was not correct. The minimum requirement within the buffer yard has to be off that list, but anything else can be added as long as it's not invasive. The exception would be a buffer yard that is part of a conservation easement, so if it's already an existing hammock conservation easement, you are not supposed to add non-natives.

Commissioner Ritz said his next issue is 114-106 landscape incentives. He loves incentives but didn't know why the pervious pavers had been taken away. Mr. Roberts responded that it has been part of the code since 2016, and zero applicants have tried to utilize those incentives. Second, it's sort of counter-productive. That incentive actually said pave more and you won't have to plant more, which is not really consistent with the goals with landscaping. Various pervious pavers were discussed. Mr. Roberts added that pervious pavers require a fairly significant amount of maintenance, and if they are not maintained in accordance with manufacturer specifications and details, the porosity and permeability disappears over time. If they are not installed correctly to begin with they never have that capability. Ms. Schemper added that there is no way to ensure that people are installing impervious pavers in an area where they otherwise would have installed something impervious such as concrete or asphalt. So this actually incentivises more paving for a reduction of landscaping. Commissioner Ritz then asked about 114-100, Section 13, turf shall not be used in required landscape areas, and if this meant that turf could not be put in the buffer areas. Mr. Roberts responded that for buffer yards and landscaping areas, sod is not an appropriate ground cover for irrigation purposes nor management and maintenance purposes. Sod is not native and doesn't meet the native plant criteria. Commissioner Ritz continued that they had just gone through saying you could plant non-natives in the buffer area as long as you meet the minimums, but now this is saying you can't plant grass because it's not native. Ms. Schemper thought this was intended to be a water conservation measure as well, considered a best practice for water conservation. Commissioner Ritz then responded that he's been on the FKAA Board since 2005, though he's not on there now, and there is no provision against grass by the FKAA. There is the SFWMD who has

irrigation requirements where you don't waste water, so you can't water in the middle of the day. You can water three days a week as long as it's not in the middle of the day, and they don't care what you plant. There is no one pushing us to do this and he doesn't believe the FKAA has ever reached the maximum amount of water that they're allowed to draw on an average basis. He is not saying water should be wasted but you are allowed to use it, and the vast majority of the water used is for irrigation. Since there is no prohibition from their side for grass, he is not sure why the County is opposed to grass. And by grass, meaning turf, just for the record.

Chair Scarpelli asked if there was anyone else who wanted to comment on landscaping, adding that he agrees with Commissioner Ritz that sod for landscape islands is great as long as the developers are maintaining them. The mulch never gets maintained and constantly falls into the parking lot and looks bad. So as long as they're following the native plant list and not utilizing the sod in the buffers or landscape islands specifically to count towards their planting requirement, he does not see why sod should be restricted. The other thing on the idea of being too restrictive, Section 114-128 says the trees shall be evenly dispersed. Though he sees the point in stating something like this, it takes away from a landscape designer who wants to do more of grouping areas and maybe there's a view corridor through the buffer yard that they're trying to accentuate. When thinking about the Land Development Code, he thinks of the guy in five or six years that needs to interpret this, and the trouble that the owner and designer will have to plead their case. Realizing this is to prevent putting all your trees in one corner, a landscape designer would never do that and if he did, he probably wouldn't work in this area for very long. Also, about coming into conformance with non-conforming buffer yards, with the redevelopment of a parcel, what exactly does that constitute? Does this go back to the main County definitions? Mr. Roberts responded that that was correct. Chair Scarpelli asked if renovating within an existing footprint would count as redevelopment. Mr. Roberts responded that the trigger is a condition of the issuance of any permit for a change of use or expansion of development footprint. Chair Scarpelli stated he totally agrees with both of those, but gets worried with the word "redevelopment." If someone is renovating a large commercial building and not increasing the impervious square footage or changing the use of the building, they don't want to mess with buffer yards. Mr. Roberts said that would not be triggered under this proposed language for the buffers, but it would get triggered for the non-conforming landscaping, though it states to the greatest extent practicable. So if you don't have the available footprint for the total available landscaping required by the code then we ask that you provide a landscaping plan that meets the intent of the code, which is to the greatest extent practicable.

Commissioner Ritz stated that he thinks the triggers are big issues. Chair Scarpelli agreed, adding that the Kmart in the City of Marathon would have real landscaping issues if they decided to redevelop that property, which is the first one that came to his mind.

Commissioner Wiatt wanted to make a general comment. One of the things he noticed in big-picture terms is there are all of these very specific requirements, and then at page 114-27 that talks about conservation, there's a really small paragraph on how to conserve or reuse, collect, and manage our storm water up front as opposed to end of the pipe. With the situation with the Biscayne Aquifer and saltwater intrusion on the mainland and all those sorts of things, it seems

we should be promoting collection and reuse of this storm water. We don't have to worry about it running off the property if we collect it and reuse it during the dry times. This makes much more sense, and yet we've almost not discussed it. We talk about installation of alternative water source systems such as reverse osmosis, cisterns, water reuse, on-site storm water collection for irrigation and other safe uses, and that's it. There's no detail. And then there's one comment in the back that just says to the greatest extent practicable, which he doesn't know what that means. Coupling in some of Commissioner Ritz' concerns, especially for these small lots with conservation swales and all that sort of thing, if those could somehow be coupled and say, hey, if you put in a cistern, then you don't have to have as many or as much square footage of swales. It seems there is very little detail with respect to conserving and reusing the storm water which he believes is really where we need to be focused. Commissioner Wiatt would like to see some thought put into how, instead of making it punitive and just an expense, to make it to where people will want to do this. It will save money and water for irrigation down the road and will make you getting your site plan approved even easier. Commissioner Neugent added that the Aqueduct did this where you could convert your septic tank, but it's amazing how quickly that water goes out during the dry period. He has 1,500 gallons of water and it disappears in a several days. Commissioner Ritz added that this is his point with taking away incentives, though he now can't argue about taking away the pervious pavers, but it bothers him that incentives are being reduced instead of expanded. From a state-wide perspective, the water problem in Florida is too much water, too much rainwater. There is a flooding problem, not a drought problem. We're not collecting it and purposely dump it out into the ocean as quickly as we can. Commissioner Wiatt agreed saying it's feast or famine when it comes to water. There is either not enough to finance the use of water for irrigation or there's too much and it's flooding the streets. It seems the collection and metering it in during the dry times is the real solution and would help from not only a storm water management standpoint, but from a potable water management standpoint. Every gallon reused is gallon not pulled out of the Biscayne Aquifer. The saltwater intrusion going in with that is not a good situation. So the less we pull out of the Biscayne Aquifer, the better off we're going to be. There is no real incentive for folks to collect that water and use it in times of real need.

Commissioner Demes then asked to go to page 6 of 17 under storm water, stating that this caught his eye where it says, "These procedures are intended to assist in the protection of vital water resources of the Florida Keys." Don't we care about the rest of the county? Though, in some areas he has seen some changes from Florida Keys to Monroe County. That was under Section 114-3 storm water and, he believes, intent. Then the potable water on page 114-2, it says that the FKAA in its efforts to "insure" sufficient potable water, and he asks that it be changed to "ensure," because ensure is when you're really ensuring something, guaranteeing something can happen, and that's the intent here. If you're insuring it with I-N, you're writing an insurance policy. Commissioner Demes then asked about the minimum pressure listed below as 20 psi at a customer service point, page 114-2. In the water systems he's been involved in, 20 psi, you lose about .3 psi per foot of head pressure, and if you've got a second-story shower head, you're going to lose 10 psi and be down to 10. The average desired is between 40 and 60 nationwide. Most people agree as a standard that 50 is acceptable. We need to touch base with the Aqueduct to see what they think because 20 is nothing. Mr. Roberts pointed out that that was the potable

water criteria, not the storm water criteria. Commissioner Ritz interjected that the pressure is 40 to 60, and he thinks that must be referring to making sure there's no backflow into the system. This is talking about if it goes below 20 then something has to happen like well water. It does dip below 40 periodically and he believes that's what's being referred to. Commissioner Demes said he would like to have that made clear. Then in number four below, under wastewater treatment level of service standards, Commissioner Demes asked if the unlabeled chart is referring to the effluent standards. Ms. Schemper responded that she assumed so but could find that out for sure. Commissioner Demes continued that he wanted to make sure that that was the effluent standards there, and that he understands hard numbers like this rather than a percent removal. Commissioner Demes noted the amount of work and number of changes required for the native planting list and the changing of Latin names, and confirmed that gumbo limbos were not off the list for all native plants, only for street trees. Commissioner Demes commended Mr. Roberts for the effort put into the native plantings list. Mr. Roberts then thanked his staff for their efforts as well, and clarified that the botanical taxonomic community changes the taxonomy of plants over time, so although the list was correct at the time it was originally created, these were changes that have occurred over time.

Commissioner Ritz interjected that on that same section 114-2 regarding potable water and storm water drainage, where it says potable water at 20 psi, and then "see below" and references Chapter 62 of the Florida Administrative Code, and asked if why, if there is already a rule, doesn't the County just adopt the rule rather than going through all of this. Same with drainage and storm water, number five, there is a rule 62 FAC, and we're getting rid of the Florida Code and coming up with our own code. If there's already a perfectly good code out there, why are we making it tougher instead of referencing the state code? Ms. Schemper explained that Florida Statute and the Comp Plan require the County to adopt level of service, so some of these are the same standard required by the state, but the County can't simply adopt something that is self updating. Commissioner Ritz noted that was done under number (3)(c) for potable water and asked if that was an error. He believes it is completely reasonable. Ms. Schemper responded that all of the level of service standards could be reviewed and brought back before the Commission, but she was not prepared to answer all of these questions now because it is beyond the scope of what they are looking at. Commissioner Ritz thought the changes under number five should not be made and be left as is, and see if more of that can be done rather than less. If there is already a rule out there from DEP, Army Corps or the state, let's not create more rules. Mr. Roberts pointed out that within the drainage and storm water recommendation where FAC 62-25 is being deleted, that code has been repealed by the State Legislature and is no longer a rule, and the water quality standards in 62-302 have also changed, so the recommendation is to delete those because they are no longer accurate referrals. Commissioner Ritz asked if there are no longer state standards regarding storm water. Chair Scarpelli stated that our code references a repealed standard so it's behind, and asked if what is being proposed is more in line with the SFWMD standards, and Mr. Roberts responded that that was correct, but it has not been codified in the Florida Administrative Code yet so there is no chapter reference.

Chair Scarpelli stated that he feels like this is three individual items because there is so much here. He also commended staff for putting all of this together, and then asked the Commissioners how they wanted to proceed with this item, or if there were any motions.

Commissioner Ritz stated that one option would be to have staff come back en masse, and another option would be to adopt what the Commission doesn't have a problem with and delete what they do have a problem with. Commissioner Wiatt asked what the time constraints are on this and if there was a reasonable amount of time to make some revisions. Ms. Schemper stated there was no set time line but staff would like to keep it moving. If the Commission clarifies the list of sections and what they want done, staff can re-work the language and bring it back. Mr. Wolfe added that they would need head nods of consensus so the staff will know what to do.

Chair Scarpelli stated they would go through it by topic. Commissioner Wiatt thought getting into the weeds as far as very, very specific was not going to happen. Commissioner Neugent asked about having each Commissioner create their suggestions and send them by email and make comments and have it circulated by staff to avoid Sunshine Law violations. Ms. Schemper suggested going through the general topics and if anyone has something they want staff to work on, to chime in, and if everyone agrees, it will give staff a little general direction.

Commissioner Ritz volunteered to go through with his items and if there wasn't a problem, it could be assumed it was okay for staff to look at. Chair Scarpelli added that the whole point is to get through this to a point where it can be approved because the codes need to be aligned with what the community needs. Commissioner Ritz began with 114-2 Section 5, on page 114-3, drainage and storm water is a deletion of Florida Administrative Code because it no longer exists. If there's a new code, reference the new code. Wherever we don't have to repeat something that's already in existence, we shouldn't repeat it, nor should we make it more restrictive than it already is because it's tough enough to build here, and that's his general thought. Chair Scarpelli added that this is the whole consensus with the storm water management and whether we're being more restrictive than the state code. Mr. Roberts explained that their guidance at the time they hired JEA to produce the storm water manual and layman's brochure was to align our code with the state-wide storm water rule. To the best of his knowledge, the consulting engineer had explained that these criteria are consistent with the proposed state-wide storm water rule. Commissioner Ritz reiterated that we should simply follow state-wide storm water rules. Chair Scarpelli thought language could be added to clearly state that this mirrors the state-wide rules and that we're not making it up on our own.

Commissioner Ritz continued, the next is on page 114-20, fences and walls, 114-13(a) height in fences, the highest finished grade versus lowest. He recommends not making the change and leaving it as highest finished elevation. He understands there is still a problem so maybe staff can come back with another solution. Chair Scarpelli asked how the retaining wall and fence issue would be addressed with other requirements in the code. Cisterns need to be covered by a six-foot fence to hide them, so if you raise your property three feet and have a cistern five feet off of the property line, can there still be a six-foot fence? That's just one specific example, so there is definitely an issue. Correcting one specific problem will create more issues and do more damage than good. For someone adding fill and doing a retaining wall, those are two different

things than doing fences. Adding fill like a normal person and putting up a six-foot fence from Home Depot is fine, but if the intent is to build a four-foot retaining wall on the property line and then put a six-foot solid fence on top of that, that's an issue. He will rely on staff on how to break that down. Commissioner Ritz suggested leaving that with staff. Chair Scarpelli suggested that someone adding a retaining wall on a property line should be the one to have more restrictions, or in the front-yard setback. The way this is written is a little too much. Commissioner Ritz added that there should be a significant problem that's being solved to create a county-wide ordinance. There are one-offs that may just have to be lived with as a society, and not penalize everybody because of these one-offs. Ms. Schemper responded that staff would work on it.

Commissioner Ritz continued, page 114-40, Section 114-100 required landscaping, Section 13, says turf should not be used, and he recommends deleting all of Section 13, and allow turf in both parking lot and landscaped areas. Chair Scarpelli agreed and everyone gave a head nod as to being okay with sod. Commissioner Ritz challenged staff to come up with more landscape incentives. Chair Scarpelli asked if buffer yard width could be reduced with increased amount of tree planting, and Mr. Roberts stated that is already in the buffer yard standards. Commissioner Ritz continued, as Chair Scarpelli had brought up, Section 114-128 on page 114-58 dealing with plantings being evenly distributed throughout the buffer yard, he would recommend keeping existing language and making no changes. Ms. Schemper commented that that incentive is already built into the buffer yard standards because people will plant all the plants along one edge of a wide area and it defeats the purpose of the wide buffer area because they end up using that area as unpermitted parking, storage, et cetera, and that's why it was changed to evenly distributed plantings. Mr. Roberts added that particularly in the wider buffers, on a long buffer they may group all of the vegetation on one end of the buffer and the rest of the buffer is a band of open space with nothing in it. That also was the idea behind "evenly distributed," not to constrain design but ensure that all of the buffer area is appropriately planted. Chair Scarpelli said the intent of a buffer yard needs to be met, so if someone approaches staff with a design that pushes all the trees to one corner or they are not dispersed throughout the yard, then the requirement is not being met. Commissioner Ritz suggested using the word "distributed" versus "evenly distributed." Commissioner Demes added that they could address that as an extreme, that one is not acceptable. Chair Scarpelli agreed. Ms. Schemper read the definition of buffer yard for the Commissioners, and suggested language using, "Distributed in order to meet the intent as defined in 101-1.:

Mr. Wolfe stated a motion to continue this would need to be made. Chair Wiatt asked that staff revisit any opportunities possible for storm water conservation to include collection and reuse, if there's any way to incentivize that without making it another thing that a property owner has to do. Find some way to possibly turning a completely 100 percent impervious surface such as the roof into a 50 percent impervious surface which might free up other uses on the property. Ms. Schemper stated they would try to think of some ideas, and reminded the Commission that the ROGO point system does award extra points for some of those items already. Commissioner Wiatt added that it's not a hundred percent, but to some extent, a non-pervious surface is being turned into a pervious one by collecting the water and reapplying it to a pervious surface at a

time where it's dry. This is one of the few things that would actually help from a proactive beginning-of-the-pipe scenario as opposed to the old EPA idea where everything is treated at the end of the pipe. Chair Scarpelli noted the expense of cisterns and that they need to be lawfully maintained. Mr. Roberts added that one reason we wind up with end-of-the-pipe treatment is because it can be regulated. The cistern is connected to the rooftop at time of final inspection but then it fills up, is never used, and is not connected to the irrigation system because it's a vacation rental. There was lengthy discussion on pros and cons of cisterns.

Ms. Schemper summarized what staff would be working on, and it would be re-advertised and continued to a date certain so the public has an opportunity to weigh in on the recommendations. Staff will revise language based on what was discussed today for Section 114-2, number 5, to reference the new Florida Statute regarding storm water level of service. Section 114-13 for fence height to be left at highest grade, and also work on additional language to address conflicts with other required fencing and more extreme issues. Section 114-100, delete number 13, the prohibition on turf in required landscape areas. Section 114-106, provide additional landscaping incentives. Section 114-128 regarding buffer yard, delete the word "evenly," leave as "distributed" and add reference to the definition showing need to meet the intent of a buffer yard. Somewhere with 114-46, any additional incentives for storm water collection and reuse, and a possible way to waive another requirement for that. Mr. Wolfe advised a motion was needed to table the item with a new draft coming back that will be re-advertised.

Motion: Commissioner Ritz and Commissioner Neugent made a motion to table the item while staff works on discussed changes. Commissioner Wiatt seconded the motion. There was no opposition. The motion passed unanimously.

2. <u>AN ORDINANCE BY THE MONROE COUNTY BOARD OF COUNTY COMMISSIONERS</u> ADOPTING AMENDMENTS TO THE MONROE COUNTY LAND DEVELOPMENT CODE TO AMEND CHAPTER 118 TO ELIMINATE REDUNDANT OR OBSOLETE TEXT, REFINE CODE LANGUAGE TO BETTER CLARIFY REGULATORY INTENT FOR THE BENEFIT OF THE REGULATED COMMUNITY AND COUNTY STAFF, UPDATE LISTS OF SPECIES AND CORRECT SCRIVENER'S ERRORS; 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 2019-184)

(12:24 p.m.) Mr. Mike Roberts, Assistant Director, Environmental Resources, presented the staff report. These are proposed amendments to Chapter 118, which is the Environmental Resources Chapter. The majority of these changes are really clarification in terms of approach. There are some changes relative to the deletion of the species of special concern and reproductively mature vegetation. Section 118-2 deletes species of special concern relative to vegetation because the Florida Fish and Wildlife Commission do not list plant species of special concern. Added in is RM which is reproductively mature. The species identified in this section are identified as reaching reproductive maturity at less than four inches DBH. Mr. Roberts

presented the guidelines for filling out the existing conditions report and the data and information required. 118-3 provides clarification of a grant of conservation easement running in favor of the County and shall be approved by the Planning Director and County Attorney and recorded in the official public records of the County for any conservation easement required pursuant to a list of sections. One proposed language clarification proposed is relative to the required native area open space. There are a number of instances where native habitat is required to be left undisturbed and it's currently referred to in the code as open space, which leads to the occasional confusion on the property owner's and contractor's part regarding open space versus protected area. This clarifies that it is a protected area, not regular open space. Criteria for fence construction is added for a fence through or abutting a conservation area where the fence construction must be completed with hand tools. There are clarifications on the mitigation standards. The existing current code does not allow for any access through or over any wetlands other than disturbed buttonwood salt marsh. There are some instances where there is a completely functional upland parcel that is separated from access by a fringe of mangrove or other wetland that is not developable in the code rendering the property inaccessible. This language is provided where only docks, docking facilities, ramps, walkways, water access walkways, water observation platforms, shelters, unenclosed rip rap, bulk heads, automobile or pedestrian access to lawfully-established dwelling units located on upland areas, so there is an opportunity to provide access across those habitat types to an upland area. This clarifies that a DEP and Army Corps permit is required for filling in a canal, boat ramp or boat slip. In 118-10, it deletes the restriction on just being a salt marsh or buttonwood association wetland to allow for the access to that upland property.

Criteria is being added for the environmental restoration standards. Restoration is separate from and a completely different conversation than mitigation. Mitigation is compensatory for permitted removal of native vegetation. Restoration is when there is unpermitted activity or activity in excess of a permit where such activity requires, under the current code, the restoration of that habitat. One thing being added is submission of a restoration plan and site plan showing the location of the restored plantings. The native canopy trees, understory and shrubs on the unlawfully cleared site shall be replaced with native plant species as appropriate. Under the current code, the restoration standard is the absolute replacement of exactly what was removed. So if a 30-foot tall mahogany with a 12-inch DBH is removed, that is what needs to be replaced. The problem encountered, especially post-Irma, is when a site has been completely cleared of native vegetation, we have no idea what was there other than it was native hammock, with no idea of what species makeup or diversity was there. Criteria was established based on published literature as to what would be required for that restoration with no evidence to support any other kind of planting. Specifically, two canopy and four understory trees required per 100 square feet of impact, and a lesser density of required trees or substitutes may be permitted at the discretion of the County Biologist, which would be based on data provided from a previous ECR that may have been done for the site or a vegetation survey from an adjacent property that was part of the same hammock, ecosystem or habitat. Canopy trees shall have a minimum of three inches DBH and be at least ten feet tall, understory a minimum of five feet tall. The replanted trees must go in the area actually cleared, and a minimum of 20 percent of the species must be listed as endangered, threatened or regionally important. This is consistent with the published literature

reviewed as the typical makeup of tropical hardwood hammock. The restoration work to correct the land clearing violation is deemed complete after four passed inspections; the initial planting inspection, and annual inspections for three years after that. A final inspection may only be approved provided three consecutive inspections have been approved, adding the word "consecutive."

Staff was originally recommending some changes or amendments to accessory structures within the shoreline setback and asked DEO informally to evaluate those proposed recommendations, and DEO's opinion was that those recommendations would likely require a Comp Plan amendment. At this point in time, staff is removing those amendments and will process them separately with a corresponding Comp Plan amendment. That applies to the walkways within the shoreline setback as well. An exception is being provided for one four-foot-wide walkway to the shoreline for the docking facility to provide access from the backyard patio or pool deck to the dock. Clarification for hoists installed perpendicular to the shoreline as opposed to parallel still requires a five-foot setback. One major addition is requiring all pilings associated with the construction of any dock shall be non-CCA (chromium, copper or arsenic) leaching material which would be recycled plastic, concrete, or be wrapped with impermeable plastic or PVC sleeves to a depth of six inches below the surface of the substrate and at least two feet above the mean-high water line. Additional recommended changes are the height of pier-type docks and piers over benthic resources be a minimum of five feet above mean-high water, which is consistent with Army Corps guidance, and requesting an additional bathometric survey to be submitted to document the water depth at the terminal end of the platform and ensure that continuous access to open water of navigable depth is available. There is the occasional instance where the navigable depth exists at the terminal platform but there is no access deeper than two feet from that platform to open water of navigable depth. For marginal docks, the dock cannot exceed eight feet in width waterward of the mean-high water line, and under no circumstances can exceed ten percent of the width of the water body.

The public comments on Chapter 118 were primarily related to the CCA treated lumber and there was quite a bit of push-back from some of the construction community there. So the question was do you have scientific evidence that wrapping the pilings reduces toxins from leaching, and the answer is no, there is no data describing the efficiency or efficacy of wrapping the pilings. There is data that CCA treated pilings is toxic to marine invertebrates. One question was if one piling is replaced, does the whole dock become non-conforming, and the answer is no. If more than 50 percent would be destroyed then the entire structure would need to come into compliance. Changes would become effective upon adoption by BOCC. Staff is not recommending any changes to the current depth requirements in the Code. Any depth other than four feet would require a Comp Plan amendment. Staff is not recommending any changes to the dredging restrictions within a basin, but there was a comment that in certain instances it would be better to dredge those basins than to leave them un-dredged. There was a comment that limiting dock length to 40 feet is very limiting for marginal docks, but it's to minimize the impacts to mangroves. Chapter 118-12(o) for special approvals is applicable to only Section 118-12 shoreline setbacks, and the public comment was that it should apply to the whole Chapter, not just 118-12. A question was if a deck or accessory structure requires a conservation

easement. And, if the addition of such structure results in the removal of native upland habitat to the point that the clearing allowances in Chapter 118-9 are triggered, then yes that would trigger the need for a conservation easement to protect the remaining tropical hardwood hammock on the lot in accordance with the entire chapter. A question regarding NOAs for the pilings is a Florida Building Code question not addressed here. And there was comment that the proposed amendments would increase cost and time associated with new bathometric and benthic survey recommendations. Staff recognizes there may be some increased incremental costs on boat dock construction but feels that in the interests of protection of the resource they are legitimate.

Chair Scarpelli asked for public comment. There was none. Public comment was closed. Chair Scarpelli then asked for Commission comments and questions.

Commissioner David Ritz started with 118-4(c) noting staff had referenced State or Federal Law, and on page 8 and 9 of 32 they referenced DEP and Army Corps. This is what he is looking for, when referencing other laws, why repeat it. At page 10 of 32, 118, Section B(3) regarding the number of trees required in a 100-square foot area of impact. 100 square feet is 10-by-10, so in this area, six trees are to be plated, two of them canopy trees, when one canopy tree will cover the entire area. So not just the standard here but the one we've been using and this seems like an excessive standard to require two canopy and four understory trees. Mr. Roberts pointed out that this is the restoration standard for unlawful clearing of tropical hardwood hammock, not landscaping. That density is based on the scientific literature that identifies up to 800 trees of a density per 1,000 square feet. So it's actually somewhat less dense than what some of the density data suggests. Commissioner Ritz believes the issue is that the County rarely has proof of what was there prior to the unlawful clearing, and it's hard to tell even with aerial photography. This is the opposite of what happens in a court of law where the burden of proof is on the innocent. Here the assumption is there was this number of trees there before when there's no proof of anything. Chair Scarpelli suggested that lawfully clearing the hardwood hammock is required or the book will be thrown at you. Commissioner Ritz said this typically happens after a storm, trees go down, people remove the trees and the County comes and says you removed too many trees. Maybe they did or didn't, but there is no proof. Commissioner Neugent added that in that instance, to pour salt in the wound, it was removed for free. Commissioner Ritz believes it seems like a lot of trees. Chair Scarpelli asked how the area of impact is determined. Mr. Roberts responded that generally it's fairly easy to see where someplace has been cleared and grubbed. Absent any other information, that is determined through aerial photography. Commissioner Neugent added that information can be obtained in the damage assessment if associated with hurricane damage. Mr. Peter Morris chimed in that the burden of proof in a Code Compliance proceeding against a property owner is on the County. There is no adverse presumption to the property owner. Commissioner Ritz asked if the County has to prove there were six trees per hundred square feet. Mr. Morris responded that the standard of review is competent substantial evidence. Chair Scarpelli asked if this was more for native hardwood hammocks because it doesn't really say that, and if land is cleared that is not designated a hardwood hammock, is that in violation of this code. Commissioner Ritz noted that it says, "in the event of any land clearing." Mr. Roberts responded that was for unpermitted and unlawful clearing. If it's all exotics, the permit is free and there's no mitigation.

Chair Scarpelli described a scenario of a 5,000 square foot lot that someone clears illegally, gets caught when they go to get their permit, and then gets told that they have to plant 300 trees, they won't be building a house anymore. Mr. Roberts confirmed that to be correct. Ms. Schemper added that this is for a subtropical hardwood hammock which is a very unique habitat that is very important to protect. Mr. Morris added that in the County's prosecution of illegal land clearing cases in the last eight years, there hasn't been one reversal from any appellate court. Chair Scarpelli admitted that this is the way to make it so people don't do it. Commissioner Ritz noted that there could have been one tree right in the middle, but this says you've got to plant six, so why don't we shoot people for speeding violations. Chair Scarpelli agreed that the punishment should fit the crime. Commissioner Wiatt added that a lot filled with Brazilian pepper, from an aerial is going to look like a hardwood hammock. Mr. Roberts responded that in accordance with the Code they go back to the 1986 existing conditions map and that has been a requirement of the Land Development Code since 1986. Based on mapping at that point in time, whether tropical hardwood hammock, exotics or pineland, that gives the first indication. Then in accordance with the code, additional aerial photography and data is looked at to determine what most likely was there, if there is data and information to suggest that it was Brazilian pepper. With modern optics and aerial photograph, you can actually tell the difference between Australian pine, Brazilian pepper, and tropical hardwood hammock or mangrove. The various habitats are discernible with high enough resolution aerial photography. Commissioner Ritz stated that the rule needs to be modified, which may be for another day, by not going back to 1986. Commissioner Wiatt stated that he can see where people would honestly not think they have to get a permit to remove invasive species. Chair Scarpelli agreed. Commissioner Ritz added that going back to 1986, maybe you're the fifth property owner since 1986, and maybe you did remove something, but you're paying for the sins of everybody since 1986. Chair Scarpelli clarified that 1986 is where the investigation starts. Commissioner Neugent asked why the magic number of 1986. Mr. Roberts responded that that's the date the Comp Plan ties the County to, though he doesn't know what the genesis of that is, but it's been in the code. Ms. Schemper clarified that the County did have a Comp Plan in '86. Mr. Wolfe stated that was the very first one, and then in '92 but with the appeals, the new one came into effect in '96. Commissioner Ritz still had an issue with the punishment fitting the crime and going back to 1986. Commissioner Wiatt noted that now that aerial photograph is so good that they can distinguish between an honest mistake and a more heinous situation, he feels better that someone won't be punished for doing something very minor. Commissioner Ritz noted that in 1986 they didn't have that modern photograph but that is what they are relying on. Ms. Schemper clarified that this is in the current Land Development Code, the legal condition of land as of February 28, 1986, and as depicted on the December 1985 habitat classification aerial photographs shall be used as the baseline to determine the clearing that may be permitted on a site. That was the point in time when clearing began to be regulated, so this is the baseline for the clearing. Anything removed since that time should have had a permit. Chair Scarpelli stated it's hard to believe that everything was permitted between 1986 and now, or recorded as being a violation previously, but we're getting in the weeds on something that this isn't about. Commissioner Ritz reiterated that this needs to be changed. Commissioner Wiatt wanted to clarify the burden of proof was on the owner, adding that using the aerial photography from 1986, and now it's cleared, and the

onus would be on the owner to prove that it was invasive Brazilian pepper. Mr. Morris stated it is the opposite and the burden of proof is on the County before an independent Administrative Law Judge. Commissioner Ritz wanted to be clear, someone buys a house in 1995, you've owned it 25 years, and some guy cleared the land in 1990, you do something next month, you've got to restore it to what it was in 1986 before you bought it, and the trigger is, "any event of land clearing that occurs on this site." Commissioner Neugent noted that is like the Code Compliance laws, you buy any problem associated with the piece of property. Mr. Morris interjected that there are defenses to unreasonable enforcement actions, such as if the County had knowledge of those violations and sat on its hands for a number of years and was ambushing a successor in title 15 or 20 years down the road. Commissioner Wiatt stated his understanding is the County doesn't recognize statute of limitations on these kinds of things. Commissioner Demes added that going back to 1986 aerial photographs would be a blessing to a lot of people because when the Clean Water Act came into effect in about the early seventies and the dredging all stopped, when people were making land down here from what he can tell, there was nothing but barren property. Back in the eighties there were very few mature mangroves and things, but once they took hold they really started to grow. From '86 to 33 years later, there's been a lot of growth, depending on how the data is used. There have been high-resolution photographs put out from Wilma and Irma to plead a case that this is not what existed here, and there are other areas of hyper-salinity that used to be thriving mangroves but when some of the storms came in and blocked the flushing, it killed all the mangroves from natural causes. So, to a degree, people will have a defense with a reasonable ability to get that defense from photographs and he doesn't see it as a problem.

Commissioner Ritz continued with number five, page 10 of 32, regarding the four past inspections versus three. Mr. Roberts clarified it's the initial planting inspection, first, second and third annual inspections. Commissioner Ritz pointed out that it says two years. Mr. Wolfe agreed it was kind of odd language but it is four inspections. Commissioner Demes asked if the third consecutive inspection which would be three at the end of the second year, if it failed, does the three years start over again. Mr. Roberts responded that that was correct. Commissioner Wiatt asked who the onus was on to have the inspections. Mr. Roberts stated the property owner is responsible for calling in for inspections for any permit in the County, but when a restoration permit is issued, each annual inspection is scheduled into the permit management system. Commissioner Wiatt thought a small snippet of language could be added identifying exactly who is responsible so there is no confusion. Chair Scarpelli asked if this was through the Building Department. Mr. Roberts responded that it's the Planning and Environmental Resource Department that does the inspections. Ms. Schemper added that it goes through the Building Department system and a report comes out every morning as to what inspections are scheduled. As a courtesy to the property owner, staff pre-loads those into the computer system so it will pop up on the inspection list each year. Restoration permits are set up differently than building permits and don't expire in 180 days. Chair Scarpelli asked what would happen if a major storm event happens while going through this process. Ms. Schemper stated that would be done a case-by-case basis. Chair Scarpelli noted that the bottom line is this is all for people who clear illegally. Ms. Schemper added that these requirements are not really being changed, rather more detail is being added to avoid matters of contention. Staff spends an infinite amount of time

going back and forth about what should be required in certain areas where clearly there was hammock that was cleared, and no one can agree on what should be replanted. This puts it into the Code. It's based on published articles, not just something the County made up, and it does not require the full density of hardwood hammock which is 80 per 100 square feet, and the County only requires six.

Commissioner Ritz stated that he does not want to drop this 1986 business in the Comp Plan. Ms. Schemper wanted to clarify that the Code language about 1986 is in the permitted clearing section. When it comes to Code Enforcement cases, staff is not running around looking to see who has cleared their property since 1986 compared to these aerials. That's the starting point, and then all other available information is used which includes additional aerial photography over the years. We have a lot of photography that gets better and better in terms of the resolution. There is also angled photography so you can see from the side and not just the top of the trees. There are things like street view and there are all sorts of resources that can be looked into. Staff does a thorough investigation to figure this out. How to figure out if there was a code violation was not part of the discussion for these proposed amendments. This is how a restoration is permitted once a code violation has already been determined. Commissioner Ritz proposed that the 1986 date be changed to 2018 because if it gets adopted in 2022, four years prior to 2022 would be 2018. There would be great photos in 2018, and that would be the new starting date instead of 1986. Chair Scarpelli stated that is something they can have staff look at but it has nothing to do with this current amendment. This is just adjusting the restoration process. Mr. Wolfe also clarified that this would be a separate request for staff to look into. Commissioner Ritz stated that he doesn't want to forget about it. Ms. Schemper was not sure if that would meet the Principles for Guiding Development and what the purpose for changing that baseline would be, and it would require a Comprehensive Plan change. Commissioner Ritz stated that that is what he is talking about, a Comp Plan change. His question is how to do it, not if it's feasible.

Commissioner Ritz continued with page 15 of 32, bulkheads, seawalls and rip rap. As to the height of seawalls, because of sea level rise, people want to add to the height of their seawall when they are repairing it if it's deteriorating, and Commissioner Ritz asked if there was any problem with raising the height of seawalls. Mr. Roberts stated that there is no criteria as to the height of the seawall. Commissioner Ritz continued, the main issue at page 17 of 32, the CCA pilings, there is no data as to what is actually leaching. Mr. Roberts interrupted to clarify that there is no data as to the efficiency of the wrapping, but there absolutely is data that CCA is toxic to marine organisms. Commissioner Ritz asked how much leaching is occurring from the pilings because when he looks at his pilings, they are completely covered in plant life and barnacles and things are growing on them. Mr. Roberts suggested he may not have CCA-treated timber. Not all pressure-treated timber is CCA. The majority is nowadays but not all of it. Commissioner Ritz thought they would be hard pressed to find something that's been in the water more than a couple of years without stuff growing on it. He doesn't doubt that arsenic is dangerous, but arsenic is in an apple and it's in the ground and it's a naturally-occurring element. It's a matter of how much. So the question is how much is leaching out to cause us to wrap it in something. Commissioner Neugent asked if that was a federal rule. Mr. Roberts responded that within the

aquatic preserves, it is a requirement from DEP, and is an optional requirement on the areas within the sanctuary, but not in State of Florida waters outside of the preserves. Commissioner Ritz stated this is a great example of the DEP who is charged with protecting the environment that doesn't require this in State of Florida waters, so why is the County requiring it? Commissioner Neugent stated he is not a big fan of some things the State does. Commissioner Wiatt added that if you wrap your pilings, they will last a hell of a lot longer, so in some ways it actually behooves the owner, and he would also argue that we may not have firm data on the overall effects of this, but there is no firm data in the opposite direction saying it's not a threat at either. From the standpoint of cost benefit and not having to be concerned that there is a real environmental issue, this seems reasonable. Commissioner Ritz thought the issue of cost was debatable. Chair Scarpelli added that he talked to a dock builder that said aluminum or metal piles are cheaper than the wood. Commissioner Wiatt stated he has built one dock that required wrapping and it wasn't expensive, though that was fifteen years ago, and those pilings are in much better shape than they would have been if not wrapped. If he had to build a dock now and it wasn't a requirement, he would wrap it anyway. Commissioner Ritz thought that should be his option.

Commissioner Demes added that he had been involved in the first clean marina on federal property where this occurred at Boca Chica years ago. When building a marina in outstanding Florida waters it's a pretty difficult thing to do to prove there's no degradation. His tact was the environment was being improved by building the marina. One of the things was getting away from the creosote piles and they used concrete, so there are a lot of options out there besides that particular treated lumber. The nature of the lumber treatment is to kill biological growth. To what degree it leaches in, it makes sense that it's doing its thing protecting the wood by killing anything that attacks it by leaching. But at the same time, regarding wrapping tiles, one thing he realized when replacing steel piles, they all fail at the splash zone where they're getting the most oxygen and wave action. It's a good thing to wrap all piles, even steel, and he has no issue with the wrapping of the piles. It's better for the environment than not doing it, and the solution to pollution is dilution. It's another factor adding something into our local waters that it would be a good idea to eventually get into the wrapping or use alternate non-toxic materials. Commissioner Ritz responded when the horse is dead, dismount, and he still feels we should rely on DEP and not be overly restrictive, but he's not going to win this battle.

Commissioner Ritz continued on Section E, the height of the pier-type dock and pier shall be five feet above the mean high water, and asked if this was new, docks being five feet over the water. Mr. Roberts responded that it's over benthic resources and is consistent with the same criteria that the Army Corps requires. Commissioner Wiatt asked if this was guidance or requirement from the Army Corps. Mr. Roberts responded that the Corps calls it guidance, but if you don't design it that way, they won't give you a permit. Commissioner Wiatt had one issue with some existing five-foot docks and how dangerous they are, especially putting people with disabilities on and off a charter. If you have a skiff, the gunnel is a foot-and-a-half off the water, and at low tide the gunnel is five to six feet away, and it is really difficult to manage. With the grates that sunlight can pass through, is it necessary to have the grated areas of your dockage five feet above mean-high water. If the grating would take care of it, wouldn't an option be if you

use grate you don't have to do the five feet, and then everybody would be happy. The five-foot thing is crazy dangerous and pretty much eliminates dealing with folks with disabilities. Commissioner Demes added, or old people like me. Chair Scarpelli thought a lower platform was allowed at the end of terminal docks. Mr. Roberts stated only where you have access, a rail or steps or stairs, but no lower area. Commissioner Wiatt suggested that everyone could see one at Edgewater Lodge on Long Key. Commissioner Ritz reiterated that this is another case where the Army Corps has a rule, then so be it. Commissioner Wiatt stated that was why he was asking if it was guidance or a requirement. If it's a requirement, then this whole conversation is moot. If it's just guidance, we can work around the guidance by saying you can go below five feet if you use a grate. Commissioner Wiatt believes this would be a nice solution for the environment and public safety. Commissioner Ritz added that to build a dock you need permits from DEP and Army Corps, so after jumping through all those hurdles, the County shouldn't be adding more. Commissioner Demes spoke on Commissioner Wiatt's point as to the reason for the regulation. If it deals with the opacity and shading biota under the water, it makes sense that if there is latitude to drop the height because of grating, which makes sense, then we should look into it. There should be a minimum opening percentage on grating to achieve the desired purpose. Chair Scarpelli asked what the impetus was for this added terminology on height. Mr. Roberts responded that it was for light access to the submerged resources. Chair Scarpelli asked if DEP and Army Corps allowed a lower platform if it's grated. Mr. Roberts stated he would have to go back and look. Commissioner Wiatt thought if it was a viable option, it should be pointed out to folks. Additionally, with the grates, if a hurricane is coming you can go out on your dock and remove them all, put them in a safe location, and when the waves hit the piers it doesn't knock them down so there are some advantages, the biggest one being a lower dock. Mr. Roberts clarified that this is for pier type docks over benthic resources, not marginal docks in a commercial basin.

Commissioner Demes commented on Section 118-7, the general environmental design criteria and his concern with the language, "This is a general environmental design criteria. No land should be developed except in accordance with the following general citeria." Then down to (b), "To the maximum extent practicable development shall be sited as to preserve all listed endangered plant species, and species of special concern". It goes down to (c) "The habitat of the protected areas, plants and animals, and not limited to the species listed as endangered, threatened or species of special concern." Again, it went from the single act of the Migratory Bird Treaty Act to the State and Federal Laws, which will decimate different species like the roseate tern which is not federally listed but is state listed. Then it gets down to, "Habitat includes but is not limited to foraging, roosting, breeding, and natural and artificial nesting habitats." Commissioner Demes then asked for an example of artificial nesting habitats. Mr. Roberts responded the roof of the County building. Commissioner Demes noted that in the Lower Keys, a lot of the tar and gravel roofs are least tern nesting habitat and create havoc to repair them, especially if you're a federal agency, and to do an environmental impact assessment to deal with changing the habitat that you know endangered species may be on is not easy. Then there are changes from bird rookeries and bird nesting areas rather than colonies. Commissioner Demes asked what the intent of the colony was, and noted that any scarified property with exposed lime rock is a least tern nesting habitat, and a vacant lot with gravel is an ideal spot for

least terns to nest. Commissioner Demes asked if this could somehow muddy the waters for people who want to develop large scarified areas of lime rock and they see a bunch of least terms coming in there in September. Ms. Schemper responded that the issue of nesting areas came up while updating the Comp Plan and Code back in 2016, and got pulled out as a separate amendment after that. There was a lot of public input on this. In 2019 the code was updated to update the definition in 101-1 for nesting areas. That's why it was changed to specifically say nesting areas so it can reference the definition clearly. That's the defined term in the code.

Commissioner Demes then commented on page 15 of 32, paragraph (k) and for his edification, wanted to know the principal uses intended there when it says, "Bulkhead, seawalls and/or rip rap," and his focus is on rip rap, "may be allowed without a principal use where it's demonstrated that the purpose is necessary for erosion control." Commissioner Demes does not know what other reason anyone would put rip rap in for besides erosion control. Mr. Roberts responded that by strict definition, rip rap, seawalls, et cetera, are an accessory structure. The code specifically prohibits construction of an accessory structure without a principal use or structure being established on a lot or a property. So this code is specifically stating rip rap or a seawall may be considered a principal structure so that you can protect a vacant lot from erosion via construction of a seawall. Commissioner Demes thought this would be a favor to the neighbours. Chair Scarpelli added that this also allows an owner to fix their erosion and rip rap prior to building the house.

Chair Scarpelli asked about the marginal docks being limited to 40 feet where there are mangroves present, and he didn't see where there was a change unless he's looking in the wrong spot. Mr. Roberts responded that it may actually be under T or L-shaped docks, and the proposal is to delete the phrase that says, "If a mangrove fringe of more than ten feet in width will be removed, a dock shall not extend more than 20 feet along a shoreline." The Army Corps and DEP routinely issue permits for docks that exceed that, so we've deleted that language. But the comment from the public he does not actually see. Chair Scarpelli just wanted to make sure he hadn't missed something.

Chair Scarpelli finally asked for motions. Commissioner Ritz made a motion to approve providing deletion of 6A referencing CCA leaching pilings and the first part of 6E referencing height of pier type docks on page 17 of 32. There was no second.

Commissioner Wiatt made a motion to approve providing staff reviews 6E to determine whether piers over benthic biologic resources could less than five feet if grating were to be used, and he would pick a number of two feet over mean-high water. Commissioner Demes stated that he could not go with eliminating the wrapping of pilings, and that he would second this motion

Motion: Commissioner Wiatt made a motion to approve with further staff review. Commissioner Demes seconded the motion.

Roll Call: Commissioner Demes, Yes; Commissioner Wiatt, Yes; Commissioner Neugent, Yes; Commissioner Ritz, No; Chair Scarpelli, Yes. The motion passed 4 to 1.

3. <u>ITALIAN FOOD COMPANY, LLC, 98070 OVERSEAS HIGHWAY, KEY LARGO, MILE MARKER 98:</u> A PUBLIC HEARING CONCERNING THE REQUEST FOR A 2COP ALCOHOLIC BEVERAGE USE PERMIT, WHICH WOULD ALLOW FOR BEER AND WINE ON PREMISE AND PACKAGE SALES FOR OFF PREMISES CONSUMPTION. THE SUBJECT PROPERTY IS DESCRIBED AS A PARCEL OF LAND IN SECTION 5, TOWNSHIP 62 SOUTH, RANGE 39 EAST, KEY LARGO, MONROE COUNTY, FLORIDA, HAVING PARCEL IDENTIFICATION NUMBER 00090600-000000. (FILE 2020-190)

(1:48 p.m. moved to 2:04 p.m.) Mr. Corey Aitkin, Senior Planner, presented the staff report. This is a request for a 2COP alcoholic beverage use permit which would allow for beer and wine sales for consumption on premise or in sealed containers for package sales at the restaurant located at 98070 Overseas Highway in Key Largo, at approximately mile marker 98, in the median of U.S. 1 in the Suburban Commercial Land Use District. The property was first established as a restaurant on March 25, 1998. Surrounding properties include a boatyard and sales location, undeveloped parcels, and single-family residences. Staff does not anticipate any adverse effect on surrounding properties or the immediate neighbourhood. A boundary survey dated September 22, 2020, submitted with the application, depicts a restaurant with approximately 1,430 square feet. Proposed use is not anticipated to have an impact on traffic generation or road capacity due to the use being the same as currently approved and allowed on the property. The 2017 level of service reserve capacity for this property location is A. There should be no increased demand on any utilities, community facilities or public services. Staff recommends approval.

Chair Scarpelli then asked for public comment.

Ms. Ann Helmers, after being sworn in, speaking on behalf of the Rock Harbor Homeowners Association, stated the association has not taken a position on this particular application, but does have a couple of questions. Will the beer and wine license convey with the property, and was music entertainment being contemplated and what steps would need to be taken to have entertainment in the future. Chair Scarpelli explained that the Commission does not give out music permits. Ms. Schemper responded that if that was a concern, conditions could be attached to the 2COP approval at the Commission's discretion. Most of the seating at this location is outdoors. Chair Scarpelli stated there is already a noise ordinance that would need to be complied with. Mr. Wolfe added that if the Commission believes this is already regulated, no additional conditions should be added. Commissioner Demes asked if this level of discussion was appropriate during public comment. Mr. Wolfe stated that the public does not have the right to cross-examine staff, but in terms of the comment, he believes this speaker is looking for the rules of the road on noise. Commissioner Demes focused on interesting wording which says, "Lighting on the permitted premises shall be shuttered and shielded from surrounding properties." Then it says, "And construction of such permitted properties shall be sound proofed." That is before it moves on to the music. Then it says, "In the event music and entertainment are permitted, the premises shall be air conditioned." So in the event of music, it only deals with air conditioning. The building is supposed to be soundproofed but the outdoor seating has 36 seats and only six inside. Does the music have to be inside where six people can

hear it, or outside where 36 of the seats are? Commissioner Neugent stated that the 2COP doesn't create the music, it's a separate issue. Chair Scarpelli said that's why he was trying to get clarification.

Ms. Helmers then added that according to a March 31 article in the Keys Free Press, the business owner stated this facility will be a restaurant with seating for 58 people, with up to 10 guests inside but many more outside, that his business would be 70 to 80 percent Italian pizza, and there will be a market both in store and online. This facility is maintaining the current 19 parking spaces which is within one of the maximum formula number. As a resident who has seen business in the median that become popular, she is concerned.

Chair Scarpelli responded that staff would look at requirements in the code, but these comments had nothing to do with the 2COP license. So unfortunately, this isn't the forum for the Commission to do anything about parking.

Ms. Isis Wright, after being sworn in, stated that she is part owner of Italian Food Company. In light of the comments, she wanted to speak. This will be a traditional authentic Neapolitan type of pizzeria with a wood-burning oven. They are renovating the exact footprint of what was already there before, inclusive of the outdoor canopy. The request for the alcoholic beverage license is a complement to the food selection, not the basis for opening the restaurant. It is in line with other establishments also on the median. There will be more noise from the cars than from people eating at the pizzeria. She is excited to bring this to Key Largo.

There was no further public comment. Public comment was closed. Chair Scarpelli asked for Commission comments. Commissioner Ritz stated that he lives nearby and is looking forward to the opening of the pizzeria. Commissioner Demes agreed, but noted that the second number two is in compliance, which is suitability of the premises regarding its location, which requires the air conditioning. However, he has no problem with this item. Commissioner Neugent stated he would join Commissioner Ritz for pizza.

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

4. <u>103031 OVERSEAS HIGHWAY, KEY LARGO, MILE MARKER 103:</u> A PUBLIC HEARING CONCERNING A REQUEST FOR A VARIANCE TO ACCESS STANDARDS SET FORTH IN CHAPTER 114, ARTICLE VII OF THE LAND DEVELOPMENT CODE (LDC). APPROVAL WOULD RESULT IN AN ACCESS DRIVE TO U.S. 1 THAT IS SPACED APPROXIMATELY 92 FEET AND 3 INCHES FROM AN EXISTING CURB CUT TO THE NORTH AND APPROXIMATELY 47 FEET AND 4 INCHES TO AN EXISTING ACCESS DRIVE TO THE SOUTH OF THE SUBJECT PROPERTY. THE VARIANCE IS REQUESTED FOR THE DEVELOPMENT OF A SINGLE-FAMILY RESIDENCE. THE SUBJECT PROPERTY IS LEGALLY DESCRIBED AS LOT 8, BLOCK 4, SOUTH CREEK VILLAGE, ACCORDING TO THE PLAT THEREOF, RECORDED IN PLAT BOOK 3, PAGE 85, OF THE PUBLIC RECORDS OF MONROE COUNTY, FLORIDA, HAVING PARCEL ID NUMBER 00467150-000000. (FILE 2020-192)

(1:50 p.m.) Ms. Devin Tolpin, Senior Planner, presented the staff report. This is a request for a variance to access standards for the development of a single-family residence on the subject property. The property is located within the ISM zoning district, the RM FLUM designation and is Tier III. The applicant is requesting a variance to the access standards that would result in an access drive off of U.S. 1 going to the subject property that is spaced approximately 92 feet and three inches from the existing curb cut to Plant Street to the north, and 47 feet and four inches from the existing curb cut for the access drive for the property to the south that currently has a single-family residence. The County Land Development Code does require new curb cuts to be spaced at least 400 feet from adjacent curb cuts. The subject property is located within a residential subdivision along U.S. 1. To the south is an existing single-family residence that currently does have an access drive off of U.S. 1. This property is proposing their drive to be 47 feet from that one, and then again 92 feet from the curb cut to Plant Street to the north of the property. Staff has reviewed the application for compliance with all necessary standards to grant a variance, finds compliance with all standards, and is recommending approval.

Chair Scarpelli then asked for public comment.

Ms. Ileana Fernandez, after being sworn in, first thanked Commissioner Ritz for bringing up the difficulty of pulling permits in the Keys and described her experience of it taking five years to get a permit. Ms. Fernandez is afraid this access drive will hinder the safety of the kids in the neighbourhood. South Creek is a little village and we all take care of each other. This does not seem feasible for the safety of her grandkids and she is against this application.

Mr. Juan Fernandez, after being sworn in, asked if this applicant had a permit to build yet, because this lot has been being cleared for a couple of months already, going in and taking trees out, when they didn't allow his father to do that. It is unfair that he had to go through everything he did and this applicant being allowed to clear without permits. Mr. Wolfe advised that he should bring that up with Code Compliance. Mr. Fernandez also stated the applicant could gain access to his lot if he removed a container that has been sitting on the easement for more than 20 years. He disagrees with this application and the neighbours are the ones that will be left with the headache.

Mr. Daren Clayton, after being sworn in, asked for the specifics about this right-of-way, and why they can't utilize access from Plant Street. The house to the south of this lot has access, and his house is the one to the north of this that butts up to Plant Street. Ms. Tolpin presented the site plan for clarification. It was realized that Mr. Clayton thought this was for a 47-foot median cut, which it is not, and the drive is only 17 feet wide.

There was no further public comment. Public comment was closed. Chair Scarpelli asked if the applicant wished to speak. Ms. Barbara Bauman, the applicant, had no comments pertaining to the variance other than to state that the request is for minimum access for the proposed house.

Commissioner Neugent made a motion to approve, and Commissioner Wiatt seconded it, but Commissioner Demes wanted to comment and note that this was being done partly to not clear the hammock in the back, which he agrees with. Although, this access in this area is death by a thousand cuts because it is another access on U.S. 1, with all that said, he agrees to approve.

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

5. <u>AN ORDINANCE BY THE MONROE COUNTY BOARD OF COUNTY COMMISSIONERS</u> AMENDING POLICY 301.1.2 OF THE 2030 MONROE COUNTY COMPREHENSIVE PLAN TO REFLECT THE U.S. 1 LOS TASK FORCE RECOMMENDATIONS TO THE BOCC ON THE LEVEL OF SERVICE METHODOLOGY. PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL OF CONFLICTING PROVISIONS; PROVIDING FOR TRANSMITTAL TO THE STATE LAND PLANNING AGENCY AND THE SECRETARY OF STATE; PROVIDING FOR INCLUSION IN THE MONROE COUNTY COMPREHENSIVE PLAN; PROVIDING FOR AN EFFECTIVE DATE. (FILE 2020-193)

(2:21 p.m.) Ms. Mayte Santamaria, Senior Policy Planning Advisor, presented the staff report. This is a proposed single amendment to the Comp Plan, specifically to Policy 301.1.2, and is merely striking out the date of August 1991, which is when the BOCC originally adopted the U.S. 1 speed-based methodology for traffic concurrency, and updating it with the date of February 2021, which reflects the Board's action on February 17, 2021, where Resolution 64-2021 was adopted updating the methodology based on the Task Force recommendation which was reinitiated in October of 2020, which had recommended six updates to the methodology.

Chair Scarpelli asked for public comment. There was none. Public comment was closed. Chair Scarpelli asked for Commission comments or questions. Commissioner Ritz pointed out to the attorney how easy it was to strike one date for another, such as 1986 to 2018.

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

6. <u>RESIDENCES ORC, LLC, 1 GOLF VILLLAGE DRIVE, KEY LARGO, OCEAN REEF:</u> A PUBLIC HEARING CONCERNING THE REQUEST FOR A 5COP ALCOHOLIC BEVERAGE USE PERMIT, WHICH WOULD ALLOW FOR BEER, WINE AND LIQUOR ON PREMISE AND PACKAGE SALES. THE SUBJECT PROPERTY IS DESCRIBED AS ALL OF GOLF VILLAGE OCEAN REEF PLAT NO 9, ACCORDING TO THE PLAT THEREOF AS RECORDED IN PLAT BOOK 6, PAGE 107, KEY LARGO, MONROE COUNTY, FLORIDA, HAVING PARCEL IDENTIFICATION NUMBER 00572611-005000. (FILE 2020-212)

(2:23 p.m.) Ms. Emily Schemper, Senior Director of Planning and Environmental Resources presented the staff report. This is a property within Ocean Reef and is a 48-unit condominium undergoing a complete redevelopment. Within that redevelopment in their center building, they have a private restaurant/club for members only. Within this zoning district Urban Residential, alcoholic beverage use permits are allowed at restaurants. They are requesting a 5COP in order to sell beer, wine and liquor for consumption on premises and package sales. Staff is recommending approval with some standard conditions. On the matter of entertainment, they specifically have stated that the only entertainment proposed is a piano or guitar player occasionally in the living room near the bar. This is not intended to cause any noise issues and

the venue is air conditioned. Staff is recommending approval. The applicant, Chelsea Vanadia from Smith Hawks, is present today.

Chair Scarpelli asked for public comment. There was none. Public comment was closed. Chair Scarpelli asked if the applicant wished to speak. Ms. Chelsea Vanadia from Smith Hawks, after being sworn in, stated there would not be package sales as with this particular property, it would not be allowed. Other than that, everything stated by Ms. Schemper was correct. Ms. Schemper confirmed with Ms. Vanadia that this was the correct permit that they were requesting.

Commissioner Demes noted that in speaking of outdated references, in County Code Section 3.6 there is no 5COP. We're approving a 5 but there's no such thing in the County Code, so that needs to be added. But with that, he would move to approve. Ms. Schemper explained that as to the 5COP, she believes it's because the Code probably hasn't been updated since the County surpassed a population of 50,000, which bumped it to a different category.

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

BOARD DISCUSSION

Commissioner Ritz requested staff to look into changing the date in the Comp Plan from 1986 to 2018, regarding the start date for enforcement of landscape issues. Commissioner Neugent asked, since the year 1986 always comes up in takings cases, whether that would have any kind of unintended consequence. Mr. Wolfe responded that it would need to be looked into. Ms. Schemper agreed. Chair Scarpelli added that overall, going back to 1986 for native vegetation, so many storms have passed through here that he agrees it would be a good thing to look at, and also asked if the Commission wanted to add the 5COP. Ms. Schemper responded that that wouldn't be something that comes before the Planning Commission.

ADJOURNMENT

The Monroe County Planning Commission meeting was adjourned at 2:32 p.m.