

MEMORANDUM

MONROE COUNTY PLANNING & ENVIRONMENTAL RESOURCES DEPARTMENT

To: Monroe County Planning Commission

Through: Emily Schemper, AICP, CFM, Acting Senior Director of Planning & Environmental Resources

From: Devin Rains, Planning and Development Permit Services Manager

Date: November 28, 2018

Subject: **Edwin Handte, 1547 Narcissus Avenue, Big Pine Key, Florida, Mile Marker 30 Gulf-side:** A public hearing concerning an appeal, pursuant to Section 102-185 of the Monroe County Land Development Code, by an owner of the subject property to the Planning Commission concerning a Letter of Understanding to establish the lawfulness of a non-conforming use dated April 16, 2018, by the Senior Director of the Planning & Environmental Resources Department. The subject property is legally described as Block 19, Lot 3, Eden Pines Colony (Plat Book 4 Page 158), Big Pine Key, Monroe County, Florida, having Property ID Number 00268980-000000. (File # 2018-177)

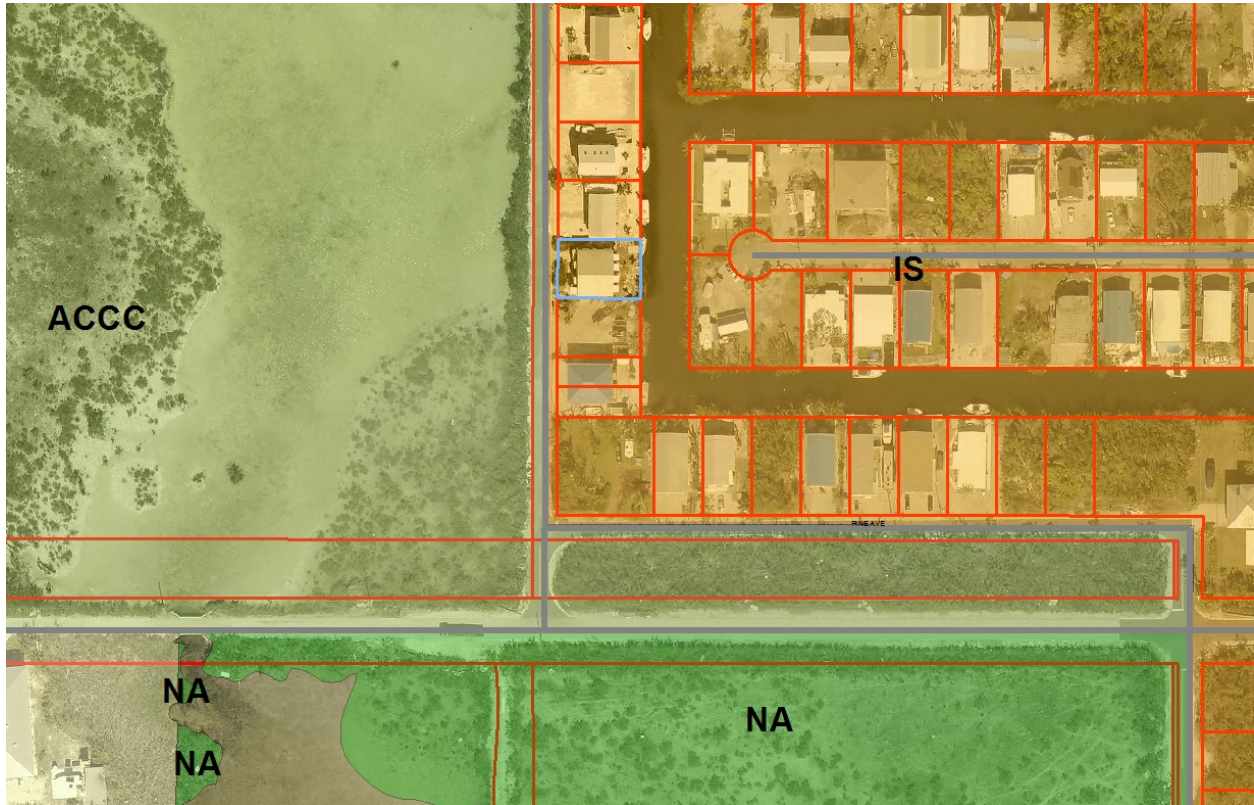
Hearing date: December 12, 2018

1 **I. DECISION BEING APPEALED:**

2 The appellant and instant property owner, Edwin Handte (the “Appellant” or “property owner”),
3 is appealing an administrative decision of the Senior Director of the Planning & Environmental
4 Resources Department (“Senior Director”) dated April 16, 2018, in which the Planning &
5 Environmental Resources Department recognized in a Letter of Understanding (“LOU”) the
6 lawful establishment of a non-conforming vacation rental use of the two existing dwelling units
7 (cumulatively, the “two existing dwelling units” or the “duplex”), pursuant to the Circuit Court
8 opinion issued May 2, 2017 and its corresponding mandate dated June 23, 2017 (cumulatively,
9 the “judicial opinion”) in Circuit Court Case No. 2016-AP-164-K (the “Circuit Court case” or
10 “the case”). The subject appeal is related to the content of the above-referenced LOU which:

- 11
- 12 1. Recognized the lawful-establishment of the non-conforming vacation rental use of the
13 two existing dwelling units;
 - 14
 - 15 2. And, referencing the Monroe County Land Development Code’s (“LDC”) requirements
16 providing that in order to lawfully maintain such a lawfully-established non-conforming
17 vacation rental use, the property owner shall adhere to the following: Obtain and maintain
18 annual special vacation rental permits and vacation rental manager licenses from the
19 Monroe County Planning and Environmental Resources Department, pursuant to LDC
20 Section 134-1; and
21

22 3. If the subject non-conforming vacation rental use is terminated, abandoned or
23 discontinued, then said vacation rental use may not be reestablished or resumed and any
24 subsequent use must conform to the provisions of the Monroe County Land Development
25 Code and the Monroe County Comprehensive Plan, pursuant to LDC Section 102-
26 56(f)(1).
27



28 *Subject Property (outlined in blue) with Land Use Districts Overlaid (Aerial dated 2018)*
29
30

31 **II. BACKGROUND INFORMATION:**

32 **Location/Address:** 1547 Narcissus Avenue, Big Pine Key, near Mile Marker 30 (Gulfside)

33 **Legal Description:** Block 19, Lot 3, Eden Pines Colony (Plat Book 4 Page 158), Big Pine
34 Key

35 **Property ID Number:** 0026980-000000

36 **Property Owners:** Edwin R. and Janice E. Handte

37 **Appellant:** Edwin Handte

38 **Agent(s):** Susan Rohe and Jerrell Phillips, Esq.

39 **Size of Site:** 5,100 square feet of residential waterfront per the Property Appraiser's office
40 Property Record Card

41 **Land Use Map (Zoning) District:** Improved Subdivision (IS)

42 **Future Land Use Map (FLUM) Designation:** Residential Medium (RM)

43 **Tier Designation:** II – Transition and Sprawl Reduction Area on Big Pine Key or No Name
44 Key

45 **Flood Zone:** AE-8

46 **Existing Uses:** Two (2) Residential dwelling units

47 **Existing Vegetation / Habitat:** Developed/disturbed

48 **Community Character of Immediate Vicinity:** Surrounding uses are: To the west
49 environmentally sensitive lands designated as Area Critical County Concern (ACCC); single-
50 family residential to the north, south and east.
51

52 **III. RELEVANT PRIOR COUNTY ACTIONS:**

53
54 County building permit # A15788 was issued on July 29, 1986, and re-issued on February 21,
55 1990.

56
57 Certificate of Occupancy # 93-3 issued on January 10, 1992, for a 1,518-square-foot duplex.

58
59 07/02/2009, the County created Case # CE09070013 based on a complaint that the subject
60 property was being used for short term vacation rentals.

61
62 On August 17, 2017, the Department received a request for a LOU to establish the lawfulness
63 of a non-conforming use. (File 2017-125).

64
65 By LOU dated April 16, 2018, the Senior Director sent the Appellant notice that based on a
66 review of pertinent records, the Planning & Environmental Resources Department
67 determined and recognized the establishment of the lawfulness of the nonconforming
68 vacation rental use of the two existing dwelling units, pursuant to the judicial opinion. The
69 LOU referenced two requirements to be met in order to maintain said non-conforming use
70 status. The notice informed the Appellant that the Senior Director's decision may be
71 appealed within 30 calendar days.

72
73 On August 27, 2018, authorized agent(s) and counsel for Appellant, Lee Robert Rohe, Esq.,
74 and Jerrel Phillips, Esq., filed a "Verified Post-Judgment Motion for Sanctions" after the end
75 of all judicial labor in the Circuit Court case, in which Appellant requested a Court Order
76 compelling Monroe County to: (1) Re-issue a 'new' LOU, (2) Remove from the eGov
77 website all entries regarding code enforcement violations pertaining to 1547 Narcissus, (3)
78 Be given a deadline by which to comply with these orders, (4) Be required to certify, through
79 an affidavit of the Senior Director of the Planning & Environmental Resources Department,
80 to be filed with the Circuit Court, that compliance with these orders has been accomplished,
81 and (5) Pay the Appellant's costs and fees in filing said motion for sanctions.

82
83 On August 30, 2018, the Department received the Appellant's application for this appeal to
84 the Planning Commission.

85
86 On October 16, 2018, the 16th Judicial Circuit Court issued an Order Striking the Appellant's
87 "Verified Post-Judgment Motion for Sanctions" in its entirety as not legally cognizable on
88 the basis that the Circuit Court case was an appeal, which had been disposed of.
89

90 **IV. REVIEW OF APPLICATION:**

91 The review of the application is contained as presented in the document "Appellee's
92 Response to Appellants' Statement of Basis for Appeal to the Planning Commission"

93 prepared by Peter Morris, Esq., Assistant County Attorney, Monroe County Attorney's
94 Office, incorporated herein by as if fully stated herein.
95

96 **V. BASIS OF APPEAL:**

97 The Agent(s) for the Appellant provided the Notice of Appeal and exhibits, which is/are
98 included in the Planning Commission package.
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100 **VI. RECOMMENDATION:**

101 The decision by the Senior Director was based upon the criteria provided in the Monroe
102 County Land Development Code and the findings of fact as presented in the document
103 "Appellee's Response to Appellant's Statement of Basis for Appeal to the Planning
104 Commission" prepared by Peter Morris, Esq., Assistant County Attorney, Monroe County
105 Attorney's Office. Based upon review of all of the available information, Planning &
106 Environmental Resources Department staff recommends that the Planning Commission
107 **UPHOLD** the decision of the Senior Director of the Planning & Environmental Resources
108 Department dated August 13, 2018, in which the Planning & Environmental Resources
109 Department referenced the Monroe County Land Development Code's ("LDC")
110 requirements providing that in order to lawfully maintain such a lawfully-established non-
111 conforming vacation rental use, the property owner shall adhere to the following:

- 112 1. Obtain and maintain annual special vacation rental permits and vacation rental
113 manager licenses from the Monroe County Planning and Environmental Resources
114 Department, pursuant to LDC Section 134-1; and
- 115 2. If the subject non-conforming vacation rental use is terminated, abandoned or
116 discontinued, then said vacation rental use may not be reestablished or resumed and
117 any subsequent use must conform to the provisions of the Monroe County Land
118 Development Code and the Monroe County Comprehensive Plan, pursuant to LDC
119 Section 102-56(f)(1).
120

121 **VII. EXHIBITS:**

- 122 ■ **Attachment A** – File 2017-125, Request for a Letter of Understanding to Establish the
123 Lawfulness of a Non-Conforming Use.
- 124 ■ **Attachment B** – Letter of Understanding dated April 16, 2018
- 125 ■ **Attachment C** – Relevant Monroe County Land Development Code excerpts
- 126 ■ Incorporated as if fully stated herein – "Appellee's Response to Appellant's Statement of
127 Basis for Appeal to the Planning Commission" prepared by Peter Morris, Esq., Assistant
128 County Attorney, Monroe County Attorney's Office.
- 129 ■ **Attachment D** – "Verified Post-Judgment Motion for Sanctions" dated August 27, 2018
- 130 ■ **Attachment E** – Order Striking Appellant's Verified Post-Judgment Motion for
131 Sanctions