

PLANNING COMMISSION  
**August 30, 2017**  
Meeting Minutes

The Planning Commission of Monroe County conducted a meeting on **Wednesday, August 30, 2017**, beginning at 10:00 a.m. at the Marathon Government Center, 2798 Overseas Highway, Marathon, Florida.

**CALL TO ORDER**

**PLEDGE OF ALLEGIANCE**

**ROLL CALL** by Ilze Aguila

**PLANNING COMMISSION MEMBERS**

Denise Werling, Chair	Present
William Wiatt	Present
Teri Johnston	Present
Ron Miller	Present
Beth Ramsay-Vickrey	Present

**STAFF**

Mayte Santamaria, Sr. Director of Planning and Environmental Resources	Present
Steve Williams, Assistant County Attorney	Present
Peter Morris, Assistant County Attorney	Absent
Derek Howard, Assistant County Attorney	Present
John Wolfe, Planning Commission Counsel	Present
Mike Roberts, Senior Administrator, Environmental Resources	Absent
Emily Schemper, Comprehensive Planning Manager	Present
Kevin Bond, Planning & Development Review Manager	Present
Tiffany Stankiewicz, Development Review Manager	Present
Janene Sclafani, Sr. Planner	Present
Martine Vray, Principal Planner	Present
Ilze Aguila, Sr. Planning Commission Coordinator	Present

**COUNTY RESOLUTION 131-92 APPELLANT TO PROVIDE RECORD FOR APPEAL**

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

**SUBMISSION OF PROPERTY POSTING AFFIDAVITS AND PHOTOGRAPHS**

Ms. Aguila confirmed receipt of all necessary paperwork.

**SWEARING OF COUNTY STAFF**

County staff members were sworn in by Mr. Wolfe.

## **CHANGES TO THE AGENDA**

Ms. Aguila stated that staff has requested that Items 1 and 2 be read together and Item 5 has been withdrawn.

## **APPROVAL OF MINUTES**

**Motion: Commissioner Ramsay-Vickrey made a motion to approve the June 28, 2017, meeting minutes. Commissioner Johnston seconded the motion. There was no opposition. The motion passed unanimously.**

Commissioner Miller asked to comment on the minutes. He thought he had seen Mr. Pla this morning and wanted to verify the minutes, quoting from page 15, “Mr. Pla continued that of the 28 units, there were a total of 42 bedrooms which would indicate how many people would be living there, and 60 parking spaces. With a 20-unit project, that would reduce density to 50 bedrooms,” so that’s eight more bedrooms, “and reduce parking to 50 spaces so there would not be a whole lot of advancement in dropping the density.” Mr. Pla was not present so Commissioner Miller noted that he could not verify that with Mr. Pla.

## **MEETING**

### **Continued Item:**

**1. AN ORDINANCE BY THE MONROE COUNTY BOARD OF COUNTY COMMISSIONERS AMENDING THE MONROE COUNTY COMPREHENSIVE PLAN TO INCLUDE DEFINITIONS OF BASIN, CANAL SYSTEM, AND PERIMETER CANAL IN THE GLOSSARY; AMENDING POLICY 202.4.3 AND CREATING NEW POLICY 202.4.4 TO ALLOW MAINTENANCE DREDGING WITHIN AREAS VEGETATED WITH SEAGRASS BEDS OR CHARACTERIZED BY HARDBOTTOM COMMUNITIES WITHIN THE CANAL SYSTEM OF DUCK KEY (MM61) IN ORDER TO RESTORE NAVIGATIONAL ACCESS; LIMITED TO PREVIOUSLY DREDGED CANAL SYSTEMS; NOT TO EXCEED DEPTHS OF GREATER THAN MINUS SIX FEET MLW; PROVIDED THERE IS NO DEGRADATION OF WATER QUALITY OR IMPACT ON SURROUNDING BENTHIC RESOURCES; REQUIRING MITIGATION FOR IMPACTS WITHIN THE DREDGED AREA; PROVIDED THE PROPOSED DREDGING IS IN THE PUBLIC INTEREST; AS PROPOSED BY DEMETRIO BRID AND DUCK KEY COMMUNITY BENEFIT INC.; 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 2016-183)

**2. AN ORDINANCE BY THE MONROE COUNTY BOARD OF COUNTY COMMISSIONERS AMENDING MONROE COUNTY LAND DEVELOPMENT CODE SECTION 101-1 – DEFINITIONS TO INCLUDE DEFINITIONS OF BASIN, CANAL SYSTEM, AND PERIMETER CANAL; AMENDING SECTION 118-10 – ENVIRONMENTAL DESIGN FOR SPECIFIC HABITAT TYPES, TO ALLOW**

MAINTENANCE DREDGING WITHIN AREAS VEGETATED WITH SEAGRASS BEDS OR CHARACTERIZED BY HARDBOTTOM COMMUNITIES WITHIN THE CANAL SYSTEM OF DUCK KEY (MM61) IN ORDER TO RESTORE NAVIGATIONAL ACCESS; LIMITED TO PREVIOUSLY DREDGED CANAL SYSTEMS; NOT TO EXCEED DEPTHS OF GREATER THAN MINUS SIX FEET MLW; PROVIDED THERE IS NO DEGRADATION OF WATER QUALITY OR IMPACT ON SURROUNDING BENTHIC RESOURCES; REQUIRING MITIGATION FOR IMPACTS WITHIN THE DREDGED AREA; PROVIDED THE PROPOSED DREDGING IS IN THE PUBLIC INTEREST; AS PROPOSED BY DEMETRIO BRID AND DUCK KEY COMMUNITY BENEFIT INC.; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL OF CONFLICTING PROVISIONS; PROVIDING FOR TRANSMITTAL TO THE STATE LAND PLANNING AGENCY AND THE SECRETARY OF STATE; PROVIDING FOR INCLUSION IN THE MONROE COUNTY LAND DEVELOPMENT CODE; PROVIDING FOR AN EFFECTIVE DATE.

(FILE 2016-184)

(10:05 a.m.) Mr. Wolfe first announced that these two items are legislative matters so anyone speaking does not need to be sworn in. Ms. Emily Schemper, Comprehensive Planning Manager, presented the staff report, beginning with the June 15, 2017 staff report for the Comp Plan Amendment covering background and history for the proposed amendment. The Planning Department had received an application in October of 2016 from Trepanier and Associates on behalf of Demetrio Brid and the Duck Key Community Benefit Association requesting to amend the Monroe County Comp Plan and Land Development Code to allow maintenance dredging adjacent to Duck Key in areas that have seagrass and/or benthic resources. The BOCC had previously reviewed and discussed amendments regarding dredging. The current policies allow no new or maintenance dredging in areas with seagrass or benthic resources. Options were discussed back in October of 2014 and the final direction given by the BOCC was to not include any of those amendments at the time of the update.

Commissioner Miller asked Ms. Schemper if the amendment she was talking about was just for Duck Key or an amendment for everyone. Ms. Schemper responded that it would have been County wide, and is not exactly what is being proposed today, but rather a related issue.

Ms. Schemper continued, in October of 2015, there was a sounding board item and the Duck Key Property Owners' Association presented areas in the Duck Key canals that had silted up to less than five feet of depth at low tide and they requested an amendment that would allow them to do some maintenance dredging where it is otherwise prohibited by the Comp Plan and Code. The BOCC at that meeting discussed a possibility of a specific Comp Plan Amendment and asked staff to bring back potential options. In January of 2016 at a BOCC meeting, there was a discussion item where staff presented potential Comp Plan and LDC amendments as follow up, recommending that the Duck Key residents submit an application for such a text amendment since it was their specific request. During that discussion item, the BOCC directed that the Duck Key property owners should apply for the applicable text amendments which the BOCC would be willing to consider if limited to previously-dredged manmade canals and possibly previously-dredged manmade perimeter canals, but not for open-water basins or channels. The BOCC was favorable towards changing storm deposition in the proposed language to sedimentary

deposition, natural sedimentary depositions or similar language and limiting eligible canals to those adjacent to developed properties or those needed to maintain continuous transportation from developed properties to open water. The BOCC was not in favor of allowing maintenance dredging in areas with benthic resources in channels, even if it was at the mouth of a canal; a channel being an area where both edges are under water.

Ms. Schemper explained that after receiving the application in October 2016 from Duck Key Community Benefit, it was reviewed and went to DRC in February of 2017. The proposed language in the backup materials had additional items that the BOCC had not recommended for approval. Staff informed the applicant that approval would not be recommended unless the application was revised to be consistent with the BOCC's direction. Revised language was received which staff continued to have some issues with. On August 11, further revised language was received for today's meeting and is addressed in the August 18 staff report. Ms. Schemper reviewed the proposed language and definitions. Staff's analysis of the proposed amendment is that it seems consistent with the current Comp Plan when read in its entirety. There are a couple of policies that it may seem inconsistent with when reading out of the context of the entire Comp Plan and proposed site-specific policies. Those are Goal 202, 203 and Objective 303.2. However, staff notes that the BOCC will be balancing site-specific needs with impact to environmental resources as they consider this proposed amendment. The proposed policy language with some staff recommended changes includes criteria for qualifying maintenance dredging projects that seek to minimize impacts on marine resources. Additionally, each individual project seeking approval would be required to demonstrate that the maintenance dredging is within the public interest. In terms of the BOCC's direction, the applicant's revised language now includes canals only and has used the term "sedimentary depositions." Staff is recommending "natural sedimentary depositions" but all of these terms were considered acceptable by the BOCC. The applicant has proposed the text amendment to apply to Duck Key only rather than Monroe County in its entirety, which is also consistent with the BOCC direction. Since the proposed language includes only canals, it would not allow maintenance dredging in channels with benthic resources which is also consistent with the BOCC's direction. The revised language includes the public interest criteria, though staff is recommending the wording in the definition of public interest remain as, "and economic benefits" rather than "and/or" as proposed.

Ms. Schemper then reviewed staff's recommended changes at page five of the August 18 staff report. With those recommended changes, staff finds the proposed amendment is consistent with the Comprehensive Plan, especially when read in the entire context of the Comp Plan. The BOCC will weigh the individual needs versus the overall Comp Plan. Staff also finds it is consistent with the Principles for Guiding Development and the Florida Statutes. So for the text amendment, staff finds it is consistent with the BOCC's direction of the January 20, 2016 meeting and recommends approval with the changes described in the report.

Ms. Schemper then shifted to Item 2, the Land Development Code Text Amendment, indicating that the background information was the same. There were no big changes to what the applicant proposed. Ms. Schemper referenced the supplemental staff report dated August 18, at page six and reviewed staff's recommended changes. Staff finds that the Code Amendment is consistent with the Comp Plan as a whole, the Principles for Guiding Development and the Land Development Code. The LDC has specific reasons that the BOCC may process an amendment

and at page 11 of the staff report the applicant responds to some of the different criteria. Staff has pointed out that this amendment is necessary to be consistent with the Comp Plan Amendment if it is adopted and becomes effective. Staff recommends approval with the changes described in the report.

Commissioner Wiatt asked about mitigation and what the State of Florida's Uniform Mitigation Assessment Method entails. Ms. Santamaria responded that she did not have the details before her, but it is a standard methodology that the State has adopted for all wetland and submerged lands impacts. The State has formulas on how they calculate the amount of impacts and the amount of mitigation required. Ms. Schemper added that it would be required even if it wasn't written in the policy. Commissioner Wiatt wanted to clarify that a mitigation study and mitigation would be required and Ms. Santamaria confirmed that to be correct.

Commissioner Miller asked about the term "reasonable access to navigation" as what is reasonable for one place may not be reasonable for another. A little sand buildup in Key West Harbor where there are ships with a 30-foot draft as compared to Duck Key and what would be reasonable for Duck Key and the historical use is different and he has a problem with leaving that wide open. Ms. Santamaria clarified that criteria number three states dredging cannot be to a depth greater than six feet. Reasonable would be between four and six feet as four is the minimum required for docking and six is the max allowed. Commissioner Miller asked how this would affect someone else who had been using kayaks and now wanted to dredge. Ms. Santamaria stated it would depend on the development of the other canal system. If it had originally been dredged to a depth of four feet and got silted in, they would be able to go back to four feet. Anything below that would be considered new dredging. Commissioner Miller stated there are places all over the Keys that are a lot shallower where larger boats cannot be brought in and that would be a concern for him. Commissioner Miller also wanted to discuss the public interest item but preferred to wait until after the public comment, allowing for a second public comment after he says what he has to say.

Chair Werling asked if the applicant would like to speak.

Mr. Owen Trepanier of Trepanier and Associates spoke on behalf of Duck Key Community Benefit, asking to amend the Comp Plan and Land Development Regulations to allow the maintenance dredging at Duck Key. Mr. Trepanier explained that this amendment is specifically for maintenance dredging in canal systems that have seagrass or hard bottom communities. In Duck Key there had been no appreciable maintenance of the canals since its construction in the fifties and that they need to be cleaned up. Boating is an important part of the Florida Keys economy and Duck Key is an important part of that, but the economy is not the only reason to support these amendments. The history as a maritime community and boating culture in the Keys is worth maintaining and protecting. Not maintaining the canals would be choosing to change the nature of our community.

Commissioner Miller asked if the restaurants and docking at Duck Key are open to the public and it was indicated that they are. Mr. Trepanier continued that the BOCC had given them an envelope within which to effect the policy change, the goals being to come up with language to allow protection of the boating infrastructure of Duck Key without creating unintended

consequences, which is why this was drafted to be specific to Duck Key. Commissioner Miller asked whether this amendment could be adaptable to other locations and Mr. Trepanier indicated it could not without action by the Planning Commission and the BOCC. Mr. Trepanier also stated that the applicant has no objection to staff's changes and his hope is that the Planning Commission can unanimously support this request.

Chair Werling then asked for public comment.

Mr. Rod Ostriker of Duck Key stated he was supporting the approval of the full amendment and also noted that a survey had been sent out throughout Duck Key and 80 percent of the residents who responded fully support this proposal. Many canal areas at low tide are down to 18 inches of water and are not navigable by anything other than a flats boat.

Ms. Kristen Brenner stated she has been a resident of Duck Key since 1976 when all of the canals were navigable by boat. Since Hurricane Georges in 1998, the flow of the canals has been interrupted and the breakwater on the southern side of the island was compromised. The State came in and rebuilt the channel on the front side of the island, but the project was not finished near the last eight houses. There are a few other spots throughout the island where the curves in the canals have silted in.

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

Commissioner Miller asked Mr. Trepanier, based on what Ms. Brenner had just commented on, if removing the sediment would increase the tidal flushing and flow of the canal. Mr. Trepanier responded that that was his understanding, but hydrology was not his field. Commissioner Miller stated that he was not sure if this template could be used in the future but felt this could evolve into something that is not sustainable and that unforeseen future scenarios need to be avoided. Where circumstances are slightly different in Duck Key, he feels this template could be used for other areas which could present a problem.

Commissioner Ramsay-Vickrey stated she was going to go in the opposite direction. Having attended the BOCC Comp Plan update meetings she had discussed with Commissioner Rice about the need to clean up canals Countywide. Duck Key presented their issue and she believes it is much more than Duck Key. The consensus was that perhaps this should be a County-wide issue. In the last three days she had received two phone calls from two County Commissioners asking why it was not Countywide. Commissioner Ramsay-Vickrey proposed following this Duck Key ordinance up with a County-wide ordinance. Right now, the LDC and Code allow for maintenance dredging Countywide only if the County pays. If the residents want to pay, then it can't be done. Commissioner Ramsay-Vickrey also believes the wording should be changed from "natural sedimentary depositions" to "natural depositions" because of the County-wide issue. Duck Key has a sand issue and other areas have a weed rack issue.

Commissioner Miller interjected that his issue is with environmental concerns on a canal and now increasing the tidal flow on that canal. Commissioner Wiatt added that the primary environmental concern with any dredging would be addressed in the mitigation. Commissioner Miller said that that could be put in there. Commissioner Wiatt stated it's in there already. Commissioner Miller clarified he was speaking of stormwater and wastewater. Commissioner

Wiatt emphasized that there are already numerous regulations dealing with stormwater and wastewater. Commissioner Miller agreed, but noted everyone has not hooked up to wastewater and people sometimes change their stormwater mitigation and this would now be moving stuff out from the canal into the adjacent waters.

Commissioner Ramsay-Vickrey stated she understood what Commissioner Miller was saying, but believes choking off the canals allows higher nitrogen, sulfides and phosphates in the canal. The canal would still be flushing, it's just a matter of to what extent, and now the canal is slowly dying and a bigger problem is being created by not flushing the canals. Commissioner Miller stated that Commissioner Ramsay-Vickrey was getting the canal before the horse by allowing those things that are going into the canal to go to the adjacent waters and he believes the adjacent waters should be protected. Commissioner Ramsay-Vickrey stated that the County had done a lot to address wastewater and stormwater. Commissioner Miller reiterated that the canals should not be allowed to be opened up if they have pollutants escaping to the open waters and he would like to open this up for public discussion.

Commissioner Ramsay-Vickrey also stated that she has a problem allowing an exclusive privilege for Duck Key to have clean canals and everybody else can go to "blank." She supports Duck Key cleaning their canals, but believes it is important to allow all County residents the same option. She is disturbed by the fact that it can be done if the County pays for it but not when the residents want to pay for it. She would like to direct staff to follow the Duck Key amendments with one that would be Countywide. Commissioner Johnston added that she believes that is what the County has done, but they would address it on a case-by-case basis. Commissioner Ramsay-Vickrey disagreed, stating that it couldn't be done elsewhere without going through the whole process. Commissioner Wiatt noted that this scenario is one where the Duck Key folks can afford to go through this process. Another scenario may be caused by a tropical system where a community may not have a year or more to go through an amendment process. He supports the Duck Key amendment but also believes there should be a process that doesn't entail an amendment to the Comp Plan for a community to do maintenance dredging of their canals as an amendment to the Comp Plan is difficult to do. He understands that Commissioner Miller is concerned that this will be used as a template for dredging and he hopes that it is. Commissioner Miller asked how environmental concerns would be handled. Commissioner Ramsay-Vickrey reiterated her desire to see a Countywide amendment to the Comp Plan, otherwise the County is saying unless you have the money and the time to go through this lengthy Comp Plan and LDC amendment process for your community, you're SOL. Chair Werling asked if she was looking for the individual property owners to be able to pay for it or for the County to pay for it. Commissioner Ramsay-Vickrey stated the County can do it now. She then referred to Exhibit B from the original 2016 application and stated that this could have been applicable Countywide and she would like the Commission to direct staff to allow this to be Countywide after the long vetting process. Ms. Santamaria asked Commissioner Ramsay-Vickrey to read the portion she was referring to. Commissioner Ramsay-Vickrey read, "Canals and Perimeter Canals: Maintenance dredging may be permitted within a previously-dredged artificial canal or artificial perimeter canal including areas vegetated with seagrass beds or characterized by hard bottom community to restore navigational access due to natural deposition and preserve the function of the artificial canal subject to the requirements in Policy 202.4.4." Since that refers to Duck Key, it would need to be changed subject to the requirements portion.

Commissioner Miller added that there was more language in what Duck Key was proposing which he likes. Commissioner Ramsay-Vickrey agreed, but wants to see staff take that language and add it to a County-wide amendment.

Commissioner Miller wanted to go back to the environmental concerns in 7.7 and asked what would be done with that. He also wanted to open this up for public comment. Prior to opening the meeting up for a second public comment session, Commissioner Wiatt wanted to add that there are secondary environmental impacts that can be caused by the dredging process under item 3.IV., on page 7 of 13 which states, “The maintenance dredging methodology shall not cause degradation of water quality or secondary and/or cumulative impacts to surrounding benthic resources.” He believes that item addresses Commissioner Miller’s environmental concerns. Commissioner Miller stated he believes that only applies to the effect of the dredging itself and not what is already happening within the canal and opens it to tidal flushing. Commissioner Wiatt noted that making a change that addresses the increase in flow would cover it. Any active pollution would be covered by other regulations and through enforcement. Commissioner Miller stated that was not being done. Commissioner Wiatt responded that this was not a dredging issue. Commissioner Miller emphasized that when a canal is being fixed or something is being done with a canal, whatever is happening in that canal should be looked at. Commissioner Wiatt reiterated that he believe that is taken care of under item 3.IV.

Ms. Santamaria responded that she was unsure of what Commissioner Miller is referring to. Wastewater would be separate because everyone is required to connect to wastewater through State Statute, County Ordinance and an enforcement process. The stormwater issue typically on a single-family home is a swale on the lot or parcel. Stormwater in the road is a County or FDOT facility. Ms. Santamaria was not sure how dredging could be tied to these items. The experts in the dredging applications are the state and federal agencies and she believes they look at water quality when reviewing those types of applications, though she cannot speak for them. Ms. Santamaria agreed that they don’t allow plugged canals to be opened for that very reason. Commissioner Miller stated that was a good example and asked if, in the case of Duck Key, if the state and federal agency involvement was in place. Ms. Santamaria responded that she did not know if they were in place yet, but a local dredge permit requires state and federal permits. Commissioner Miller wanted to tighten up the language requiring inspection of the canals. Ms. Santamaria stated that there is no one on the County staff that does water quality testing. Chair Werling added that these are presently flowing canals, not plugged canals. Ms. Santamaria clarified that today’s discussion concerns canals that have resources. Currently, maintenance dredging of canals can be done as long as there aren’t resources. This is a unique scenario with canals that have seagrass and hard bottom.

Mr. Wolfe interjected that before moving on to public comment that typically when the Planning Commission wants to direct staff to look into an issue, that is done in Board Discussion. Today’s item is for Duck Key.

Ms. Dottie Moses stated that there would never be a situation where a hurricane silted up a canal and this process would need to be gone through because there would not be benthic resources involved. Maintenance dredging is allowed now and this amendment deals with canals with seagrasses and benthic resources. There would be a very limited number of canals needing to

overcome the limits of maintenance dredging. The process gone through here by Duck Key and the direction from the BOCC was for staff to address this individual amendment for Duck Key. If anyone else has individual issues, they can also follow this process, but she does not see how many canals would be in need of this because maintenance dredging is already allowed. The community is very concerned about the destruction of benthic resources and water quality. Ms. Moses was surprised to hear the BOCC was asking to expand this because their initial direction had been to limit this to Duck Key. The system in place now provides enough oversight and public input to prevent abuse which would be her concern.

Chair Werling noted that this item should be moved to Board Discussion. Commissioner Miller wanted to continue with the public comment session. Mr. Wolfe indicated that public comments during Board Discussion would not be part of the record on this item. Chair Werling allowed continuation of public comment.

Ms. Deb Curlee of Cudjoe stated this is all about seagrasses and benthic resources, which is her concern about this particular proposal, though she is less concerned because of staff's work tightening up the restrictions. She believes each proposal should be required to go through an amendment to the Comp Plan. The BOCC had an opportunity to change this and they chose not to. This proposal is to a specific area and she is not in favor of opening this up Countywide because anyone can go through this process and there is a reason for it being arduous. If the BOCC chooses to throw seagrass under the bus then let them attempt to do that.

Mr. Bill Hunter of Sugarloaf stated that the discussion Commissioner Ramsay-Vickrey brought up is important, if a carve-out is good for one particular area then why is it not good for everybody. He believes Commissioner Miller is trying to tie the condition of the canal to dredging which will increase flushing and it is a valid concern that the Canal Restoration Subcommittee should be addressing. The issue is, what is the pollution, what's causing the low DO, what's causing the problem. If the problem is wastewater, the County has dealt with that, but it could be added as a condition that everybody on the canal has to be connected to wastewater. The other possible pollutant is stormwater and other than requiring swales, the County doesn't check to see that they're present nor check to see what's running into the canal. The County should be looking at stormwater because that's the second component. The other component is the weed rack and that's a whole different issue altogether. The canal restoration programs are trying to increase flushing to deal with weed rack so that it doesn't stay in the canal, decompose and lower DO. So depending on what the pollutant is, flushing is a good idea or a bad idea. The applicant is here today to restore navigation and that should be the focus of these two items and he would like the Commission to please continue the rest of the discussion later.

Commissioner Miller agreed with Mr. Hunter but on the point with Duck Key, he would like to clarify number seven which is a concern for him at this moment. He understands there are agencies looking at the dredging but he would like it included in the language or make sure that somebody is going to take a look at this canal. Mr. Williams interjected that Ms. Santamaria had already stated the County does not have the staff to do that and that the County outsources that in the other canal processes. There is not a department, division or a guy with a pool kit to do it. Commissioner Miller stated there are biologists working for this County. Mr. Williams

responded that they don't do this testing and that's why it's handled by an outside contractor, which may be his suggestion.

Commissioner Ramsay-Vickrey added there may be a consensus to do what Commissioner Miller is proposing but she does not feel it's necessary to go further, that everything has been addressed. Commissioner Miller asked Mr. Trepanier if it would be too much to ask for this canal to be tested to see if there are problems with this canal. Mr. Trepanier responded that by going through the joint permit process the state and feds review if water is impounded and they consider the impacts on nearshore water quality. In Duck Key the presence of seagrass and hard bottom indicate a relatively high water quality. Commissioner Miller stated he understands and is taking a leap of faith that Duck Key canals are clean but he's thinking about other canals.

Ms. Kristen Brenner of Duck Key stated that prior to the sewer conversion, the State came out on multiple occasions testing canals throughout the County and Duck Key was always the very cleanest, even when they had septic tanks and leach fields. Now that Duck Key has been converted to a sewer system, the problem is nonexistent. Commissioner Miller stated that is the kind of assurance he would like to hear on this canal and any future canal. Ms. Santamaria stated that is not required, but there are the pilot programs and the water quality sampling that the Water Quality Steering Committee does for the Sanctuary the other state and federal agencies for water quality based on the wastewater project. Commissioner Ramsay-Vickrey stated the findings were listed on the DEP website.

Commissioner Miller reiterated that he would like the wording that the canal has been tested to be included in number seven. Commissioner Ramsay-Vickrey stated she was not adding that. Commissioner Miller added that the County is in an Area of Critical State Concern.

Chair Werling asked for further public comment. There was none. Public comment was closed. Chair Werling asked for a motion on Item 1.

**Motion: Commissioner Ramsay-Vickrey made a motion to approve Item 1 with staff's recommendations. Commissioner Johnston seconded the motion. Commissioner Ramsay-Vickrey then added the condition to change the wording of "natural sedimentary depositions" to "natural depositions." Commissioner Johnston did not accept that change. Commissioner Wiatt seconded the motion. The roll was called as follows: Commissioner Ramsay-Vickrey, Yes; Commissioner Wiatt, Yes; Commissioner Johnston, Yes; Commissioner Miller, Yes; Chair Werling, Yes. The motion passed.**

After this vote was taken, Commissioner Johnston indicated she did not understand that the vote had been taken on the additional language added by Commissioner Ramsay-Vickrey so the motion was restated for Item 1.

**Motion: Commissioner Ramsay-Vickrey made a motion to approve Item 1 with staff's recommendations and the added condition to change the wording of "natural sedimentary depositions" to "natural depositions." Commissioner Wiatt seconded the motion. The roll was called as follows: Commissioner Ramsay-Vickrey, Yes; Commissioner Wiatt, Yes; Commissioner Johnston, Yes; Commissioner Miller, Yes; Chair Werling, Yes. The motion passed.**

Chair Werling asked for a motion on Item 2.

**Motion: Commissioner Ramsay-Vickrey made a motion to approve Item 2 with staff's recommendations and the added condition to change the wording of "natural sedimentary depositions" to "natural depositions." Commissioner Wiatt seconded the motion. The roll was called as follows: Commissioner Ramsay-Vickrey, Yes; Commissioner Wiatt, Yes; Commissioner Johnston, Yes; Commissioner Miller, Yes; Chair Werling, Yes. The motion passed.**

**New Items:**

**3. A PUBLIC HEARING TO CONSIDER AND FINALIZE THE RANKING OF APPLICATIONS IN THE DWELLING UNIT ALLOCATION SYSTEM** FOR APRIL 13, 2017, THROUGH JULY 12, 2017, ROGO (4<sup>TH</sup> QUARTER YEAR 52). ALLOCATION AWARDS WILL BE ALLOCATED FOR ALL UNINCORPORATED MONROE COUNTY.  
(File 2016-164)

(11:33 a.m.) Ms. Tiffany Stankiewicz, Development Administrator, presented the staff report of the ROGO rankings. The Planning Department recommends approval of the following market-rate rankings. Lower Keys applicants 1 through 16 recommended for allocation awards, Big Pine No Name, applicants ranked 1 through 2 subject to mitigation availability at the time of permitting and Upper Keys applicants 1 through 8. There were no affordable housing applicants. Staff recommends approval.

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

**Motion: Commissioner Ramsay-Vickrey made a motion to approve. Commissioner Johnston seconded the motion. There was no opposition. The motion passed unanimously.**

**4. CHEECA HOLDINGS, LLC, 99060 OVERSEAS HIGHWAY, KEY LARGO, MILE MARKER 99 BAY SIDE:** A PUBLIC HEARING CONCERNING A REQUEST FOR A 6COP S, SPECIAL MOTEL/HOTEL, ALCOHOLIC BEVERAGE USE PERMIT, WHICH WOULD ALLOW FOR BEER, WINE, AND LIQUOR FOR SALE BY THE DRINK OR IN SEALED CONTAINERS FOR CONSUMPTION ON OR OFF THE PREMISES WHERE SOLD. THE SUBJECT PROPERTY IS LEGALLY DESCRIBED AS A PARCEL OF LAND IN SECTION 32, TOWNSHIP 61 SOUTH, RANGE 39 EAST, KEY LARGO, MONROE COUNTY, FLORIDA HAVING REAL ESTATE #00088020-000000.  
(File 2017-038)

(11:34 a.m.) Martine Vray, Principal Planner, presented the staff report and power point presentation. This is a request for a 6COP S, Alcoholic Beverage Special Use Permit. The property owner is Cheeca Holdings and the agent is James Lupino. The applicant is requesting approval of a 6COP S, Special Motel/Hotel Alcoholic Beverage Use Permit which would allow for beer, wine and liquor for sale by the drink or in sealed containers for consumption on or off the premises where sold for use of the hotel on site. This site had been used as an RV park

which is now closed for renovations. Within a 500-foot radius, there are several other special use alcoholic beverage use permits. Up on the right is Keys Meads providing package sales. Across the street is Key Largo Inn and Corks and Curds. Pinecrest Bakery also has package sales. Keys Bite and Mrs. Mac's Kitchen both have a COP as well. In 2003, the Planning Commission approved a major conditional use permit to develop 89 hotel rooms and 8,158 square feet of commercial use on the site, including a restaurant/bar facility, lobby, storage, outdoor swimming pool, spas and extensive landscaping. In 2007, an amendment to the major conditional use permit was approved for a resort hotel on the site. Under this CUP and subsequent deviations, the site currently now has approval for 135 hotel rooms, a 4,740 square foot restaurant/bar, and associated accessory uses and amenities. In 2011, the BOCC approved a development agreement regarding the proposed hotel use on the site. The development agreement allowed for an interim phasing plan and an expiration date of December 16, 2021, which would allow continued operation of the RV park while developing the site, though it is currently is closed. On October 14, 2014, Resolution P-30-14, an alcohol beverage special use permit was issued to Northstar Resort Enterprises Corporation, associated with the interim phase of development on the site. However, the associated state license was never issued and the special use permit is therefore null and void. Ms. Vray presented the approved site plan showing the location of the bar and restaurant which is where the alcohol would be served and sold for consumption on the premises of that site.

Staff recommends approval with the following conditions: Number one, alcoholic beverage special use permits issued by virtue of Section 3-6 of the Monroe County Code shall be deemed to be a privilege running with the land. The sale of the real property which has been granted an alcoholic beverage use permit shall automatically vest the purchaser thereof with all rights and obligations originally granted or imposed to or on the applicant. Such privilege may not be separated from the fee-simple interest of the realty. Condition number two, alcoholic service sales and consumption shall occur only within areas allowed for such use and approved by the Monroe County Planning and Environmental Resources Department. Specifically, this approval shall apply only to the hotel, restaurant and other areas as permitted under Florida Statutes for a 6COP S alcohol license. Condition number three, in the event that the holder's license by the Department of Business and Professional Regulation of the State of Florida expires and lapses, this alcoholic beverage special use permit approval shall be null and void as of the date of that expiration. Additional approval by the Planning Commission shall be required to renew the alcoholic beverage special use permit. Ms. Vray indicated that the applicant also had a power point presentation.

Mr. James Lupino, representing the applicant, stated he was available for questions as he was not disputing the staff's report with regard to the approval. He introduced Mr. Jim Saunders of Cheeca Holdings to make a presentation introducing the project. Mr. Wolfe swore in Mr. Saunders.

Mr. Saunders described Buttonwood Sound and presented a power point showing the quaint bungalow hotel project using a lot of landscaping and soft textures. The only concrete on the property would be for ADA parking and routing but the intent is to present a very natural environment with a lot of landscaping. The bungalows are all individual and each has a side

deck with an outdoor tub. The main restaurant and tiki bar area is in the middle of the property, hundreds of feet away from either of the neighboring properties. The bungalows will each have its own separate room, front porch and side decks. More photographs were presented. Mr. Sanders indicated he was available for any questions.

Commissioner Miller asked if consumption was on or off premises. Mr. Saunder confirmed it was on premises and not a package store, explaining that was the language of the liquor license.

Chair Werling asked for public comment.

Ms. Dottie Moses, after being sworn in by Mr. Wolfe, stated that this property has had many lives over the years. When the recession came in 2008, the County allowed the temporary use as a campground. Buttonwood Sound and Sunset Cove is a federally designated critical habitat for manatees and has been identified as one of the richest seagrass beds in the Keys. Pelican Key is a little offshore island that is a rookery for protected birds. Traditionally, this area has been mostly residential and has, up until recently, been a quiet, little area. The manatees come through, the birds come through and it's very nice. When the campground came into town, it changed the makeup of the area. There were jet skiers, boaters and noise. They had a bar and license there as well. There are other problems in the area with other developments with amplified music, dancing and some code violations in place with the police. The Code Department says they can't really enforce anything beyond their scope and they can't seem to manage it.

This development looks very nice and the applicant has said in their backup material that they will not be providing any music or entertainment on the property. She would like to see that be a part of the condition of the liquor license. It sounds like they want a quiet, serene, spa-like environment which is much easier for the community to deal with. However, they could sell it a year after they develop it and the new developer could come in and with a liquor license, have a bar and say, let's party with that. The applicant also states they're not going to be using the deck or the dock for anything other than guests to use. There is a boat ramp but no parking for trailers which will not be provided. Ms. Moses is confused about how the boats are going to be getting to the dock and whether they will all come by water.

Chair Werling pointed out that only the liquor license was being addressed today. Ms. Moses understood but stated that the site plans have been changed three times and this is the latest owner and some of these things hadn't been brought up in the past. The community is concerned about what may happen going forward. The idea of amplified music and entertainment should be a required condition of their permit. Chair Werling agreed.

Commissioner Miller noted that it doesn't actually say amplified, but rather says "no music." Mr. Saunders wanted to respond. Commissioner Miller asked if no music or entertainment would be put on their website. Mr. Saunders stated he wanted to clarify that they never had a liquor license except for at the Big Fish Restaurant which wasn't part of the resort and because they were an RV resort, they didn't qualify for the liquor license so there was never an open bar. As to the boat ramp, there's no boat parking because the boat ramp is only for launching kayaks or whatever for the patrons of the hotel. They have an existing marina for picking somebody up to

go on a fishing trip or whatever but it does not allow overnight stays which is part of the approval with the State on use of the marina. Jet skis are not allowed by virtue of the development agreement. That was one of the prohibitions of the development agreement which stays with the property so there won't be that noise pollution. Mr. Lupino also wanted to clarify the comment regarding no music, indicating that the application states "no event music." Mr. Lupino interprets that as not hosting any events. However, they would like to have the ability to have music by the pool and the tiki hut within reasonable decibel levels for purposes of having a guitar player such as someone playing Jimmy Buffett type music, but they do want the ability to have music played by the pool, the tiki hut area and the restaurant. Not loud music and no bands.

Mr. Williams stated that the County is told one thing and then is told something else when it gets to hearing time and he doesn't believe it was limited to event music, but that the Commission can place conditions on this. This becomes an issue for any amplified sound and enforcement in the Upper Keys is very difficult whether it's the Sheriff's Department or the County office. His suggestion would be that in the recommendation section five, paragraph four it should state, "Any amplified sound occurring on premises must be attenuated to the highest extent possible, including but not limited to sound attenuating shutters, directional speakers, keep all sound directed internally to the bar area and any other measures as may be necessary to keep sound from escaping the premises." Additionally, add a paragraph five to state, "Upon receipt of two separate noise complaints from the public or adjoining property owners in a 30-day period, this license shall be brought back before the Planning Commission for review." With those two conditions it should work and would distinguish this approval from other surrounding noise complaint areas in Key Largo.

Chair Werling noted that people don't always realize how far the noise can travel. Commissioner Miller agreed. Commissioner Ramsay-Vickrey thanked Mr. Williams, agreeing that those were excellent recommendations. Mr. Lupino noted that in the application itself the actual language was, "Is event music or entertainment proposed on the property?" And that's the question that was answered, "No." Mr. Williams asked if music was not for entertainment. Mr. Lupino believed it was interpretation. Mr. Saunders wanted to address a next door neighbor that is a problem who complains all the time about aliens drilling up under her floor or other situations. Chair Werling suggested that not be gone into. Mr. Williams explained that he knew who Mr. Saunders was referring to and did not realize she was an immediate neighbor to this parcel. He suggested that particular neighbor's complaints would be taken into account because the County has experience with her through Code Enforcement. Mr. Lupino clarified that he wanted to make sure that the conditions were reasonable because if nobody else complains and it's just someone who wants to target them because they don't want them there in the first place, that would be a different story. Mr. Williams suggested adding one word to alleviate Mr. Saunders' concern: "Upon receipt of two separate 'substantiated' noise complaints from the public or adjoining property owners in a 30-day period." Mr. Lupino indicated that would be fine.

Commissioner Johnston asked Ms. Santamaria if these two situations were in the Code with the development agreement for this property and Ms. Santamaria indicated they were not. Mr.

Williams confirmed that the applicant would be okay with the sound attenuating devices as they are efficient and would make this different from other properties with frequent complaints. Chair Werling asked for further public comment.

Mr. Bill Hunter of Sugarloaf Key, after being sworn in, asked for clarification of the application for the liquor license and whether it was for the property as it exists today or as it will exist after a future development is approved. Chair Werling responded that it was after the development is approved. Ms. Santamaria added that it's for the bungalow-style hotel and restaurant already approved. Commissioner Johnston asked if they were not built if the liquor license would still be in effect. Ms. Santamaria stated that, yes, it is still in effect but the state application would not be signed until permits for the bungalows and everything else were issued. They would have the approval today to apply to the state. Commissioner Johnston asked if they had the approval before getting their CO. Ms. Santamaria indicated they would, but they obviously couldn't sell because they can't operate on the property yet.

Commissioner Miller asked if he would be able to pull up to the dock in his boat and get a drink if he were not a guest. Mr. Saunders replied that this was not the intent, that the dock was intended for people staying at the hotel and not for the public.

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

**Motion: Commissioner Ramsay-Vickrey made a motion approve with both the attorney and staff's recommended changes. Commissioner Johnston seconded the motion. There was no opposition. The motion passed unanimously.**

## **BOARD DISCUSSION**

Commissioner Ramsay-Vickrey began with the topic of three County Commissioners who had expressed interest in seeing the Duck Key canal dredging amendment be something implemented Countywide, indicating she would like the Planning Commission to direct staff to work on an ordinance.

Chair Werling stated that she doesn't doubt that there are three Commissioners interested in this, but noted they had been the ones who started this and that this had been kicked around for a long time. Commissioner Wiatt commented that the BOCC may see the need for legislation so why not have the folks interested in having the change made get the ball rolling and move it forward. To think that the BOCC is collectively not interested in having an amendment that could go beyond just Duck Key would be presumptuous. He believes they may very well be interested and if they're not, they can shoot it down. Commissioner Wiatt added that Duck Key is an affluent community with the time to move this forward and that isn't always going to be the case, for example, with a commercial fishing island may not have the money and wherewithal to move forward with the amendment. They would want to spend their dollars on the boots on the ground getting the job done. He sees no reason to bring this up as a topic of discussion, but make sure concerns such as those of Commissioner Miller regarding potential negative environmental effects of opening up canals with slow flow can be brought up. Chair Werling stated she does not live in an area where this would even be possible as there is no delineated group that would

all be on the same page, so this would only befit a Duck Key gated community or peninsula area that's kind of off unto itself.

Commissioner Ramsay-Vickrey used No Name Key as an example, explaining that the east end of No Name Key has terrible canal access, though she doesn't know whether there are seagrass resources in the filled-in canal area. There are 14 homes there and if they wanted to get together as a group and clean that canal, they could probably afford to pay for that, but if prior to that they had to hire Mr. Trepanier and go through a year or two of process to get that done, that would use up their money. She believes they should be afforded the opportunity. They would still have to go through the County permitting processes so it would not be a free pass. Commissioner Ramsay-Vickrey suggested the same set of conditions be kept, but change shoaling and sedimentation to natural deposition to take weed rack into account. Chair Werling noted that a canal on Big Pine did get the homeowners together and they invested in a weed screen. Commissioner Ramsay-Vickrey also added that on the east end of No Name Key no one could get into the canal on low tide. Commissioner Johnston asked staff if there was a mechanism to accomplish this without a Comp Plan Amendment. Ms. Santamaria responded that there is if there are no resources present. If there are seagrass or hard bottom communities it would require a Comp Plan and Code amendment.

Commissioner Wiatt added that he would go out on a limb and say that benthic resources could get established in less than a year in certain situations. He does not feel good ever having an amendment that specifically exempts a certain community, particularly noting that the exempted community just happens to be one of the most affluent communities in the Keys. He could see where someone could call that social discrimination and believes that's bad policy. Commissioner Ramsay-Vickrey agreed that it is granting an exclusive privilege. Mr. Williams noted he believes this is done every month. Commissioner Wiatt emphasized that not all communities would have the wherewithal to pull off what Duck Key just pulled off and he doesn't know that it's fair, even if only for reasons of being not organized and not on a very specific island. Commissioner Miller brought up the protections that he had been talking about, noting that the County had spent seven million dollars of infrastructure money fixing about six canals and no one knows what the affect is on what's called the HALO, the adjacent waters here. A scientist is proposing that studies on what is happening at the mouth of these canals be done at 75 to 150 yards out, which is in the public interest, rather than fixing individual canals. He doesn't believe this helps to fix the system, but only helps people to fix their canal. Chair Werling and Commissioner Wiatt understood. However, Commissioner Wiatt added that he would be more concerned with what they had done today if it weren't for the fact that he is very familiar with the Duck Key canal system and that it is about as clean a canal system you can get. He agreed with Commissioner Miller when talking just canals in general and if moving forward on a broad-based change that would need to be taken into consideration. Commissioner Miller added that some of these policies need to be meshed so they make sense in a comprehensive manner instead of in a piecemeal way. It's not comprehensive when talking about fixing a canal and not looking at the bigger picture.

Commissioner Johnston added that she believes Duck Key had done the heavy lifting in this instance with the help of Ms. Santamaria and asked how the issues addressed by the public would be protected if this were opened up Countywide. Ms. Santamaria responded that the

County was currently doing canal pilot programs with different methodologies to see what will work and what won't. Number 7 could be tied to some water quality monitoring if it were Countywide, maybe pre and post. Dissolved oxygen is what is being done for the canal project but other parameters could be included. At this time, she did not know what levels they should be at and further research would be needed. Chair Werling agreed with Commissioner Wiatt that with Duck Key, that was less of a concern than other potential areas. As far as the runoff, as properties change ownership, more of the property is covered with non-porous materials and runoff goes right to the street and it becomes a whole different ballgame. Commissioner Ramsay-Vickrey mentioned that sewer connection could be added as a condition. Commissioner Miller believed it would be unacceptable to open up the tidal flushing on a canal without the wastewater connection being completed. Commissioner Wiatt pointed out that Duck Key is on central sewer. Commissioner Ramsay-Vickrey agreed with adding central sewer as a condition. Staff would still be reviewing it and it would go through Development Review Committee and then come to the Planning Commission. Chair Werling asked, from a workload standpoint, how high of a priority this should be for staff at this moment. Commissioner Ramsay-Vickrey asked Ms. Santamaria if most of this work had been done with Duck Key and if this could be slid in. Ms. Santamaria indicated she would need to study it to make sure there are no other tweaks that needed to be made to make it apply Countywide. She confirmed that the Commission was asking for conditions of advanced wastewater connections and something regarding pre and post water quality monitoring, adding that this would take a little bit of time to figure out. Chair Werling indicated she is not totally onboard with Countywide and is still not sure.

Mr. Williams added that before the Commission sends Ms. Santamaria down this road, at least three Commissioners would need to believe this is a good idea. He would like to have Ms. Aguila take a roll call so Ms. Santamaria can explain to the BOCC why she is doing this. The language to limit this to Duck Key was very detailed and quite specific. That language is going to have to be altered to allow this to work in other areas of the County. A couple of years ago, one of these got voted down on an island not too far from Duck Key. So the language has to be inclusive enough to be broader than Duck Key, but more narrowly tailored to prohibit what was voted down on the other nearby island. Commissioner Wiatt agreed and believed it made the most sense to recommend to the BOCC that they consider having a look at this on a County-wide basis. Commissioner Ramsay-Vickrey brought up the fact that things change over time and staff sitting here now knows what just happened so if this is going to be given an opportunity to move forward, as three County Commissioners have expressed, now might be a good time to do it while there is a consistent knowledge base.

Mr. Williams asked Ms. Aguila to go down the line and ask to hear who would be in favor of having Ms. Santamaria go further with this topic. Ms. Deb Curlee wanted to ask if the Commission was talking about doing away with the seagrass protections Countywide. Commissioners Miller, Ramsay-Vickrey and Johnston all responded no. Ms. Curlee stated that her canal is filled with muck with no seagrass present and her neighborhood had applied and gotten a permit to dredge some of the canals but the cost was prohibitive. So it can be done if residents want to come together and do that so right now, no change is needed.

Ms. Santamaria asked for clarification, that this was direction for County-wide amendments related to canals with resources with all the criteria and so forth. Commissioner Ramsay-

Vickrey indicated affirmatively. Commissioner Wiatt also agreed, but to be regulated similarly if not more restrictive than Duck Key because it would have to be more of a one size fits all and it would need to include things like mitigation. The key to the regulation is managing it properly so we can have navigation and still have environmental resources and do no harm. Commissioner Miller's concern is fixing a canal and adjacent waters being degraded.

**Roll Call: Commissioner Ramsay-Vickrey, Yes; Commssioner Wiatt, Yes; Commissioner Johnston, Yes; Commissioner Miller, Yes; Chair Werling, Yes.**

**ADJOURNMENT**

The Monroe County Planning Commission meeting was adjourned at 12:33 p.m.