PLANNING COMMISSION
July 31, 2019

Meeting Minutes

The Planning Commission of Monroe County conducted a meeting on **Wednesday, July 31, 2019,** beginning at 10:00 a.m. at the Marathon Government Center, 2798 Overseas Highway, Marathon, Florida.

CALL TO ORDER by Chair Werling

PLEDGE OF ALLEGIANCE

ROLL CALL by Debra Roberts

PLANNING COMMISSION MEMBERS

Denise Werling, Chair	Present
Tom Coward	Present
Ron Miller	Present
Joe Scarpelli	Present
William Wiatt	Present

STAFF

Cheryl Cioffari, Acting Senior Director of Planning and Environmental Resources	Present
Steve Williams, Assistant County Attorney	Present
Peter Morris, Assistant County Attorney	Present
John Wolfe, Planning Commission Counsel	Present
Mike Roberts, Senior Administrator, Environmental Resources	Present
Bradley Stein, Development Review Manager	Present
Devin Rains, Planning and Development Permit Services Manager	Present
Jay Berenzweig, Principal Planner	Present
Ray Ortiz, Key Largo Building Official	Present
Ilze Aguila, Senior Planning Commission Coordinator	Present
Debra Roberts, Senior 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. Debra Roberts confirmed receipt of all necessary paperwork.

SWEARING OF COUNTY STAFF

County staff and members of the public were sworn in by Mr. Wolfe.

CHANGES TO THE AGENDA

Items 4 and 5 were requested to be read together, and Items 9 and 10 were requested to be read together. Item 3 requested a continuance to the September 26, 2019 meeting.

Motion: Commissioner Wiatt made a motion to continue Item 3 to the September 26, 2019 meeting. Commissioner Coward seconded the motion. There was no opposition. The motion passed unanimously.

APPROVAL OF MINUTES

Motion: Commissioner Coward made a motion to approve the June 26, 2019 meeting minutes. Commissioner Wiatt seconded the motion. There was no opposition. The motion passed unanimously.

ANNOUNCEMENT

Chair Werling announced that due to the large agenda and public attendance, the five-minute time limit for public speakers would be adhered to.

MEETING

1. EDWIN HANDTE, 1547 NARCISSUS AVENUE, BIG PINE KEY, FLORIDA, MILE MARKER 30 GULF SIDE: AN APPEAL, PURSUANT TO SECTION 102-185 OF THE MONROE COUNTY LAND DEVELOPMENT CODE, BY THE PROPERTY OWNER TO THE PLANNING COMMISSION CONCERNING A LETTER OF UNDERSTANDING TO ESTABLISH THE LAWFULNESS OF A NONCONFORMING USE DATED APRIL 16, 2018, BY THE SENIOR DIRECTOR OF PLANNING & ENVIRONMENTAL RESOURCES. 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 REAL ESTATE NUMBER 00268980-000000. (File 2018-177) **CONTINUED FROM 12/12/2018 & 2/27/2019 & 4/24/2019**

(10:05 a.m.) Mr. Devin Rains, Planning and Development Permit Services Manager, presented the staff report. The property is located at 1547 Narcissus Avenue, Big Pine Key, approximately Mile Marker 30. A power point presentation showed that subdivision highlighted in yellow is in the IS Zoning District, with the subject property outlined in blue to the left of that development. The building permit was applied for and issued under the 1973 to 1986 Monroe County codes and maps. The property obtained a certificate of occupancy on January 10, 1992, for a duplex. The original permit was in the RU-2 zoning district. In the 1986 Pattison maps, the zoning district changed to Improved Subdivision. In 1992, the revised Craig maps went into effect. In 1997, the BOCC created Ordinance 004-1997, modifying the existing prohibition on tourist housing to allow for tourist housing in certain districts under certain conditions.

In May and June of 2017, judicial opinions were issued related to this specific parcel and property. In 2017, an application for a letter of understanding for nonconforming use was applied for. That letter was issued in April of 2018, and is the subject of today's appeal. The appeal was applied for in August of 2018 following an application of filing for a verified post-judgment motion for sanctions with the courts. In October of 2018, the judicial circuit court

issued an order striking the appellant's verified post-judgment motion for sanctions. Ordinance 004-1997 includes the statement as follows: "Section 24, Monroe County Code, is hereby amended to include additional Subsection 9.5-2(d) to read as follows: (d) Vacation Rental Use. Previous vacation rental uses shall be discontinued in any district that prohibits vacation rental uses after the effective date of this ordinance. All vacation rental uses shall obtain annual special vacation rental permits regardless of when the use first established. Leases, subleases or other occupancy agreements for RV spaces for six months or more within a particular RV park, other than in a designated storage area, shall be discontinued and they shall not be renewed, extended, or entered into after the effective date of this ordinance."

The current Land Development Code is consistent but has slightly different language. Section 134-1, vacation rental uses, (k)(2) reads, "It shall be unlawful for any landlord, tenant, agent or other representative of a landlord to rent, lease, advertise or hold open for rent any dwelling unit for vacation rental use without a special vacation rental permit except as otherwise exempted under this Section."

Staff recommends that the Planning Commission uphold the decision of the Senior Director of Planning and Environmental Resources in which the Director recognized the lawful nonconforming vacation rental use but stated the Code sections that require that they obtain and maintain annual special vacation rental permits and vacation rental managers licenses pursuant to Section 134-1; and, if the subject nonconforming vacation rental use is terminated, abandoned or discontinued, then said vacation rental use may not be reestablished or resumed, and any subsequent use must conform with provisions of the Monroe County LDC and Comp Plan pursuant to Land Development Code Section 102-56(4)(1). Mr. Rains stated he was available for questions. There were none.

Mr. Peter Morris, Assistant County Attorney, began direct examination of Mr. Rains, covering his job duties and years of service with the County. Mr. Rains explained that as the Planning Development Permit Services Manager, his duties included oversight of the application of the Land Development Code and Comp Plan during permitting, supervision of employees, and he facilitates and reviews the issuance of vacation rental permits and vacation rental manager licenses, having processed a couple hundred including renewals; and has worked for the County for greater than four years. Mr. Morris asked for education, certifications and experience. Mr. Rains stated he has a bachelor's of science from the University of Missouri in human environmental resources, environmental design, construction with technical emphasis; a master's of science in architectural studies; and, a graduate certificate in project management from University of Wisconsin, Platteville. Other certificates include National Association of Home Builders, Graduate Certified Builder and Certified Floodplain Manager. Experience includes over a decade as a Building Code Consultant for the Wisconsin Builder's Association, thirteen years as a college professor in architectural technologies, and teaching technologies including design and zoning requirements and regulations.

Mr. Morris requested the Commission recognize Mr. Rains as an expert witness in the field of Planning. Chair Werling stated that he was so recognized.

Mr. Morris then inquired as to the details of the duplex structure. Mr. Rains testified that the initial permit had been issued July 29, 1986. The certificate of occupancy was granted January 10, 1992. Mr. Rains explained the difference between a vacation rental use and a special vacation rental permit, indicating that the use goes to the activity related to the occupancy of that structure, whereas the permit is the permission to use the structure for that specific use. The license is tied to an individual, not to a property. An individual could have a vacation rental management license for multiple properties approved under a permit. The term "grandfathered" is not a term defined in the Monroe County Code; the term "lawful nonconforming" would be the term used for properties lawfully established and nonconforming to the codes and regulations.

Mr. Morris asked Mr. Rains for his familiarity with the Code Enforcement appeal and the briefs filed by opposing counsel, Mr. Lee Rohe. Mr. Rains testified that he had reviewed Judge Koenig's opinion in that appeal, noting that the opinion stated that Mr. Handte's property is "grandfathered" from regulation of vacation rentals, but that the County would refer to it as "lawful nonconforming." However, the court opinion did not conclude that the subject property was exempt from permit and license requirements.

Mr. Morris reviewed Monroe County Ordinance 04-1997 with Mr. Rains, having him read the second sentence from Section 24(d) of the ordinance. "Vacation rental use: Previous vacation rental uses shall be discontinued in any district that prohibits vacation rental uses after the effective date of this ordinance. All vacation rental uses shall obtain annual special vacation rental permits regardless of when the use was first established. Leases, subleases, and other occupancy agreements for RV spaces for six months or more with a particular RV park, other than in a designated storage area, shall be discontinued and shall not be renewed, extended or entered into after the effective date of this ordinance."

Mr. Morris then asked Mr. Rains what materials the appellant had provided with the letter of understanding application upon which the Planning Director could rely on to render her decision. Mr. Rains listed the application form, an agent authorization letter, and a copy of the mandate in the Circuit Court of the Sixteenth Judicial Circuit Court. Mr. Morris asked for an explanation of a pre-application conference. Mr. Rains responded that this is a conference allowing members of the public to meet with staff members through an application process relating to a specific inquiry. Mr. Morris asked what the relationship is between a pre-application conference and a letter of understanding application. Mr. Rains explained the two different types of letters of understanding. The letter of understanding is related to development, which is typically precluded by a pre-application conference. The letter of understanding for nonconformities or nonconforming use is, at the option of the applicant, precluded by a pre-application conference. Mr. Handte had not requested a pre-application conference with his letter of understanding application, though he could have. A pre-application conference in Mr. Handte's case would have gone through any aspect of the Land Development Code, maps, Comprehensive Plan, Livable Communi-Keys Plan, and anything relevant to any use or development.

Mr. Morris asked what materials had been submitted by the appellant after the LOU had been issued. Mr. Rains listed the application for the appeal, including response briefs to County writings, a copy of the staff report, a copy of Mr. Morris' brief, and affidavits. Regarding the

affidavits, Mr. Rains noted that they were not direct testimony and included language such as, "to the best of my knowledge," and content-wise contradicted one from another. Mr. Rains read the definition of “personal knowledge” from Black's Law Dictionary. “Knowledge gained through firsthand observation or experience as distinguished from a belief based on what someone else has said." Mr. Rains described the affidavits as containing secondhand or to-the-best-of-my-knowledge type scenarios versus firsthand knowledge, with none being sworn to.

Mr. Morris asked whether the vacation rental permit would run with the land, and Mr. Rains indicated they would only be tied to the property owner applying for that specific permit. Mr. Morris then asked whether the impacts of transient occupants in a residential area would be more or less intensive. Mr. Rains stated there could be impacts to surrounding property owners though there are regulations within the Land Development Code to minimize them when the use is permitted, and the license requirements are designed to mitigate those impacts. The license is held by an individual and is renewed annually. The Planning Director had not required Mr. Handte to obtain any special vacation rental permits or licenses for years preceding the date of the LOU. Mr. Morris asked if Mr. Handte's argument on page three of his initial brief stating "The County did not begin regulating vacation rentals until 1997, when it enacted Ordinance 004-1997," was accurate. Mr. Rains responded that it was not, and that the term "vacation rental use" was codified in 1997, but that short-term or other-described rentals were not allowed in certain zoning districts, though there were provisions for such in other zoning districts. Mr. Rains then read from the ordinance, "Whereas Monroe County desires to amend the Land Development Regulation to expressly clarify the existing prohibition on short-term rental (less than twenty-eight days) of single-family homes within Improved Subdivision and other residential districts," noting that this language indicates the BOCC had regulated vacation rentals prior to 1997. The 1997 ordinance actually created an avenue for vacation rental use to be allowed in certain districts under certain qualifications. Mr. Rains further clarified, reading from the ordinance, "Providing that preexisting uses that were established under any code provision expressly allowing vacation rental uses that were in effect prior to September 15, 1986, may remain subject to nonconforming use provisions, providing that the provisions of Section 9.5-2(c) FEMA provisions shall not apply to tourist housing or vacation rental use, providing that Code Enforcement four-year statute of limitations set forth in Section 6.3-13 shall not apply to new vacation rental uses or violations of the prohibition on vacation rental uses;" semi-colon.

Mr. Morris then pointed out the regulatory code or requirements referred to in the County’s answer brief filed in this appeal, which were 134-A, 134-1(g), 134-1(e), 134-1(d)(1), and 134(k)(2), and asked Mr. Rains if these code provisions were being retroactively applied by the Planning Director to any past conduct of Mr. Handte. Mr. Rains responded that they were not, and that Mr. Handte was not being required to pay any permit or license fees in arrears for any pre-1997 year that the duplex was allegedly used as a vacation rental; nor had the Planning Director required him to retroactively document that the duplex had a qualified vacation rental manager for any pre-1997 year. This was only being required for present and future vacation rental use of the subject property, and the LOU does not prohibit vacation rental use of 1457 Narcissus, rather it recognizes the lawful nonconformity of that use.

Mr. Morris stated that Mr. Handte had claimed these requirements were, "onerous," and asked Mr. Raines if there were any specific facts articulated to support that claim. Mr. Rains responded there were none, other than that the owner lived in Key Largo. Mr. Morris then asked who was authorized to render official interpretations of the Monroe County Code. Mr. Rains explained that the County Attorney is a resource of the Planning Director, but that the Planning Director has the sole authority to make official interpretations. Mr. Morris asked whether there Mr. Rains was aware of any other lawfully-established short-term vacation rentals in the subject subdivision, and Mr. Rains was not.

Mr. Rains then went through the affidavits that had been provided. The affidavit of Manuel James attests that members of his family have been property owners on Narcissus Avenue, that only one of the units at 1547 Narcissus had been used as a transient rental, and the other unit has been used as the manager's apartment. Steve Lear was Mr. Handte's first manager who had remained until sometime in 2007, when he was replaced by a couple who currently serve as managers. Mr. Rains pointed out that this affidavit contradicted the appellant's claim that the duplex had been continuously used for transient rentals since 1992.

Mr. Rains then discussed the affidavit of Lynn Barry who owned 1779 Narcissus from 1995 to 2009, over twenty lots away from the subject property, who had stated that from 1995 until 2009, the appellant had continuously rented the vacant units, in the plural, as transient units for stays ranging from a single night to two weeks in duration, having some repeat customers. This affidavit refutes the claim in Mr. James' affidavit that half of the duplex had been continuously used as a manager's apartment, though Steve Lear had been mentioned as serving as property manager.

Mr. Rains then discussed Mr. Lear's affidavit, stating that he resided at 1547 Narcissus in one half of the duplex from the early 1990s to 2007, and managed the other half. This contradicts the appellant's claim that the duplex had been continuously used for transient rentals since 1992, with no mention of one-half being used for occupancy by a personal manager; and contradicts Ms. Barry's claim that the duplex had been continuously rented for transient rentals. Mr. Lear's affidavit also contradicts the appellant's assertion that having a vacation rental manager on-site would be a hardship due to the appellant's domicile in Key Largo.

Mr. Rains then discussed the affidavit of Mr. Ed Closkey who had made allegations regarding the appellant's intent when he had designed and built the duplex. Mr. Rains explained that neither the Planning nor Building Departments issue permits based upon intent communicated from a property owner to a contractor as they would have no way of knowing about communications which may have taken place or not taken place prior to an application. The application would be reviewed based on the content provided at the time of permit application.

Mr. Rains then discussed the affidavit of Michael Stacio who stated he had stayed in one-half of the duplex beginning in 1993, and that Mr. Handte had managers staying in the other one-half of this duplex. This also would contradict the appellant's claim that the duplex structure had been continuously used for transient rentals.

Mr. Rains then discussed the affidavit of James Cameron who stated that one of the rental units at 1547 Narcissus duplex had been continuously rented as a vacation rental, while the other unit has served as living quarters for the property manager. Mr. Rains informed Mr. Morris that had nothing further to add to his testimony.

Mr. Lee Rohe, on behalf of the appellant, Mr. Handte, then cross-examined Mr. Rains. Mr. Rohe first inquired about the contradictions in the affidavits that Mr. Rains had been testifying about and wanted clarification on whether his answers had been restricted to 1547 Narcissus, and Mr. Rains confirmed that they had been. Mr. Rohe asked if Mr. Rains was aware of another duplex down the street at 1791 Narcissus that could have been what was being referred to or confused with in the affidavits. Mr. Rains clarified that he could not attest to the affidavits being incorrect or correct in that the affidavits said, "in the best of their knowledge," but that the affidavits were contradictory amongst themselves. Mr. Rohe asked if there were two duplexes with four units on Narcissus, how he would know which duplexes the affidavits were referring to. Mr. Rains agreed the affidavits were not that specific which therefore made them fairly useless. Mr. Rohe then asked about the affidavit of Mr. Closkey and his use of the word “intent.” To clarify, Mr. Rains read the following from that affidavit: "Mr. Handte instructed me to design and build a duplex specifically for a transient renting purpose and not for long-term renting purposes. At the time, I designed the duplex under the applicable zoning designation of RU-2." Mr. Rains explained that the statement indicated Mr. Handte had requested a design for a specific use, but that Mr. Closkey had provided a design of a duplex that would have been consistent with the zoning designation of RU-2, not that he had provided a hotel, motel, or other transient-type structure. The zoning district RU-2 allows for a duplex of a minimum of 750 square feet, prohibiting all other uses. Mr. Rohe stated that the word “design” had been left out and asked whether plans for a particular design needed to be submitted and whether that was really the rest of the context Mr. Closkey had been talking about in terms of intent. Mr. Rains again quoted from the Closkey affidavit, "I designed the duplex under the applicable zoning designation of RU-2," adding that the design document is what would have been submitted for review with a building permit application and reviewed as a duplex. Mr. Rohe then asked whether the design submitted for the duplex had been approved by the County. Mr. Rains responded that it had met requirements of a duplex or attached dwelling unit. Mr. Rohe asked when Mr. Closkey had submitted that duplex design. Mr. Rains responded that it would have been prior to the permit being issued in 1986.

Mr. Rohe then turned to the 1997 ordinance and the reference to a deadline of September 15, 1986. Mr. Rains again read from the ordinance, "expressly allowing vacation rental uses that were in effect prior to September 15, 1986, may remain, subject to nonconforming provisions, provided the provisions of," noting that the ordinance continued on with other sections and referred to lawful nonconforming uses that were previously established. Mr. Rohe asked if there was any language in any ordinance prior to 1997 similar to what he had just read. Mr. Rains responded that prior to 1997, the Code provided for permitted and conditional uses, but that this type of use was not permitted in the RU-2 or RU-1 zoning districts. Mr. Rains referred to Chapter 19 of the Monroe County Code, often referred to as the '73 to '86 Code, specifically Section 19-109, the interpretation of permitted use, and read, "In the administration and

enforcement of this ordinance, all uses not expressly permitted in any district are otherwise prohibited." Mr. Rains explained that RU-2 allowed for duplex and uses established in RU-1 zoning districts. The RU-1 language specifically states all other uses are prohibited. At that time, RU-7, Residential Tourist District, and RT-8, Resort Tourist District, allowed for tourist uses.

Mr. Rohe asked Mr. Rains to point out the particular sentence he was relying upon that existed in the code before September 15th, 1986, that prohibited vacation rentals. Mr. Rains reiterated, Section 19-109, interpretation of permitted uses. "In the administration and enforcement of this ordinance, all uses not expressly permitted in any district are otherwise prohibited." Mr. Rohe asked where the 1986 Code addressed vacation rentals. Mr. Rains explained that the term itself was not codified at that time. Other terms were used as in the RU-7 Residential Tourist District, "This district is intended to provide an area for accommodations oriented to the transient and resort trade with a residential character and preserving and protecting the amenities of a living environment." Mr. Rohe asked whether the code being applied to Mr. Handte now in 134-1 specifically referred to vacation rentals. Mr. Rains confirmed that it did, as codified by Ordinance 004-1997. Mr. Rohe then asked, since the existing code felt the need to define vacation rental and use, whether that was the County regulating a new use of property that was not in existence before September 15th, 1986. Mr. Rains stated that prior to 1986, the terms "accommodations" and "transient uses" were used; and in1997, a provision was made for a specific use of "vacation rental use" where it had previously been prohibited. Mr. Rohe asked whether the Division of Hotel Management under DBPR was the entity that regulated transient rentals under Chapter 509, and directed him to Section 12-22 from the Monroe County Code, pre-1986 Code, subsection (1) and read, "Every person engaged in the business of renting accommodations as defined in Chapter 509, Florida Statutes, except apartment houses, shall pay for each place of business in the amount of $1.50 for each room. The room count shall not include rooms occupied by the owner."

Mr. Morris objected to Mr. Rohe reading from a document that was not in the record and therefore not available for Mr. Rains to acquaint himself with. Mr. Rohe indicated it was in the record of the court litigation and applied to this particular property. Mr. Morris then objected to the narrative explanation by Mr. Rohe, adding that the judicial record could have been submitted into this record. Mr. Morris admitted that the prior referenced document was in the record but had not been certified by a public records custodian. Mr. Rohe responded that Section 12-22 was not being submitted into evidence but is part of the law which does not have to be certified, adding that he doubted any of the code provisions were certified that were referred to in Mr. Morris' direct examination of Mr. Rains. Mr. Morris stated that ample testimony had been presented by Mr. Rains as an administrator and manager in the Planning Department, and that he was qualified to speak to Planning Department documents.

Mr. Rohe continued with his cross-examination regarding the Randy Ludacer letter. Mr. Rains pointed out that he had not acknowledged the document as referred to, as the Randy Ludacer letter, and asked if there was another title for it that he could refer to. Mr. Rohe explained that Mr. Ludacer had been the County Attorney at one time and presented Mr. Rains with a June 25,

1993 letter addressed to All Managers of Resort Dwellings, referring to the sentence beginning with, "Please be advised." Mr. Rains responded that this 1993 letter had gone out advising that Florida Statutes required licensing of resort dwellings, using the terms resort dwellings and resort condominiums, and was basically asserting that legislation was being considered, providing notice of initial hearing dates in 1993 through 1994 related to that contemplated regulation.

Mr. Rohe turned to the Judge Koenig letter regarding this property, the second page captioned, History of the Appellant's Use, explaining that Judge Koenig had sat as an appellate judge over the County's administrative law judge. Mr. Rohe asked Mr. Rains whether he thought any of the facts found by Judge Koenig were incorrect. Mr. Rains read from the summation of facts and the judge's finding issued on January 10, 1992, for a duplex; "The CO does not mention the manner in which the duplex was to be occupied." Mr. Rohe then pointed out the sentence stating, "Vacation rentals were not allowed or disallowed by 1970s zoning," and asked Mr. Rains if he disagreed with that. Mr. Rains stated his testimony was based on the BOCC ordinance, and that the term "vacation rentals" was not codified in 1970, and therefore didn't exist. Mr. Rains noted that "vacation rentals," as defined and in current code, was not addressed, and therefore not allowed or disallowed at the time of the construction of the structure.

Commissioner Miller asked what years Section 19-196 of the old code was in effect. Mr. Rains responded from 1973 to '86, often referred to as the pre-1986 Code. Mr. Rohe then asked Mr. Rains if he disagreed with anything in Judge Koenig's decision. Mr. Rains responded that the LOU acknowledged and was based on that decision and documented recognition of it. Mr. Rohe asked if the judge's decision meant that the County could not retroactively apply a law that was passed today to something that occurred prior. Mr. Rains stated he was not sure that was the full content of the decision.

Chair Werling asked if the appeal before the Commission was about the Planning Director's decision, and not the court litigation. Mr. Morris responded that that was the County's position, that the Planning Director had played no role in the court appeal. Mr. Wolfe agreed, adding that the court order speaks for itself and whether Mr. Rains agrees or disagrees is irrelevant. Mr. Rohe disagreed, arguing that Mr. Morris had opened the door by allowing Mr. Rains to interpret affidavits, apply law, read the law, and state when and how the law applied. Mr. Morris objected to Mr. Rohe's narrative summation of the court case. Mr. Rohe stated that it is very relevant, that Mr. Handte had been cited for illegal vacation renting because Code Enforcement had applied the law backwards, and the same occurred in the LOU. Commissioner Miller asked what Mr. Rohe was referring to, and he responded the May 2nd, 2017 decision. Chair Werling reiterated that the Commission was here to uphold or overturn the Planning Director's decision, not re-litigate something outside of that. Mr. Rohe argued that his questions were within the scope of what Mr. Morris had asked Mr. Rains on direct examination. Chair Werling added that she did not mind the questions, but did not think an opinion on the court case related to the question of whether to uphold the Planning Director's decision.

Mr. Rohe then asked Mr. Rains about the memorandum dated November 28th, 2018, from Devin Rains through Emily Schemper to the Monroe County Planning Commission, and whether it was part of the LOU. Mr. Rains stated that it was not; it was a staff report to the Planning

Commission, though many of the staff memo items reference the LOU and document some of the relevant prior County actions. Mr. Rohe referenced the Appellee's Response to Appellant's Statement of Basis for Appeal to the Planning Commission, stating that he had never received that document which appeared to have been written by Mr. Morris. Commissioner Miller asked if he was referring to Mr. Morris' answer brief, the appellant's initial brief. Mr. Morris interjected that what Mr. Rohe was referring to was a statement on page four of four in Mr. Rains' staff report under Roman numeral six entitled, Recommendation, stating, "The decision by the Senior Director was based upon the criteria provided in the Monroe County Land Development Code and the findings of fact as presented in the document, Appellee's Response to Appellant's Statement or Basis for Appeal to the Planning Commission," which had been prepared by Mr. Morris. Though it may be poor phrasing, it made no findings of fact. All findings of fact were made by the Planning Director. Mr. Rains added that the decision of the Planning Director was based upon the criteria of the Monroe County Land Development Code, and he had referenced that document as support for the County's recommendation to uphold the decision of the Senior Director of Planning and Environmental Resources in the letter of understanding.

Mr. Rohe asked if the response offered by Mr. Morris was used by whoever authored the LOU. Mr. Rains responded that it was not, that it was a poorly-stated reference but the intent was to make the recommendation to uphold the decision of the Senior Director based on the criteria provided in the Monroe County Land Development Code; and, the description and findings of the Appellee's Response to Appellant's Statement that Mr. Morris wrote in response to Mr. Rohe's initial brief. Mr. Morris added that the answer brief was filed after the LOU with a certificate of service date of December 7, 2018. Mr. Wolfe added that it was clear the document did not and could not have existed when the LOU was issued. Mr. Rohe then asked why Emily Schemper, the author of the LOU, was not present, and it was explained that she was on maternity leave. Mr. Rohe had no further questions.

Mr. Morris then called Reynoldo Ortiz, Assistant Building Official for the Monroe County Building Department, as a witness. Mr. Ortiz stated he had worked for the County since 2010, and his duties consisted of planning, organizing, directing and coordinating the functionality of the Building Department, including permitting, plan review, inspections and contractor licensing. Mr. Morris asked Mr. Ortiz for his education, certifications, licenses and experience. Mr. Ortiz stated he has a bachelor's degree in architectural design, a master's degree in architecture, eleven certifications with the International Code Counsel, including Certified Building Official and Building Code Specialist. He is a Certified Floodplain Manager, a Certified Planner through the Associate Planning Association, an associate member of the AIA, and has a Sedimentary Control Measure Inspector license. Mr. Morris then tendered Mr. Ortiz as an expert in the fields of Planning and Building Code Administration, and was accepted as such by the Planning Commission.

Mr. Morris asked Mr. Ortiz if he was familiar with what are called certificates of competency, which he was, and if he could briefly explain what those are. Mr. Ortiz explained that a certificate of competency is a certificate given to an individual once they meet the criteria for a

contractor license. They are usually done at a local level; however, at the state level they have a state license. Mr. Morris then asked if he had observed, in his capacity as Assistant Building Official, whether the Monroe County BOCC had enacted an ordinance requiring a certificate of competency that "grandfathers in" individuals previously practicing a trade. Mr. Ortiz responded that the BOCC has taken into account a person's capacity to do a specific contracting trade and taken steps to allow that person to continue with that trade when that trade is no longer offered or the criteria for that trade has been modified. Mr. Morris asked if there were instances where the BOCC nonetheless would require that individual to obtain a license. Mr. Ortiz explained that if someone came in today to request a building permit, they need to meet the criteria today for that license. So it would be today's code, today's rules, and that was also true at the state level. Mr. Morris asked if, in his experience, Mr. Ortiz believed state agencies and the BOCC knew how to write in a "grandfathering clause." Mr. Ortiz indicated he had seen evidence that they would take it into account. Mr. Morris had no further questions.

Mr. Rohe began cross-examination and asked Mr. Ortiz if he had been involved in the drafting of the LOU for 1547 Narcissus Avenue, which he responded had not. Mr. Rohe asked if his testimony had to do with real property or licensing of contractors. Mr. Ortiz stated if building permits were required, they would be for a piece of property. Mr. Rohe asked as far as grandfathering, whether he had meant someone could be grandfathered as a contractor when there are new licensing requirements that come into effect. Mr. Ortiz stated he didn't believe grandfathering was the right word, but that someone could be allowed to continue within the parameters of their license; however, the ordinances or codes are rewritten and sometimes take into account what they were doing before. Mr. Rohe had no further questions.

Mr. Morris stated the County rested. Mr. Rohe called Mr. Edwin Handte as a witness and proceeded with direct examination.

Mr. Rohe asked Mr. Handte how long he had been involved in litigation regarding1547 Narcissus. Mr. Handte stated since 1999, when he had received his first Code Enforcement Notice of Violation on all three properties, 1547 and 1791 Narcissus, and 103365 Overseas Highway in Key Largo. The County had dropped the case in 2001, but had since lost their records of that case. No other action was taken until 2010, when he was cited with the same violation. This case ultimately went before Judge Koenig. He then asked for a letter of understanding from the County as that is the process for the County to understand that he was grandfathered in under the old codes prior to 1986, based on Monroe County Code 12-22, which specifically says renting out short term comes under State of Florida Code 509. Mr. Rohe asked if his properties were up for sale. Mr. Handte responded that they were, and that he was selling them as transient rental vacation units. In 2005, after the County had violated several ordinances surrounding his properties, he had decided he'd had enough of Monroe County and he purchased property in North Georgia. Mr. Rohe asked if Mr. Handte had any problems with applying for the license the County now wanted him to get. Mr. Handte responded that licensing requires the property owner to respond within an hour to a disturbance which he cannot do living in Key Largo and that his business office is in Key Largo. The management that was on the property in the past was only for purposes of cleaning the units. Mr. Handte then confirmed he had been

continuously renting as a vacation rental since he had received his CO, adding that his other property at 1791 Narcissus and the one at 103365 Overseas Highway in Key Largo had also received a violation in 1999, which were also dismissed. Mr. Morris objected to relevance. Mr. Rohe stated he was trying to streamline things as 1791 was the next agenda item. Chair Werling explained that the items could not be combined. Mr. Rohe had no further questions.

Mr. Morris began his cross-examination of Mr. Handte, and referred to Section 134-1(e)(10) and (11) of the LDC, and asked Mr. Handte to read those sections. "Complaints to the vacation rental manager concerning violations by occupants of vacation rental units to this section shall be responded to within one hour." "All vacation rental units shall have a vacation rental manager that has been issued a vacation rental manager license by the Planning Department provided for in subsection (8) of this section. The vacation rental manager shall reside within and be licensed for the section of the County, Upper, Middle, Lower Keys." Mr. Morris pointed out that the section did not say he had to respond physically, and asked him if he had a telephone, to which Mr. Handte responded he did. Mr. Morris had no further questions.

Chair Werling asked for clarification on whether the permit for the building was for a duplex and whether it could still be sold as a duplex today. Mr. Handte confirmed that to be correct.

Mr. Rohe then presented closing arguments, summarizing that the LOU was mistaken the same way Code Enforcement was mistaken in that it declares Mr. Handte to be in violation because he did not get a license under the new Code 134-1 and follow the regulations under that ordinance. The judicial process established that Mr. Handte's structure and his vacation rental use were grandfathered, so County staff came up with a third requirement to get a special license to do various things which involve a lot of retrofitting of his operation at his property. The appellant believes he was declared vested. The County did not appeal that decision so this same analysis by the judge would apply to the new requirement enacted in 2016. Mr. Rohe urged the Commission to declare the LOU in error and state that the new 2016 law does not apply to Mr. Handte's 1547 Narcissus duplex operation because he's grandfathered.

Mr. Morris presented his closing arguments stating that this is an appeal of the initial findings and conclusions of the Planning Director, not about creating new, additional findings or conclusions. It's about whether the Senior Director of the Planning and Environmental Resources Department’s letter of understanding is supported. The appellant furnished limited documentation to the Planning Director for her review in the letter of understanding application. There was ample opportunity to furnish additional information or to request a pre-application conference and supply additional facts or to explain purported facts to the planning staff and Director. It is well settled that the Planning Director's interpretation of the Land Development Code, which she and her department are charged with administering, is entitled to deference and should not be overturned so long as her interpretations are within the range of permissible interpretations. The burden is on the appellant, Mr. Handte, to make reversible error on the part of the Planning Director appear. There's no property right exempt from a non-prohibitory, purely regulatory special permit or license requirement attached to a use of property and there were no citations of legal authority standing for that proposition in the briefs. The appellant is confusing the difference between the question of whether a nonconforming use exists, which the

court did find in a Code Enforcement appeal that did not involve the Planning Director or the Planning Department, versus the question of whether an owner engaged in a use has to comply with regulatory requirements that don't prohibit the property's use. Mr. Morris gave examples: If he drove for years at 55 over Tea Table Relief Bridge or the Fills and FDOT reduced the speed limit, he could not come back as a defense and say, "Well, I've been driving 55 for years. You can't charge me, officer." Likewise, ride-sharing companies such as Uber and Lyft are now required to carry insurance for bodily injury or death. The fact that they were not required to prior doesn't mean that they are exempt from having to carry insurance to carry on their activities lawfully. Mr. Morris pointed to the testimony of Mr. Ortiz stating the local legislature knows how to write exemptions into laws, and there is no such exemption here. Judge Koenig's order concluded that the subject duplex is a lawful nonconforming use but that does not immunize the appellant from other regulations governing the safety of that use. The appellant is asking for is kind of the wild west of regulation; if he was doing it beforehand and a regulation is enacted afterwards, then he doesn't have to comply with that because he was doing it beforehand. Mr. Morris stated that he knows of no law in Florida or federally that stands for that proposition. The appellant also did not specify whether his due process claim was procedural or substantive. Due process means notice and opportunity to be heard and the appellant received that. The County doesn't know how due process of any variety has been deprived of this property owner. The mere purchase of land doesn't establish a vested right. It has been well established in multiple cases in this state that possession of a permit or certificate of occupancy alone doesn't establish vested right. A property owner seeking to establish a vested right must demonstrate that he or she substantially changed their position and have incurred extensive obligations and expenses in reliance upon governmental actions. There was no articulation of what that reliance was here.

Mr. Morris then cited the following cases: Harbor Course Club, Inc. vs. DCA, 510 So. 2d, 915-918, Florida, 3rd DCA, 1987; Pasco County vs. Tampa Development Corp., 364 So. 2d 850-853, Florida 2nd DCA, 1978; Newport Largo, Inc. vs. Monroe County, 95 F3d 1084, 11th U.S. Circuit, 1996; and, City of Miami Beach vs. 8701 Collins Ave., Florida Supreme Court, 1954. One of the other arguments raised by the appellant is retroactivity, that a government cannot pass a law today which makes yesterday's conduct illegal, which misstates the issue on appeal. The issue is the LOU and what the appellant has to do to lawfully maintain this lawful use of the subject property. The law doesn't simply become retroactive merely because it draws upon past facts for its current application. If that were the case, every statute, ordinance or regulation enacted to govern conduct that may have occurred previously would be null and void and wouldn't apply to anybody who's carrying on that business activity beforehand. To rule for the appellant would be telling him that he has an unlimited, unconditional right to a vacation rental use of property without any regulation whatsoever, which is an absurd interpretation of law.

Mr. Rohe asked for rebuttal closing to also cite the following cases: Rollison vs. City of Key West, 875 So. 2d 659, 2004; and, Allen vs. City of Key West, 59 So. 3d 316, 2011. These cases deal with how the law cannot be applied retroactively, especially with regard to real estate, which can get into thorny issues such as whether you're taking somebody's property under eminent domain or inverse condemnation.

Mr. Wolfe advised the Commission they needed to either uphold or overturn the Planning Director's LOU, and that the motion should state why, referencing evidence and arguments presented. Commissioner Coward asked how many other legal nonconforming vacation rentals were out in the County presently. Mr. Rains responded that this situation was most likely unique. Commissioner Miller asked if it would be possible to get a special vacation rental permit at 1547 Narcissus. Mr. Rains responded that it was. The LOU states that the County recognizes the lawful nonconforming use, but it also then provided guidance that the code, per the ordinance, established in 1997, and it would be required to obtain the permit which is predicated on a vacation rental manager's license. Commissioner Scarpelli clarified that the '97 ordinance was superseded by the new 2016 code section. Mr. Rains confirmed it had been modified, the current Section 134-4. Commissioner Scarpellin also asked for confirmation that the LOU is attached to the property. Mr. Rains clarified that it establishes the nonconforming use to the property, but there are code sections that could affect that if the use changes down the road. Commissioner Scarpelli asked if a potential buyer would also have the same availability to get a vacation rental license. Mr. Rains stated they would, provided that the vacation rental use does not cease. Commissioner Wiatt commented that it is not unreasonable for the Planning Director to regulate a vacation rental of this nature, especially one in a residential area. Without that, there's little to no regulation. The fact that it's in a residential area is important. Chair Werling added that she believes the property retains its value as the duplex that it was built for originally.

Motion: Commissioner Coward made a motion to uphold the Planning Director's decision based on evidence presented, that the market value of the property had not been diminished, and that this is a very reasonable expectation of the Planning Director. Commissioner Scarpelli seconded the motion.

Roll Call: Commissioner Scarpelli, Yes; Commissioner Wiatt, Yes; Commissioner Miller, Yes; Commissioner Coward, Yes; Chair Werling, Yes. The motion passed, 5-0.

2. <u>EDWIN HANDTE, 1791 NARCISSUS AVENUE, BIG PINE KEY, FLORIDA, MILE MARKER 30 GULF SIDE</u>: AN APPEAL, PURSUANT TO SECTION 102-185 OF THE MONROE COUNTY LAND DEVELOPMENT CODE, BY THE PROPERTY OWNER TO THE PLANNING COMMISSION CONCERNING A LETTER OF UNDERSTANDING TO ESTABLISH THE LAWFULNESS OF A NONCONFORMING USE DATED AUGUST 13, 2018, BY THE SENIOR DIRECTOR OF PLANNING & ENVIRONMENTAL RESOURCES. THE SUBJECT PROPERTY IS LEGALLY DESCRIBED AS BLOCK 18, LOT 9, EDEN PINES COLONY (PLAT BOOK 4 PAGE 158) BIG PINE KEY, MONROE COUNTY, FLORIDA, HAVING REAL ESTATE NUMBER 00268790-000000. (File 2018-178) **CONTINUED FROM 12/12/2018 & 2/27/2019 & 4/24/2019**

(12:05 p.m.) Mr. Rohe stated he had exhibits that required a vote that he would like moved in, consisting of a letter from the Chamber of Commerce showing that Mr. Handte had been in the vacation rental business since 1992, or a member of the Chamber of Commerce since then; a copy of one of his ads showing that he's been continuously in business; and, a Code Enforcement investigation on e-Gov, for the 1791 property. Mr. Wolfe determined they were all from the

same code case. Mr. Morris had no objection to submission of the exhibits. Mr. Wolfe noted that since this hearing had a lot of similarities to the first one, the parties had agreed to import the record from the first hearing into this one. New evidentiary testimony would be taken with issues significantly different for this case.

Mr. Devin Rains presented the staff report, pointing out that the history for 1791 Narcissus Avenue is slightly different from 1547. This building permit had been reissued on February 21, 1990, due to the removal voluntarily from the permit by Mr. Closkey, and Mr. Handte establishing himself as the contractor of record. On April 23rd, 1993, the certificate of occupancy for the duplex was issued. Again, Ordinance 004-1997 modified the existing prohibition on tourist housing, an application for a letter of understanding for the nonconforming use was requested in 2017, the LOU was issued in 2018, and, a request for Planning Commission appeal was applied for August 30, 2018. Staff recommends the Planning Commission uphold the decision of the Senior Director of Planning and Environmental Resources Department in the letter of understanding for nonconforming use dated August 13, 2018, in which the Planning and Environmental Resources Department was unable to recognize the establishment of the lawfulness of the nonconforming vacation rental use at the subject property.

Commissioner Miller noted Mr. Rohe's memorandum to Monroe County Planning, on page one, where it states, "While the entry is now closed, there is a caveat under the covenant code dated 11/9/2018," which reads, "Should a new complaint be received regarding the use and/or advertisement of this property for rentals of less than twenty-eight days in a subdivision or where it is prohibited, the new case will be opened and investigated as normal," and asked if that would apply to any property in Monroe County, that if there were complaints it would be investigated. Mr. Rains indicated affirmatively, that there would be a Code Compliance investigation.

Mr. Morris first noted that Mr. Rains had previously been qualified as an expert in Planning, and began his direct-examination. Mr. Rains summarized that this duplex structure at 1791 Narcissus was initially issued a building permit on July 29, 1986, and that permit was later reissued February 21, 1990. The CO was granted to the reissued permit on April 23, 1993. Mr. Morris asked how that had come to pass. Mr. Rains explained that the County files contained a letter from Mr. Closkey removing himself from the building permit, and that Mr. Handte had then applied as owner-builder on the permit. That initial application was denied by the Building Department. Mr. Handte appealed to the Planning Commission which denied his appeal, but allowed for the permit to be reissued because during the time of the appeal, the permit had expired. The appellant was able to obtain the permit as reissued, and under his name as a licensed general contractor. When the reissued permit was granted, it established the lawfulness of the duplex structure based on the RU-2 zoning, which allowed for a lawful duplex use, and was issued a certificate of occupancy as a duplex. Mr. Rains provided the definitions of duplex under the 1973 through '86 Code, Section 19-5: Duplex, a single residential building containing two dwelling units. Dwelling is defined as a house, apartment or building used primarily for human habitation. The word dwelling shall not include dormitories, fraternities, sororities, hotels, motels, tourist courts, or other buildings for transients. Dwelling unit is defined as a building or portion thereof designed for residential occupancy by one family, having all rooms of

the unit accessible from within the unit, with complete housekeeping facilities for the exclusive use of the occupancy family, including only one facility for the cooking and preparation of food, not to mean motorhomes, travel trailers or campers. Mr. Morris asked if it was fair to say that dwelling does include hotels, motels, tourist courts, or other buildings used for transients, which Mr. Rains confirmed. Mr. Rains then read Section 19-109 of the '73 to '86 Code titled Interpretation of Permitted Uses. "In the administration and enforcement of this ordinance, all uses not expressly permitted in any of the districts are otherwise prohibited." Mr. Morris asked Mr. Rains to explain the meaning of that provision. Mr. Rohe objected, as the witness was not a legally trained lawyer admitted to the Florida Bar. Mr. Morris stated that he was asking for Mr. Rains' opinion as a professional planner about the Land Development Code which he administers. Mr. Rohe further objected on best evidence rule, adding that the Code provisions speak for themselves. Mr. Morris then withdrew the question stating that it didn't matter.

Mr. Morris asked what the subject property's zoning district was in July of 1986. Mr. Rains responded that it was RU-2, reading, "Section 19-196, RU-2, two-family residential district. This district is intended to provide residential areas in which duplexes may be constructed and occupied. Uses permitted. (1) Any use permitted in the RU-1 Districts; and, (2), permanent two-family dwellings or duplexes." Mr. Morris asked it was correct to say that buildings used for transients, tourist courts, motels, hotels were not included within the RU-2 district's permitted uses, and Mr. Rains indicated that was correct, codified at Section 19-196 of the 1973 to '86 Code. The RU-2 two-family dwellings district specifically lists the uses permitted, including any uses permitted in the RU-1 district; and, the RU-1 district allows for permanent single-family dwellings, and also states uses prohibited as being mobile homes and all other uses. Under the pre-'86 Code, the RU-2 zoning district did not expressly permit vacation rental or transient uses. The 1986 Effective Code Section 9-201 (a) specifically states, "No structure or land in Monroe County shall hereinafter be developed, used or occupied unless expressly authorized in a Land Use District in this division." After 1986, this zoning was changed to Improved Subdivision which does not expressly authorize vacation rental or transient uses. Mr. Morris asked Mr. Rains about the five exhibits attached to the appeal from files maintained by the Planning Department, and asked if he was the records custodian for such files. Mr. Rains indicated that he was, and could certify these were true and accurate copies of those original files. Mr. Morris then asked about Exhibit B to Mr. Rohe's initial brief and asked whether that had been included in the original application. Mr. Rains indicated it had not. Mr. Morris asked whether Section 12-22 addressed zoning or taxation, and Mr. Rains responded that it addressed taxation. Mr. Morris stated that the appellant claims the Ludacer letter referred to in the previous appeal stands for the proposition that the County had not regulated transient rentals prior to 1993, and asked whether Mr. Rains agreed with that statement. Mr. Rains believed the letter stated that regulations were pending and the term "vacation rental" was not codified at that time, and short-term use was not prohibited. The letter was providing guidance that regulations were impending that might allow for that, but did not mean that transient rentals were allowed in any land use district before 1993. Only specific Land Use Districts allowed for specific types of short-term accommodation use. Mr. Morris read the first sentence of Ordinance 004-1997, "An ordinance modifying the existing prohibition on tourist housing, including vacation rental use in residential districts," and asked if it was fair to state that the only way the subject property could have been a lawfully-established

transient or vacation rental use, either under the RU-2 pre-1986 Code or the IS post-1986 Code was if RU-2 or IS expressly authorized vacation rental or transient use. Mr. Rains indicated that was correct. Mr. Morris asked if the appellant had supplied any documentation to the Planning Director for her to consider when she was contemplating the issuance of the LOU reflecting that he had been vacation renting lawfully under the pre-1986 or post-86 Code. Mr. Rains responded that the application for the LOU included minimal information and did not specifically offer evidence of continued vacation rental use or the establishment of lawfulness of vacation rental use. Further, Mr. Handte had purchased the property in 1973, so Section 19-109 was in effect, and the RU-2 Zoning District regulations were also in effect at that time. When the CO was issued in 1990, Section 9-201 was in effect, along with the IS Zoning District regulations discussed. Any property owner could have consulted these Code provisions of record at any of those times. There was also no evidence provided to support the claim that the property's marketability has been impaired or that Monroe County has clouded the property's title by virtue of the Planning Director's LOU. There is a lawful duplex on the property so there are other uses available. The appellant's application file included the application, an agent authorization letter, a copy of a finding of a court case for a separate property and some other documents, but nothing to support that the 1970 Code says what the appellant claims it says. Mr. Morris had no further questions.

Commissioner Miller asked Mr. Rains, for the salient reason why the County recognized the lawful establishment of the nonconforming vacation rental use of the two existing dwelling units at 1547, but not for 1791 Narcissus. Mr. Rains responded that the court's findings specific to the 1500-block property were acknowledged in the other LOU as additional documentation for lawful nonconforming use. The property at 1791 was not included in that court case and on its own merits, per the application, the lawful nonconforming duplex to the IS District was recognized, but the vacation rental use was not.

Mr. Rohe then conducted cross-examination, referencing the second page of Judge Koenig's decision which dealt with 1547 Narcissus, adding that 1791 Narcissus was down the street, and asked if Mr. Rains agreed or disagreed with Judge Koenig's statement that vacation rentals were not allowed or disallowed by the 1970 zoning. Mr. Rains reiterated that the specific term "vacation rental" was not defined until the 1997 ordinance, and therefore could not have been regulated or not regulated under a "vacation rental" term. Mr. Rains agreed that vacation rental use was not established as lawful until the 1997 ordinance for specific land use districts under specific conditions. Mr. Rains also agreed that the DBPR still licenses motels and other transient rental uses and, in fact, that it is a document required in a vacation rental permit analysis, that an applicant be properly licensed with the state. Mr. Rains did not recall seeing a specific DBPR license in the application documents of Mr. Handte. Mr. Rohe asked if Mr. Rains had looked for Mr. Handte's County tax license and state license regarding the LOU. Mr. Rains responded that the LOU was authored by the Acting Director, Ms. Emily Schemper, and the evidence that was provided was summed up within the document by Peter Morris. There may have been sentences within the LOU written by him but he could not say specifically which ones as the document had gone through several edits. The staff report was written November 28, 2018 by Mr. Rains, after

the application for appeal, and was not a part of the LOU written on August 13, 2018. Any similar content would be references to the historic building permits.

Mr. Rohe asked if Mr. Rains had written the segment of the LOU on page four at the top, "On April 13, 1989, the Planning Commission heard administrative appeal by Mr. Handte, who overturned the decision of the Assistant Building Official to require a licensed contractor for permits." And then, the meeting minutes that state, "The land use designation was, at the time, Improved Subdivision, Area of Critical County Concern, IS-ACCC. Results of the hearing were the denial of the administrative appeals memorialized in Revised Resolution Number 2-89. The findings and conclusions of the resolution include the following statements." Mr. Rains believed he had initiated the draft of that content, quoting that content from the building permit itself. A copy of the signed resolution was included in the building permit archives. The relevance was to establish the building permit history and the record where the permit was reissued. The reissuance upheld the ability to construct the duplex in the RU-2 Zoning District. The building official would have been the one who reissued the permit, not the Planning Department. Mr. Rohe asked if there was some significance attached to reissuance of the permit. Mr. Rains responded that had Mr. Handte been required to reapply, it would have been reviewed as a new application, and the IS Land Use District did not allow for duplexes; so, at the time of reissuance, the lawful nonconforming duplex was therefore recognized. The origin of the sentence in the LOU that says, "Based upon a review of the records, the Planning and Environmental Resources Department has determined that the evidence submitted does not support the establishment of a nonconforming vacation rental use prior to September 15, 1986," could not be confirmed by Mr. Rains, only that the summation was accurate. Mr. Morris then objected, stating that he was not sure of the relevance of trying to ascertain the author of specific items in the LOU, which was finally approved by the Planning Director in April of 2018. Mr. Rohe found that ironic since Mr. Rains had been interpreting other peoples' documents all day long. Mr. Rains reiterated that he could not confirm that the statement regarding Mr. Handte allowing the building permit to expire was specifically written by him, but all of the information could be found in the building permit archives. Mr. Rohe objected to the documents not being available for this proceeding. Mr. Morris stated he did not understand the purpose of this line of inquiry as the LOU speaks for itself.

Mr. Rohe then asked about Attachment C, "Relevant Monroe County Land Development Code excerpts," and whether all of those excerpts from Code Section 134-1 and 101-1 definitions, et cetera, included the enactment date and when they were amended. Mr. Morris objected to relevance. Mr. Rohe believed it was relevant since they were dealing with applying law backwards in time. Mr. Rohe then asked if anyone had been prosecuted for vacation rental violations before February 1997. Mr. Rains responded that he would not have that knowledge; Code Compliance should be asked. Mr. Rohe had no further questions.

Mr. Morris proceeded with cross-examination wherein Mr. Rains confirmed he had done the research leading up to this appeal, the fact that one building was built near the time of the other building would not establish that the lawful use of one building applied to another, nor does the fact that a use was established mean that it was legal in the first place as it must go through a

permitting process and be lawfully recognized. The DBPR license does not establish the lawfulness of a use under a County Land Development Code. Activities akin to vacation rentals were prohibited in certain zoning districts such as RU-2 under other terms such as tourist courts, transient rentals, hotels-motels and specifically a definition on accommodations that were regulated. Mr. Rains confirmed that Ms. Schemper, the Planning Director, had the final say on approving the content of the LOU, and that the appellant had provided significantly more evidence to the Planning Commission than to the Planning Director, and that the Ms. Schemper, currently on maternity leave, had not been requested to appear at this hearing by the appellant. Mr. Morris had no further questions.

Mr. Rohe requested recross-examination and was allowed one question regarding whether Mr. Rains had come across a copy of any vacation rental permit or authorization dated between 1986 and 1997; to which Mr. Rains indicated he had not.

Commissioner Miller wanted to confirm that the 1547 property could get a vacation permit if they applied, but that the 1791 property could not. Mr. Rains indicated that was correct. Commissioner Miller asked what the harm to the public good would be and what the difference was between the two properties. Mr. Rains explained that if a neighbor came by and said, "That guy got a vacation rental permit because of a court case, I want one, too, and I've got some records of where I rented," they would be reviewed for that lawful nonconforming use based on the documents provided and determine whether they're eligible. It had not been determined that the 1791 property had been a lawfully-established nonconforming use. Regardless of owner, the history did not support it and the Zoning District does not support it. Mr. Rains was not sure what it would or it would not open up concerning other properties, but addressed the Code in effect at the time, the current ordinances with regard to requirements, and based on the body of evidence provided in the LOU. The 1547 property had a specific court case which overturned a prior judge's ruling and where additional documentation were considered; the Planning Department did not go against that judge's ruling. The 1791 property was not subject to that court review and was taken on its face as a separate property.

Commissioner Coward asked if the original permit and reissued permit both fell under the RU-2 Zoning District. Mr. Rains confirmed that was correct, though at the time the permit was reissued the zoning had changed to IS, but being a reissued permit it was taken out of its expiration status and reissued under the original zoning ordinances. Commissioner Coward felt the only difference between the two properties was the reissuance of the permit for 1791, which was not a big, major difference. Commissioner Miller agreed. Mr. Rains added that he did not find the reissuance significant but wanted to make sure that it was acknowledged as part of the zoning history. Commissioner Coward asked if evidence had been provided of the state license from the DBPR from '86 through '97 before the County got involved. Mr. Rains stated he had no documents evidencing that.

Mr. Rohe then called Mr. Handte for direct examination and asked him about the reissuance of the permit and the statement in the LOU regarding him allowing the permit to expire. Mr. Handte explained that that would have applied to both 1547 and 1791. The Planning Commission had given the permits back for both because the Building Department had failed to

respond in a timely manner to the engineer Wayne Grierson's letter stipulating the tie beam could be poured in different sections. The inspector didn't accept what was being done and wanted an engineer's letter. The letter was supplied to the County and the County did not respond in excess of a year. So the permits never expired. The time was tolled because of a woman by the name of Becker who did write a letter of apology. Assistant County Attorney Garth Coller had urged the Planning Commission, because of that fault, to give the permits back. Mr. Handte also stated he had provided Department of Revenue records showing that state sales taxes had been paid on the vacation rentals to Ms. Lisa Granger during the discovery period in the case. He had supplied documentation going back to the year 2000, and the State of Florida had supplied documentation going back to 1992. He had had the license since 1994. Chair Werling noted that the tax licenses are just to collect sales tax. Mr. Handte agreed, but added that he had to have the state license and tax number to operate. Mr. Handte stated he'd had no problems with 1791 in terms of disturbances, and the only inspector from DBPR that had come out had only wanted to see the license.

Commissioner Miller asked what harm the decision of the Planning Director concerning 1791 would be. Mr. Handte responded that she had made a decision that he was not a lawful transient rental use, and that is what his business is, thus he would not be able to continue in the transient rental business.

Mr. Handte added that he would not have made two trips to Stock Island from Key Largo to pick up his permits, and that they were picked up at the same time on January 1, 1984 from Patty Becker. In 1999 when his three properties were cited for vacation renting, he had hired an attorney and had used the same defense then as now, that the County Code specified under 12-22, if you rented out for short term, you fell under State of Florida Codes 509, but the County had lost their records of that case. Mr. Rohe had no further questions.

Mr. Morris then conducted cross-examination and asked Mr. Handte how many vacation rental units he owned. Mr. Handte stated he has three properties with nine units. Mr. Morris had no further questions.

Mr. Rohe presented closing arguments, reiterating the prior closing argument in terms of the impermissibility of applying a law retroactively, as well as the two cases he'd cited prior. This case is strictly to argue that the LOU is wrong because 1791 has a similar history to 1547, hence Judge Koenig's decision and the same principles of law would apply. The facts are very similar and this should be grandfathered as a structure and as a vacation rental use. Anything that's grandfathered gets phased out over time, but over regulating something that's grandfathered puts the government at risk of being sued for inverse condemnation or a taking. Mr. Rohe believes the 1791 property should be recognized the same as 1547, and that the LOU is incorrect. Mr. Rohe added that Mr. Handte has had a very tough time over the years trying to stay in business. There are perhaps other vacation rentals out there that the County doesn't know about, so there may be other people similarly situated. This question may be faced again with another owner at some point in the future, and the decision from Judge Koenig is very instructive that the law can't be applied retroactively.

Mr. Morris presented his closing argument, stating that it is of significance that no questions were asked of the County's witness regarding County Code Sections 19-109, or 9-201(a). Mr. Rains' testimony regarding the fact that transient rentals, tourist courts, vacation rental use unless expressly authorized in a zoning district is prohibited, was left untouched. There was very little relevant questioning asked of Mr. Rains regarding Ms. Schemper's letter of understanding. This is an appeal, and the appellant has attempted to backdoor significantly more evidence to the Commission than was presented to Ms. Schemper. This is a review for whether or not Ms. Schemper committed reversible error based on what scant documentation they provided to her in the first place, and the appellant has essentially vaulted over Ms. Schemper and appealed to the Planning Commission for relief based upon an alleged commission of reversible error by Ms. Schemper and based upon reams of evidence that was never even presented to her. Ms. Schemper's LOU should be upheld. She did not commit reversible error based upon her diligent research and Mr. Rains' research of the applicable codes in force at all times relevant to this appeal. The appellant could have solicited a pre-application conference, as noted in the prior appeal, which would have given ample opportunity for the appellant to articulate or explain any facts he believed were pertinent but he elected not to avail himself of that mechanism. There is a record before Judge Koenig that the appellant could have filed with this Planning Commission and he chose not to. The judge made a decision based on a separate record that was before him. The appellant is attempting to shoehorn that decision relating to that other property into this property's appeal of Ms. Schemper's LOU. As with the prior appeal, affidavits were filed with this Commission which suffer from the same fatal problems. Mr. Handte could have brought any of those witnesses in to testify, to elaborate on what sources of information or knowledge those statements were based upon, and he elected not to. The appellant's contentions are that it has essentially been the County's fault or County staff's error at multiple turns. Whether the appellant's use of the subject property is or is not creating disturbances is not a legal element in the review of legal correctness or incorrectness of Ms. Schemper's decision. This is a legal forum to review Ms. Schemper's LOU, and her interpretations are entitled to deference so long as they're within the permissible range of interpretations. None of the County Code provisions relied upon by Mr. Rains had been addressed in cross-examination. The due process claim is inadequate and hasn't been articulated. Chapter 509 operates as a taxation registration system, not as a state-based land use law or code. For any other points in contention, the County would rely on arguments made in the prior appeal and upon the brief filed in this appeal. Mr. Morris respectfully requested the Commission uphold Ms. Schemper's LOU.

Commissioner Scarpelli asked if there was a way for Mr. Handte to apply for a permit extension back in 1988 or in the years in question. Mr. Rains responded that he was not aware of the Building Department's options for extension, but that he believed Mr. Handte had accurately expressed the scenario regarding his ability to have that building permit. Commissioner Wiatt commented that he understood the similarities between the two properties to be starkly different because of how things had transpired with the appeal process in the circuit court, and did not believe it was appropriate to piggyback this property on the back of the other given the fact that there was only one appeal that had gone through the circuit court. Though he is sympathetic with the appellant, he is looking at the bigger picture throughout unincorporated Monroe County.

Commissioner Miller stated that he would not consider not upholding the Planning Director's decision to be calamitous, considering Mr. Rains' testimony, so he would prefer to err on the side of Mr. Handte.

Chair Werling stated that she looks at it differently. This is a commercial operation in residential zoning. The RU-2 is duplex, and these were built as residential duplexes. They can be rented annually and this is not taking away any expected rights that Mr. Handte had when these were built as duplexes. Chair Werling added that she has a hard time rewarding bad behavior. Just because Mr. Handte got away with it or the rules were different or lax, doesn't make it acceptable to go forward.

Motion: Commissioner Scarpelling made a motion to uphold the Planning Director's decision based upon the testimony heard on this item, and the fact that there was no real evidence or a court appeal that could have given the Director the ability to allow this property to have a lawful nonconforming use. Commissioner Wiatt seconded the motion.

Roll Call: Commissioner Scarpelli, Yes; Commissioner Wiatt, Yes; Commissioner Miller, No; Commissioner Coward, No; Chair Werling, Yes. The motion passed, 3-2.

Items 4 and 5 were read together.

4. <u>AN ORDINANCE BY THE MONROE COUNTY BOARD OF COUNTY COMMISSIONERS</u> AMENDING MONROE COUNTY COMPREHENSIVE PLAN POLICY 101.5.31, MAXIMUM HEIGHT WITHIN OCEAN REEF, A GATED MASTER PLANNED COMMUNITY, TO ALLOW FOR A MAXIMUM HEIGHT OF 80 FEET WHEN A VARIANCE TO HEIGHT HAS BEEN APPROVED BY THE MASTER ASSOCIATION, AS PROPOSED BY SMITH HAWKS PL; 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 2019-023)

5. <u>AN ORDINANCE BY THE MONROE COUNTY BOARD OF COUNTY COMMISSIONERS</u> AMENDING MONROE COUNTY CODE SECTION 131-2(A), MAXIMUM HEIGHT, WITHIN OCEAN REEF, A GATED MASTER PLANNED COMMUNITY, TO ALLOW FOR A MAXIMUM HEIGHT OF 80 FEET WHEN A VARIANCE TO HEIGHT HAS BEEN APPROVED BY THE MASTER ASSOCIATION, AS PROPOSED BY SMITH HAWKS, PL; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL OF CONFLICTING PROVISIONS; PROVIDING FOR TRANSMITTAL TO THE STATE LAND PLANNING AGENCY AND THE SECRETARY OF STATE; PROVIDING FOR INCLUSION IN THE MONROE COUNTY CODE; PROVIDING FOR AN EFFECTIVE DATE. (File 2019-024)

(2:03 p.m.) Mr. Jay Berenzweig, Principal Planner, presented the staff report. On February 19, 2019, an application was received from Smith Hawks on behalf of Ocean Reef Club and the Ocean Reef Community Association to amend the Monroe County 2030 Comp Plan Policy 101.5.31, and the corresponding Land Development Code Section 131-2, to allow structures

within Ocean Reef to exceed the maximum height limit up to a maximum of 80 feet on evidence submitted by the Ocean Reef Community Association, Inc., or Master Association. That variance to height was approved by the Master Association based on criteria established for a variance by the Master Association. Background: In 1977 the Monroe County Zoning Board approved the overall conception plan of Ocean Reef as a major development project in accordance with Ordinance 21-75, memorialized by an unnumbered resolution dated August 25, 1977. In 1997, the master plan for Ocean Reef was vested under BOCC Resolution 70-1997. The master plan was formally vested under BOCC Resolutions 478-1988 and 539-1988. On September 27, 2017, BOCC passed and adopted Ordinances 016-2017 to amend Comp Plan Policy 101.5.31, and the corresponding Land Development Code that allowed Ocean Reef, a gated master plan community inaccessible to surrounding community, non-habitable architectural decorative features such as railings, widow walks, parapets to exceed the 35-foot height limit, but not to exceed five feet above the building's roofline, and the exception would not result in a building, together with any architectural feature, a height to exceed 40 feet. A master plan community means a planned community of 100 or more acres in area, subject to a master plan or other development order approved by the County where public access is restricted and the community is operated and maintained by the community, including the provision of the comprehensive private utilities and transportation facilities and services within its boundaries, and a homeowners association or similar entity which regulates development standards and monitors development requests by all of its members. There was no community meeting required as there is no countywide impact. DRC considered this item on June 25, 2019, to provide for public comment.

Commissioner Miller asked Mr. Berenzweig how he had ascertained that this did not have countywide impact, and whether hurricane evacuation pertained to Ocean Reef. Mr. Berenzweig responded that it did pertain to hurricane evacuation, but did not have countywide impact because the proposed amendment is to height and is located within the gated community of Ocean Reef. Ms. Cheryl Cioffari interjected that privately-sponsored amendments that do not have a countywide impact do not require a community meeting. Commissioner Miller again asked how it was ascertained there was no countywide impact with the impacts of hurricane evacuation. Ms. Cioffari responded that the proposed text amendment is limited to the community of Ocean Reef. Commissioner Miller asked if Ocean Reef was in the County's hurricane evacuation plan. Ms. Cioffari responded that the changes to the regulation do not affect the entirety of Monroe County, are limited in the total number of units, and height would not change the total number of units so it wouldn't affect hurricane evacuation.

Mr. Berenzweig continued that staff found the proposed amendment to be consistent with the rules and restrictions of the master association. The internal variance procedure would permit Ocean Reef to maintain its distinct community character. The proposed amendment does not affect the aesthetics or design of any other areas within the County, and any other area would need to initiate a Comp Plan Text Amendment and follow the public process. Staff found the proposed amendments consistent with policies in the Comp Plan and Land Development Code, and that the amendment does not change the function of the Comp Plan and applies to the entirety of Ocean Reef. The amendment encourages storm-hardened and practicable development of old, elevated structures to more easily comply with floodplain regulations and match increasing rising sea levels and storm surge. Originally, the applicant had proposed

striking through the definition of Master Plan Community in the Comp Plan Amendment but staff recommended that stay in, so the applicant has amended accordingly. Applicant's Exhibit B indicates existing buildings that currently exceed the 35-foot height limit. Staff recommends approval with staff's indicated changes.

Commissioner Wiatt asked if Mr. Berenzweig had had any contact with the residents of Ocean Reef regarding this proposal. Mr. Berenzweig responded that he'd had a couple of people approach him verbally when out on an inspection, but has received no phone calls or emails, either positive or negative. Commissioner Wiatt commented that there have been issues with height of room and redevelopment, and asked if there had been discussion about increasing the numbers of actual beds. Understanding, from a ROGO standpoint, there is no opportunity for increases, what about larger rooms, more beds, that sort of thing, even though it may only be under a single ROGO. Mr. Berenzweig explained that under the Land Development Code, the numbers of bedrooms are not regulated. Commissioner Wiatt pointed out that height is regulated and if height starts to affect number of beds, then it seems that would get into what was concerning Commissioner Miller. Mr. Berenzweig stated that ORCA has their own architectural design standards, and he then turned the question over to Mr. Bart Smith, representing ORCA and Ocean Reef Club.

Mr. Smith described the location of Ocean Reef being off Card Sound Road, approximately ten miles north of the 18-mile stretch. To answer the question regarding height leading to additional bedrooms, building would still be restricted to the same areas. The maximum impervious surface and floor area ratios as to the total size of a lot aren't changing, so regardless of the height of the ceilings, and the actual size does not change. Commissioner Miller asked how much development potential had been used up. Ms. Cioffari did not have that answer. Commissioner Miller asked at what point Ocean Reef would be considered 40 percent developed. Ms. Cioffari explained that Mr. Smith had been referencing the open space provision on a per-parcel basis. The height of a building would not affect the open space ratio. Commissioner Miller believed that was ludicrous. Mr. Smith continued with a slide presentation. All commercial development is owned by the Ocean Reef Club, a not for profit that operates the non-residential areas. The tower is the one current building at 80 feet, which would not be exceeded, and this is one reason why 80 feet was chosen. Non-residential is for amenities for Ocean Reef Club. The boat barn also exceeds the height limitation due to the size of boats, which is another reason going higher was proposed by Ocean Reef. Residentially, there are many issues coming up with homes. Mr. Smith then showed the 10.2 miles that the property is located away from the nearest developed area, emphasizing this is relevant only to the area.

Commissioner Miller asked from how far away an 80-foot building could be seen. Mr. Smith responded that when you drive into Ocean Reef, you cannot see the tower. Commissioner Miller interjected an 80-foot building could be seen from U.S. 1, within 11 miles. Mr. Smith disagreed, and Commissioner Miller suggested he look it up on the internet. Mr. Smith stated that he understands Commissioner Miller is against the amendment and continued, showing there are properties in VE-16, VE-13 and VE-15 Zones, which will get higher with the coming map update. To build three feet above VE-15 is 18 feet. A 10 or 12-foot ceiling with two feet of free board in between is another 12 feet. Commissioner Scarpelli clarified that for a VE Zone, the lowest horizontal member, not the floor, needs to be two feet above flood. Mr. Smith agreed,

continuing with the example that a two-story building would be up to 45-46 feet. Commissioner Miller noted that was not 80 feet. Mr. Smith stated he understood, but there are significant units present with a ROGO exemption that to build anything would exceed 35 feet, so this was being requested for both commercial and residential. Mr. Smith presented some examples of existing buildings such as Creek House, Harbor House, the Dolphin, Marlin and Pompano buildings, which if needed to rebuild, they would look for higher ceilings, not increase density. The density is set for Ocean Reef and this request is looking at the future based on flood conditions and modern designs, particularly for public spaces. Because the development is self governed, this is a reasonable solution, with a cap, to allow Ocean Reef to continue to operate as it has and continue allowing buildings of the same heights while allowing for future development and redevelopment. Ocean Reef has agreed with the provisions made by staff for both the Comp Plan and Land Development Code. Mr. Smith requests the Commission recommend approval.

Commissioner Scarpelli asked if Ocean Reef has its own FAR. Mr. Smith responded that the commercial does and they have a lot of the same zoning provisions contained in the County Code. Commissioner Scarpelli asked about the volume diagram preventing buildings from going too close to the setback lines. Mr. Smith responded that as they go higher, the rear, front and side setbacks get stepped back, which also creates limitations on height. Commissioner Coward asked if there were restrictions to the number of floors allowed in condos or if they were capped at four. Mr. Smith stated there was not a cap on the number of floors, but there is on the number of units. The residential is limited to 48 units and the only thing that could change is the configuration of the units. Because of the height restriction and base flood, there are a lot of logistical hurdles in rebuilding the units. Commissioner Wiatt asked for the actual square footage for the resort including the units and hotel rooms of current floor area. Mr. Smith responded that hotels are measured in number of hotel rooms. Redevelopment would not cause a hotel to gain units, but could cause it to be redesigned with more height. Commissioner Wiatt noted that all units are not created equal. Mr. Smith disagreed, because under the Code a transient unit is equated to one bedroom and one front room. Each additional bedroom is an additional transient unit so there is a limitation. Ms. Cioffari added that a hotel room is a bedroom-bathroom combination with a foyer and floor area is associated with commercial uses. The square footage for the size of a house is not currently regulated. Commissioner Miller stated that the number of floors were regulated. Ms. Cioffari interjected that the height is what is regulated, and the Building Code has provisions regarding the height between stories. Commissioner Miller reiterated that there is a current regulation that the three feet for flood exemption cannot be used, and then get three stories in a residential home, which equals regulating the number of floors with the flood exemption. Ms. Cioffari responded that that was a voluntary change to get above flood. Commissioner Wiatt added that projects like this worry him because square footage is not regulated on the residential side. To increase height and potential number of floors, he wants to get it right. Chair Werling expressed concern with any other gated community or association wanting the same thing. Mr. Smith stated that the definition of master plan association is over 100 acres approved as a master plan association, and Ocean Reef is the only one. Commissioner Miller added that he does not believe this would be in the community character; and, he doesn't believe some of these billionaires would be happy with this. Commissioner Scarpelli confirmed that this proposal had come from the Ocean Reef Master Association, and Commissioner Miller asked how many people that association consisted of. Mr. Smith responded that it consisted of all of the members who own a residence within the

association. Commissioner Miller asked for the percentage of owners who voted. Mr. Smith stated that even if he knew it, he couldn't divulge it. Chair Werling expressed concern with the upcoming change in the flood maps and using that reason for this change, makes her skittish as to what door may be opened for other VE Zone properties. Commissioner Wiatt added that the height requirements were increased based on the idea of flood and that they can already build higher than they used to be able to build to adjust for rising sea level concerns, so this is a total add-on using sea-level rise as an excuse. Mr. Smith added that there is a desire for added ceiling heights. Commissioner Wiatt responded that taking hotel rooms from eight feet to ten feet doesn't get it to 80. Commissioner Coward thought this was trying to make the Tower conforming. Mr. Smith then suggested 60 feet for habitable or non-residential and 20 feet for decorative as a reasonable compromise. Chair Werling commented that he was asking for 80 but will take 60. Commissioner Miller stated he had no problem keeping it as it is now, and asked where the data was, other than Ocean Reef providing their own, and how it's possible for 80 feet to be within the community character of 50-foot buildings. Mr. Smith responded that there are buildings in the 50-foot range now which sustained damage during the storm and the contemplation is to redevelop the buildings within the same footprint. Under the current code they cannot do so; thus the proposal to allow for heights that are existing now at Ocean Reef. Commissioner Wiatt stated they are not the only ones that suffered in the hurricane and no one else has been given a blanket increase in height anywhere near 80 feet. He would be more comfortable going on a case-by-case basis. Commissioner Miller believed what was before them allowed Ocean Reef do whatever they want. Commissioner Coward noted that with 55-foot buildings there now that need to go up five feet, he doesn't see why 60 feet is a bad compromise. Commissioner Wiatt added that he's not necessarily throwing stones at that, but to give blanket, across-the-board increases when the rest of the Keys are taken on a case-by-case basis is inherently unfair. This is a staff recommendation with no conditions, which is unusual right off the bat. To ask for the moon and settle for something less, what the settlement is going to look like needs to be thought through.

Mr. Smith asked if non-residential was the concern. The applicant's position is that this is what is in the best interests of Ocean Reef. He would like a recommendation of approval, but maybe adding conditions on non-residential could be discussed. Commissioner Wiatt responded that the applicant is now asking the Commission to write this on the fly. Mr. Smith responded that the proposal is that Ocean Reef will make the determinations. Commissioner Wiatt reiterated that the proposal is to give Ocean Reef the full right to do that up to 80 feet and he would not support that.

Ms. Cioffari interjected that this is a text amendment and would not have typical conditions seen on a development application, there are recommended modifications to the language, and additional modifications can be given to staff to be crafted. Commissioner Wiatt stated his own recommendation would be to break it down. He sees no need for changes for single-family homes. Hotel rooms should be done on a case-by-case basis, based on current height and some consideration for architecture. Ms. Cioffari explained that under the current code, for multi-family buildings over 35 feet, there is the ability to go above that height, provided you go before the BOCC. It's in 131-2(d), "Lawfully established existing multi-family buildings which exceed the 35-foot height limit that are proposed to exceed a total height of 40 feet, a public hearing before the Planning Commission and the BOCC to review and specify the maximum approved

height shall be required prior to issuance of any County permit or development approval." So it allows for lawfully-established multi-family units to go up five feet. Commissioner Miller asked if that was the Code for Monroe County, and Mr. Smith responded that this was for Ocean Reef. Ms. Cioffari interjected that subsection (d) applies to the whole County. Commissioner Wiatt asked if the Commission agreed that single-family residences don't get any additional height over the rest of the County, which would be his stance, if that would change the association vote. Commissioner Scarpelli noted that in Ocean Reef's building regulations, single-family homes are only allowed to go 25 feet above base flood elevation at the most vertical point of the roof. Mr. Smith agreed it was already capped. Commissioner Wiatt wanted to confirm there was no change in that within this proposal. Mr. Smith stated there is already governance in place that provides the protections. Chair Werling asked for clarification that the residential was not looking for 80 feet also. Mr. Smith stated they hadn't put a limitation on it because if they're at VE-16 and all of a sudden they're at VE-19, it's going to be at 40 feet. Other than multi-family hotels, which already are up to 60 feet, with most in the 50s. The single-family already has a cap in place, but it can't be predicted if they'll be in VE-19 in two years. Chair Werling stated that would need to be addressed countywide. Mr. Smith stated they were trying to get ahead of the game in that regard. Chair Werling noted that if the Commission does this now and picks a number, then what leg would they have to stand on to deny another VE-19 person that same right. Commissioner Miller agreed. Commissioner Wiatt wanted this proposal to have no affect on single-family homes in Ocean Reef. Take that out of the picture right off the bat and start from there. Mr. Smith responded that a recommendation needed to be reached, and he requested it all be recommended for approval. Commissioner Wiatt noted that once removing residential is done, if that would be acceptable, then the association vote might change because now the people making the vote aren't getting anything out of an affirmative vote, which would give the Commission a better idea of who is really for this and who is against it on its own standalone merit without carrots being placed in front of them. Mr. Smith disagreed. Commissioner Miller agreed, adding that this is saying the Commission can't do in the County what is already approved because Ocean Reef is saying they can't do it. Commissioner Scarpelli stated Ocean Reef gets the same relief from FEMA that the County does. Commissioner Miller reiterated, if this is changed, it says the County wasn't done right, and Ocean Reef gets done better, but yet the County doesn't need this. He feels this is completely wrong and ludicrous, and would suggest scotching this and coming back with something else. Commissioner Wiatt stated that he has no problem with anyone in the County getting back what they had before the hurricane but extras need to be talked about and this says far more than that. Start with having this not affect single-family homes and see where it goes from there. Mr. Smith restated that he would like to take this to the BOCC, so he's requesting a recommendation. The Planning Commission can put recommendations on it, but if they don't want to, he would request a recommendation of approval.

Commissioner Wiatt stated he would be happy to recommend that single-family homes be taken out completely. Chair Werling added, and taking commercial on a case-by-case basis. Commissioner Scarpelli noted that was right back where they are now. Chair Werling then asked for public comment.

Mr. Vaughn Roberts, an employee of Ocean Reef Club, wanted to clarify that the most notable building at Ocean Reef Club is the Tower, which is 80 feet. Most of the multi-family buildings

are in the range of 50 to 60 feet. Mr. Roberts asked the Commission, were there to be a storm or some other disaster, what would the possibility be of any of those structures being substantially repaired under the current Code requirements. Chair Werling responded on a case-by-case basis, with the 50-percent rule. Mr. Smith stated that was not his understanding. The height exception was only five feet and there's no allowance for unlimited height or up to what it was built. Ms. Cioffari interjected that substantially damaged creates substantially improved, which would have to come into compliance with the current Code and Comp Plan. There are no protections for non-conforming heights. Section 131.2(d) allows, through Planning Commission and BOCC approval, to return to a height or propose a new height that exceeds 35 feet. Commissioner Miller thought that the BOCC had decided this would be looked at on a case-by-case basis on structures throughout the County. Mr. Smith stated it is only multi-family in the Code. Commissioner Miller understood that, but thought there were a few buildings mentioned before in the County and it was decided that it would be looked into on a case-by-case basis if the occasion arose. Ms. Cioffari confirmed that was correct, adding that any recommendations or modifications can be drafted and it could be brought back to the Planning Commission or moved forward to BOCC. Commissioner Miller stated he would like and recommend that. Ms. Cioffaro stated that it would be brought back next month, if Mr. Smith agrees as it's privately sponsored. Right now, Mr. Smith is looking for a recommendation from the Planning Commission.

Commissioner Coward stated that he did not have a problem with the existing buildings going to 60 feet, giving them another five feet to get above the new flood and not have to go through the time and expense of going through them individually; and new buildings would be on a case-by-case basis. Mr. Smith added that Ocean Reef has more stringent regulations on residential than the County and they are comfortable with not applying the height to single-family residential, but are looking for self-governance on the multi-family buildings and non-residential that already exceed the height. Commissioner Wiatt restated his concern with doing that today as it would not give the residents a chance to change their vote. Mr. Smith responded that it would be brought to their attention between now and going before the BOCC. Commissioner Miller asked if they could get the record of that. Mr. Smith stated the Ocean Reef Club Community Association is bringing this amendment with Ocean Reef Club. If there was a decision not to proceed forward, he would withdraw the application on their behalf. Commissioner Wiatt wanted to see that done. Mr. Smith added that he would be going before the BOCC in September, then it would then go to the State, and then it would come back down. The Club would like to see it proceed forward. Any recommendations would be brought back in a report and they could make decisions based on that. Commissioner Miller asked if voting of an association in Monroe County is considered private. Mr. Smith stated it is private in every matter. Mr. Wolfe added that it is not subject to the Public Records Information Act, and is private like any other corporation. There was no further public input. Public comment was closed.

Commissioner Coward restated he was good with 60 feet for residential and multi-family condos, 60 feet for the six existing buildings. Anything after that would be on a case-by-case basis. Take out the single-family residential altogether. Commissioner Wiatt agreed with that. Chair Werling thought the hotels would need to be case by case. Mr. Smith stated the maximum hotel was four floors over parking, for reference. Commissioner Coward asked what buildings

specifically were damaged by the storm. Mr. Smith responded that it was some of the non-residential buildings near the water, the clubhouse and restaurants, that an art center was being contemplated to be built and a boat barn. Chair Werling noted that he was now talking about new buildings. Mr. Smith responded that he was also talking about the aesthetics and community character that Ocean Reef desires to continue, and a lot of those buildings are in the 40 to 60 foot height range. All of the buildings contemplated would exceed those heights. Commissioner Miller thought they had been discussing existing. Commissioner Wiatt agreed, adding that it's a different animal when talking about new, and he would want to see something about no increase in number of floors. Mr. Smith clarified this was all for replacement. There is a program for new buildable lots which are all single-family lots. All of the non-residential areas are buildings that are being replaced, though perhaps not being replaced with the same use. Chair Werling thought this was to allow them to replace damaged buildings that don't fit, not to completely change everything. Mr. Smith added that they were talking about autonomy. Commissioner Miller stated that Mr. Smith had been talking about replacing existing buildings that were damaged, not new buildings. Mr. Smith added that there was more than one reason for this amendment. Commissioner Wiatt asked if he was talking about adding parking spaces. Mr. Smith responded they were adding a parking garage, and parking spaces are related to the amount of need for parking. Commissioner Wiatt responded that it was also then invariably related to traffic and hurricane evacuation. Mr. Smith disagreed with that statement. Commissioner Wiatt wanted to know if parking spaces were or were not going to be added. Mr. Smith responded that he couldn't speak to that, but there are still vacant lots, so when vacant lots are developed, there will be more vehicles. Commissioner Miller reminded him ROGO was being ended in the County. Commissioner Wiatt thought golf cart parking could be increased because it doesn't get on the road and affect hurricane evacuation. Mr. Smith interjected that Mr. Roberts had stated there are no residents at Ocean Reef during hurricane evacuation. Commissioner Miller stated that was the argument for the whole County. Chair Werling noted that if a private road is put in, then they would go from the crown of that road. Mr. Smith stated that has been utilized throughout the County.

Commissioner Coward made a motion permitting a new overall maximum height of 60 feet due to flood surge hardening and modernization, excluding single-family residences, but including the residential multi-family, the three and four-story hotels, and institution buildings, just for the existing buildings, excluding the tower since it's already 80 feet. Commissioner Wiatt continued to express concern over the parking.

Commissioner Coward stated the intent of his motion is to cap existing buildings at 60 feet, to include the six residential multi-family condos, the hotels cap at 60 and restrict no additional floors being added and be kept at the three or four existing, with the exception of the Tower, cap the institutional and industrial at 60 feet as well; and, excluding single-family residential. Commissioner Wiatt requested a new association vote since there is now no benefit for single-family home construction. Mr. Wolfe stated that that was not in the Commission's purview. Mr. Smith assured him he would be updating the association. Commissioner Miller apologized for his obvious irritation for this agenda item, but going back for years, the Ocean Reef community has not had a stellar record regarding the stewardship of this area. He has been disappointed when these autonomous decisions have been made, and he would leave it at that.

Mr. Berenzweig summarized Commissioner Coward's motion as follows: Overall height of 60 feet, excluding single-family residences, including hotels and multi-family, restricting at four floors, as to the development listed in Exhibit B, other institutional and commercial, excluding the water tower. Commissioner Coward added that it would be to the existing number of floors, as some have three floors and not four.

Motion for Item 4: Commissioner Coward made a motion to approve with conditions summarized by Mr. Berenzweig. Commissioner Wiatt seconded the motion.

Roll Call: Commissioner Scarpelli, No; Commissioner Wiatt, Yes; Commissioner Miller, Yes; Commissioner Coward, Yes; Chair Werling, Yes. The motion passed, 4-1.

Motion for Item 5: Commissioner Coward made the same motion, to approve with conditions summarized by Mr. Berenzweig. Commissioner Wiatt seconded the motion.

Roll Call: Commissioner Scarpelli, No; Commissioner Wiatt, Yes; Commissioner Miller, Yes; Commissioner Coward, Yes; Chair Werling, Yes. The motion passed, 4-1.

A five-minute recess was requested. Recess from 3:23 p.m. to 3:30 p.m.

6. AN ORDINANCE BY THE MONROE COUNTY BOARD OF COUNTY COMMISSIONERS AMENDING THE MONROE COUNTY COMPREHENSIVE PLAN POLICY 101.5.25 TO PROVIDE A DENSITY BONUS ABOVE THE MAXIMUM NET DENSITY FOR AFFORDABLE HOUSING FOR A PROPERTY SUBJECT TO A SITE-SPECIFIC SUBAREA POLICY ESTABLISHED UNDER PROPOSED GOAL 111 OF THE COMPREHENSIVE PLAN; ESTABLISHING GOAL 111 AND OBJECTIVE 111.1 TO INCENTIVIZE AFFORDABLE HOUSING DENSITY BONUSES THAT EXCEED THE ESTABLISHED MAXIMUM NET DENSITY PROVIDED IN POLICY 101.5.25; AND CREATING POLICY 111.1.1 STOCK ISLAND WORKFORCE SUBAREA; ESTABLISHING THE BOUNDARY OF THE STOCK ISLAND WORKFORCE SUBAREA 1; LIMITING THE PERMITTED USES OF THE SUBAREA TO DEED RESTRICTED AFFORDABLE HOUSING DWELLING UNITS; ESTABLISHING MAXIMUM NET DENSITY FOR AFFORDABLE HOUSING, HEIGHT AND OFF-STREET PARKING REQUIREMENTS IN THE SUBAREA; AND ELIMINATING ALLOCATED DENSITY AND FLOOR AREA RATIO; FOR PROPERTIES LOCATED AT 5700 LAUREL AVENUE, 6325 FIRST STREET AND 6125 SECOND STREET, STOCK ISLAND; AS PROPOSED BY SMITH/HAWKS, PL ON BEHALF OF WRECKERS CAY APARTMENTS AT STOCK ISLAND, LLC; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL OF CONFLICTING PROVISIONS; PROVIDING FOR TRANSMITTAL TO THE STATE LAND PLANNING AGENCY AND THE SECRETARY OF STATE; PROVIDING FOR INCLUSION IN THE MONROE COUNTY COMPREHENSIVE PLAN; PROVIDING FOR AN EFFECTIVE DATE. (File #2018-120)

(3:30 p.m.) Ms. Cheryl Cioffari, Acting Senior Director of Planning and Environmental Resources, presented the staff report. On June 20, 2018, Smith Hawks on behalf of Wrecker's Cay applied to establish a Goal, Objective and Policy that incentivizes affordable housing on

Stock Island, and to specifically create a Subarea Policy for the subject property of 6325 First Street, 6125 Second Street, and 5700 Laurel Avenue. The applicant has also requested a Land Use District Map Amendment that will be heard later today, a Text Amendment to the Land Development Code Section 130-157 to allow for increased density for properties within the Urban Residential Zoning District on Stock Island that apply for and receive a site-specific Subarea Policy as established in the Comprehensive Plan, and a Development Agreement for the property, a right-of-way abandonment for a portion of Laurel Avenue and Maloney Street. The property is currently developed with three mobile home parks and accessory uses and structures.

Ms. Cioffari focused on the proposed changes to the Comp Plan, referencing page sixteen of the staff report. The first change is proposed in Policy 101.5.25, there's a subsection (n) noted under the Residential High Future Land Use Map category next to the Urban Residential Zoning District. What that note says is that density increases above the max net density may be permitted for properties within a site-specific policy subarea under Goal 111. That means if increasing density through other policies in the Comp Plan, it must be consistent with Policy 101.5.25. Addition of (n) would allow for that. Moving on to Goal 111 the purpose is to incentivize affordable housing near employment centers, and that the County will provide for the development of site-specific land use mechanisms limited to, 1) density increases up to a maximum of 40 affordable dwelling units per buildable acre; 2) the transfer of ROGO exemption within the Lower Keys, 3) modification to height and, 4) alternate off-street parking requirements. This would all be to augment the development potential to address the inadequate availability of affordable housing in the Lower Keys. This goal shall only be available to properties that are within the Residential High FLUM category and located on Stock Island as established through a site-specific Subarea Policy. Goal 111 is limited to Stock Island only and outlines the whole idea the applicant has come forward with. Objective 111.1 mimics the language within the Goal allowing 40 affordable dwelling units per buildable acre in suitable areas in close proximity to Key West, facilitates transfer of ROGO exemptions, may vary off-street parking requirements, and may allow up to three stories within the building height envelope. It reiterates that all subarea policies would be located on Stock Island and be required to have a specific subarea policy outlining development restrictions and allowances. The policy specific to the Wrecker's Cay property is Policy 111.1.1, which would allow for development of affordable housing within the Residential High FLUM category, which the property already has, on Stock Island, and limited to 40 affordable dwelling units per buildable acre and they will not require transfer of development rights. There is no allocated or maximum net density standard available for market rate dwelling or transient units, so that ability will be removed from the property. The maximum floor area ratio for all non-residential uses shall be zero; i.e., no commercial square footage. Staff has recommended removing the language referencing transferring as there are already regulations that allow for the transfer of ROGO exemptions and density. Currently, there is a moratorium on transferring market rate ROGO exemptions and that has been reduced to allow transference to IS or URM platted lots, not in a VE Zone, not working waterfront, and a Tier III property. The BOCC has already made a decision about where they want to see those market rate exemptions go and that formulates the rationale behind that decision to recommend that that portion of the text be removed. The fourth item is that buildings that are elevated up to three feet above base flood may be developed with three habitable floors, which is consistent with the recommendation of the Affordable Housing Committee and recommended that an overlay be created and that the height go up to a potential of 40 feet.

5) The parking requirements shall be one parking space per one-bedroom unit, one and-a-half per two-bedroom unit, and two parking spaces per three-bedroom unit based on acceptable data and analysis reviewed by the Planning Director that evidences it is sufficient with intermodal transportation including bus stops, bicycle paths and utilization of scooters. The applicant has submitted the traffic and parking study that is currently under review. Staff is recommending including the language in red is because that study has not been approved at this time. The language states that if there is data that supports the reduction in parking, it will be considered, but again, only specific to this property. 6) Non-residential uses are prohibited. 7) All new residential units developed are subject to the ROGO allocation system. 8) The protest procedures are applicable to applications submitted under the site-specific Subarea Policy. 9) Staff recommends that a development agreement be required for the proposed development for this specific property and define the income category distribution. 10) All new units developed in this subarea policy shall require occupants to derive at least 70 percent of their household income from gainful employment in Monroe County. 11) The boundary of the subarea must be legally described with a clear map. This is slightly subject to change as there are two pending road abandonments so the legal description will change if those are approved. Staff asks that the final legal description with the map be included. The proposal is consistent with the Monroe County Comp Plan, Stock Island-Key Haven Livable CommuniKeys Plan and the Principles for Guiding Development. Ashley Monier is present from Naval Air Station Key West if there are any specific questions regarding sound attenuation and notification to potential leases of the property, though any concerns most likely happen through the Development Agreement and the Conditional Use process.

Commissioner Scarpelli asked if there were provisions for bike and scooter parking requirements. Ms. Cioffari stated that in the Livable CommuniKeys plans there is the ability to reduce parking if additional scooter and bike parking is provided. Commissioner Miller asked how implementing and enforcing the 70 percent income requirement would take place. Ms. Cioffari stated that would be through the certification process. Mr. Williams interjected that he may be mixing an apple and an orange, but with the LIHTC funding and other federal funding sources, the County may lack some ability to apply restrictions but in other situations they can. Commissioner Miller asked if none of this funding would be available. Commissioner Coward asked why staff had taken out workforce housing and added affordable housing, but then at the end added in the 70 percent. Ms. Cioffari responded that workforce housing is not defined in the Comp Plan or Code and staff felt affordable was more appropriate specific to the Subarea Policy. The proposal came directly from a private applicant and they have proposed to limit it, keeping it out of the Goal.

Mr. Bart Smith, representing the applicant, stated there was a case, Monroe County vs. Cohen wherein Mr. Cohen was not earning 70 percent of his income from Monroe County and he owned the place, and he was required to vacate the residence so someone who was making 70 percent of their income from Monroe County would occupy that residence, so Monroe County has an example of enforcing this to the full extent of the law. With restrictions such as these, it jeopardizes federal funding because it could violate the Fair Housing Act, so that's why other mechanisms have been proposed to offset the cost of the housing, which will be discussed through the slide presentation. Mr. Smith presented the slides showing garden-style apartment buildings in keeping with the maximum 38-foot height limitation. An exemption had been

requested for elevator shafts and mechanical equipment. The County has allowed for elevator shafts to exceed the height limitation when it's also used as ventilation. If the elevator shaft is set back five feet from the edge with some shielding, it provides for a visible barrier and stays within the height envelope for all of the habitable space. The applicant has asked to be able to put the third floor within it, but it was never intended to apply to multi-family affordable housing. The parking would exceed 1.5 parking spaces per unit, which is less than the current Code, but on Stock Island a lot of people have alternative transportation modes such as scooters, bicycles and electronic bikes. This site is in a fantastic location, close to Maloney Avenue which has a light to enter U.S. 1. One block down to Laurel is an intersection entering both ways onto U.S. 1. Further down is a dual intersection that accesses U.S. 1 in both directions. This Goal is proposed solely for Stock Island and this project. The reason workforce is not used as a defined term is because it doesn't exist in the Code, so it is explained with the 70 percent gainful employment requirement. The project relies on several things to occur. 1) Planning Commission approval for the Subarea Policy. 2) There are two other amendments proposed; two parcels Zoned Urban Residential Mobile Home where a change is being requested to Urban Residential; and, a corresponding Land Development Code Regulation which is a sub-note on the density table parallel with this, which Mr. Smith noted could have been read simultaneously with this item. So the project works utilizing its proximity to Key West, the employment center, the ability to be within this height limitation, and the ability to have intermodal transportation. There are provisions in the Code that allow for scooter parking to substitute. The parking study has been provided which included every large multi-family parcel on Stock Island and Key West to get a census of what the parking is on other parcels. Generally speaking, all of the County's revisions were fine. Mr. Smith indicated he would go through the provisions individually, identify those that are in agreement, and provide an explanation for those not agreed to.

In the land use density and intensity, the sub (n) which will also be in the Land Development Code, the applicant agrees with the proposed revisions. As to the actual Goal, the applicant is in agreement with all language revisions proposed by the County. As to the Objective, the applicant is in agreement. As to the specific points regarding benefits, restrictions and requirements, the applicant agrees with number one with small language changes. The applicant agrees with number two, no allocated or maximum net density. Third is the first change which has come up with what is going on with the parcel as to the workforce housing. There are some docking facilities on the property and the County has been looking for mooring fields and shoreside facilities for dinghy dockage. If there's dinghy dockage, it's considered a marina facility. If this excluded all non-residential uses, dinghy dockage could not be provided in the future. The applicant does not want to exclude the ability to provide dinghy dockage if there was a future agreement to provide the upland facility for a mooring field.

Chair Werling asked to go back to number three. Mr. Smith explained that the County has the maximum floor area ratio for all non-residential uses within the subarea as zero. With that, no uses would be allowed including a marina or docking facility. A docking facility is a lot of times accessory to a residential use. Marina is probably the more applicable term to dinghy dockage. The applicant is requesting a modification to the language proposed by staff that the maximum floor area ratio for all non-residential uses within the subarea shall be zero, except for marinas and docking facilities, which would allow for some type of upland mooring facility with restroom facilities that would be needed for that type of facility. Commissioner Miller asked if

this would be for affordable boaters. Mr. Smith responded that the Boca Chica Channel right now has a tremendous amount of illegal moorings. For a long time there has been discussion about adding a mooring field, which would then require pumpouts of vessels and allow for control of that area so people wouldn't be located over seagrass. There can't be a mooring field without an upland facility, and you can't have an upland facility unless it is nearby where the mooring field is located. It is very difficult along that side of Stock Island where there is property that could be the upland facility, and one idea is to have an upland facility on the property. If there wasn't an exception for allowing for marina facilities, then this property could not be used. The space would be leased to the County who would maintain the mooring field and the actual facilities. Development regulations apply to everyone. It couldn't even be built without having this exception in the policy so that's the reason. Commissioner Miller commented that he was trying to understand how that would affect the density on the property. Mr. Smith responded that because it is employee housing, it doesn't count toward non-residential uses. Ms. Cioffari interjected that an alternative to think about would be that potentially, language could be added that says a shoreside facility associated with a mooring field would be considered an accessory use in the Residential High and Urban Residential Zoning Districts. There are ways to massage the language if this is something the Commission is open to. Mr. Smith was saying there is contemplation about working with the County to establish a shoreside facility with a potential mooring field. Previously, the County had looked at Murray's Marine and that deal didn't work out. Mr. Smith's concern is if the language says no non-residential uses and no floor area that would negatively affect the ability to make that offer. It doesn't count against the affordable housing density as it is looked at differently, but there are ways to have it work. Mr. Smith expressed the willingness to work with staff to have it narrowly apply to such facilities, and could be worded at the discretion of the Planning Commission and BOCC.

Mr. Smith then explained that these were mobile homes and there were people in the mobile homes. Because this is waterfront property, the sellers recognized the value of their property, so the purchase price reflected waterfront property with market rate units. Second, there were people that were assisted in vacating by compensation. There have already been some significant costs put forth to the project. Beyond that is the cost of construction. Everyone has looked at workforce housing and there have been many debates about cost. There are ways that projects are subsidized to offset that cost and low-income housing tax credits are one. Those come from the federal government but have strings attached such as the Fair Housing Act, which the employee housing would not comply and would exclude this project from being employee housing to get LIHTC funding to buy down the costs. The other is the direct subsidization from local governments such as Flagler Village, Meridian West, Isle West and the Quarry. Commissioner Miller asked if that meant the Commission could approve this and the applicant might come back and ask for money to do it. Mr. Smith responded that right now there are 80 market rate units on the property existing today. Those 80 market rates, prior to the moratorium, the value is relative to where they can be transferred to. IS and URM lots can get ROGOs and there is not a line to wait in. The third way to reduce the cost is to allow a project to transfer the 80 market rate units to a multi-family parcel, which is what this requests. There is an amendment that will ultimately change the provision of the Code that provides that it can be transferred anywhere, which limits transfer to URM and IS lots. The applicants looking to be the final project allowed to and afterwards, the door is shut, but this would allow for 279 units to be built. Mr. Smith would like to transfer all 80 market rate dwelling units of the property and the

density associated with it, which is very important and provides value. The ROGO exemption transference has always been permissible in the code. Only now is it being changed. It is permissible between parcels in the Cities of Marathon and Key West. The applicant is requesting to transfer all of the density off as it is not needed for affordable housing. Alternatively, if just the allocated density was required to remain and the 32 units of density above that amount could be transferred off, that would be a reasonable middle ground. This is the value that allows this project to occur is being able to transfer. It could be limited further to an identified property on Stock Island, and it could be limited to only transfer to a multi-family property on Stock Island. But this part is really important to make the project meet the funding requirements and be able to be restricted to employee housing when there is not the LIHTC funding ability. That is number four. So the applicant requests the vote on the Goal, Objective and Subarea Policy be gone through one by one as the applicant proposes and with staff's recommendation. The applicant is proposing about 279 units, which is about three and-a-half employee housing units to every one market rate ROGO that the applicant would be able to transfer off.

As to height, up until 2012 or 2013, affordable housing was allowed to be up to 44 feet and three stories, so this request is subject to a recent change in the Code. With this, the habitable space would still be within the 38 feet, but the elevator shaft and mechanical equipment would be allowed to exceed it. Although the applicant doesn't really disagree with staff's "based on acceptable data and analysis requirement" as to parking, they would like it excluded because the Planning Director has already been satisfied with the study submitted surveying all large multi-family on Stock Island and Key West. The average is just under one parking space per unit. The applicant is requesting much higher and believes the data supports it. Under the dingy dockage, the applicant has added in, "except marina and docking facilities," which is open to word-smithing that would narrowly tailor it. Regarding the County's numbers 7, 8, 9, 10 and 11, the applicant agrees with all of the language. Mr. Smith is requesting a vote for approval with the modifications requested for the site-specific policies pertaining to what would be 3, 4, 5, 6, 7, and that's it. This is the first step and still needs to get through the BOCC and the DEO. After it comes down and is adopted, there is a Development Agreement that's been filed which the applicant is fine with and will be coming back to the Commission for specific terms that identify breakdown of units, bedrooms, parking and everything. These things are still not fully materialized. Mr. Smith requests approval as read in, understanding this Commission will see this again in the form of a Development Agreement. Chair Werling asked for public comment.

Mr. Steve Miller, President of Florida Keys Community Land Trust, but not a part of this development, stated he was speaking for a lot of people, including business leaders that had been there earlier. He wanted to talk to the Commission about how much trouble they have finding people to work. Mr. Miller lives on Big Pine and is getting ready to build an affordable housing unit a hundred yards from where he lives. He is looking forward to it because he wants the police, firemen and teachers, the people here working all the time to help keep his community as a place where everyone can function. Some of the biggest problems are retention. Young recruits come here to work, but afford to stay. This project is bringing in the ROGO units that they want to use to fund this project. Mr. Miller remembers when all of the ROGO units moved from Big Pine to Stock Island for the Perry Hotel. It isn't that big of a deal and it's not like it hasn't been done before. This is something that is needed and he asks the Commission to give it

great consideration. As to the parking, folks in affordable housing are very keen on using public transportation and a lot don't even bother having a car.

Ms. Virginia Panico, Executive Vice President of the Key West Chamber of Commerce, also stated there had been other people present earlier, and one was from Waste Management with over sixteen employees, having issues with keeping employees in town. These aren't tourism workers but are the people that pick up the trash. Another one was Bill Lay who has a catering company and restaurants. The Chamber is always in favor of affordable or workforce housing. This has been a crisis since 1987. Ms. Panico worries that there are workers from Stock Island to south of the Seven Mile Bridge and when Mariners Hospital opens in Marathon, workers may be lost from the Lower Keys Medical Center, and they are presently missing nurses and staff personnel at the hospital. This is serious. The transfer of ROGO units has been done several times already and she doesn't feel that is really an issue. It is something where the County and Cities all work together and it works well. The strategic plan for the County clearly states, both before and after Irma, the number one priority is workforce housing, that's it, countywide from the citizens themselves. Ms. Panico urges the Commission to keep the fabric of the communities intact and vote in favor. Ms. Panico added that she was present for the ribbon cutting in the early 90s for Meridian West. If the County Commission had given those builders two more feet, they could have added on a hundred more units. Commissioner Miller clarified that she was referring to two feet above 35. Ms. Panico added that everyone hears that the government is short staffed, and private enterprise loses their staff to government.

Commissioner Miller asked how many allocations Key West had left as they had recently received 900 allocations. Mr. Craig Cates responded that he thought there were about 600, and they were still getting more.

Mr. Bill Hunter, Sugarloaf Key, agreed with what had been heard from the employment centers. There is no doubt workforce housing is needed. That's the problem and what is being considered today is a potential solution. As a resident of the Lower Keys, he is not speaking for or against this project. There are aspects he really likes and he will get into those, but he wants the Commission to see what increasing density can do. Mr. Hunter presented graphs with both market rate and affordable housing density numbers in the County. The highest is Urban Residential which is 25. So compared to the typical low, medium and high, the existing affordable housing density of Urban Residential is as high as Marathon and higher than Key West is today with one exception, which Mr. Scarpelli is familiar with, the Gardens Apartment on College Road which is at 40 per acre, the highest anywhere in the whole County. The City is considering 40 per acre on the commercial strip along North Roosevelt. Mr. Hunter presented the Key West Zoning Map and the blowup of Stock Island, showing the existing 40 per acre and the project before the Commission today. Mr. Hunter presented the transit/bus map that shows the 40 per acre on the upper left of where the City is building their affordable housing, and the one on the right being the Wrecker's Cay property. Both of those properties are on the bus routes with good bus service. No doubt, Stock Island is a good place for transportation. Mr. Hunter pointed out that this is the Planning Commission for the suburban and rural areas of unincorporated Monroe County. Urban Residential has 25 affordable units today. Mr. Hunter was not recommending density be increased on Stock Island, as that is the Commission's decision. Mr. Hunter believes workforce ought to be right up in the Goal. By increasing density,

the cost of construction is lowered, and that should be for workforce, not affordable, and it should say for rental only, and adjacent to the major employment center, Key West. The density should equate to the amount of jobs there are and there is no doubt this problem is in Key West. It should say it complies with the Livable CommuniKeys Plan because the Stock Island Plan recognizes they are the workforce housing center. Some of the other Livable CommuniKeys Plans don't. Market rate, transient, commercial has been addressed, and the Goal ought to include the income levels and caps because when the Development Agreement shows up, then you start hearing how this won't work unless it's 75 percent moderate. By that time, the Goal has already let all of the value of this property disappear and the only thing it can be used for is affordable housing.

Mr. Stuart Schaffer, Sugarloaf Shores Property Owners Association, echoed what Mr. Hunter said at the beginning. No one is saying this is a bad idea. His comments were limited to the Goal and Objective. The mechanism for introducing this increase in density was supposed to be Goal 109 which didn't happen. Now there is Goal 111 and an Objective. An overarching new change in the law is being created to allow projects on a project-by-project basis to get these very valuable incentives. This sounds like a good project but the Goal ought to restrict this great increase in density to the appropriate projects. The greatest crisis is with workforce housing, not affordable housing. Staff has stated there is no defined term in the law today so let's not use it. Let's use it and put the definition in, settling the issue once and for all. There is a definition of workforce housing in several proposals that are in the pending amendments on the County Planning Staff web page, working their way through the process, and it was also in Goal 109. This should not be 40 per acre for affordable, but should be for the workforce. The subtle reason the change could be being made is because it would jeopardize LIHTC funding, but the beneficial increase to 40 per acre replaces the LIHTC funding. Some will argue if it's affordable, broader than workforce, it will be for the workforce anyway, but no studies have been done to look at existing projects that are affordable housing to see what percentage of those people are workforce. That should be legislated and required. Rental only should be in the Goal. No market rate housing. The applicant is willing to do it, but let's require every project to do it and put it in the Goal. No transient units should clearly be in the Goal. On the mooring field point, that's good, that's for workforce housing as well and an exception that is fine, but let's also put that in the Goal. Some floors for low and very low income categories and caps for moderate should be considered, and if it's not in the Goal, it's going to come out and won't make it to every project. Mr. Schaffer supports the limitation to Stock Island because this is 40 per acre and for that kind of density the commutes need to be minimized. Sugarloaf is under siege because people are buying cheaper land wanting to do very dense projects, but Sugarloaf is a low-density area. Stock Island doesn't say that so let's keep the increase in density in Key West and Stock Island where it should be. Mr. Schaffer believes this is the direction the County should be headed in and urges the Commission to consider making the changes to the Goal itself.

Mr. Mike Murawski, President and CEO of 907 Whitehead Street Corporation, the Ernest Hemingway Home and Museum, was representing the family owners of that property. He has spoken before the BOCC before regarding affordable housing. He has over 30 employees, housekeepers, landscape artists, retail operators, tourism guides and administrative staff. They are young and are currently pregnant, so they are producing the next generation of Hemingway Home employees. They have hospital and school needs and are very concerned. They need

David Clay's staff at the hospital or they will find some other community to go to. Their kids are currently in the public school system so they need teachers available. The school system is in dire need of good, long-term teachers. He has spoken with many regarding affordable housing and the devil is in the details. One of the major problems with affordable housing is how do you pay for it, and that's why tax credits become a significant part of the equation. Caution needs to be taken when changing the terms between affordable and workforce. The criteria of 70 percent income from the County eliminates projects that would have tax credit financing becoming a significant component. Every developer doing affordable housing is trying to grapple with the financing mechanism. The two things that come up are usually increasing density and some type of tax credit. This particular project does not require tax credit, they've gone to another mechanism, and that mechanism is the transfer of ROGO units to provide the financing for this particular project. Mr. Murawski would support this. The regulations for affordable housing look good on paper, but the problem is these developers are trying to put together a project where the workforce can become the fabric of our community and they're struggling with the economics associated with it. Mr. Murawski asked the Commission to take a hard look and see if they can make this project happen.

Commissioner Miller asked if Key West was the perfect place for this type of density. Mr. Murawski stated all of Monroe County is a good place for it. Commissioner Miller stated that Key West was asking for the affordable housing, saying they need this affordable housing. Mr. Murawski stated there is not a place better for this density than Stock Island. Commissioner Miller asked if Key West was not better, to put it in the City where it's needed and not in the suburbs. Mr. Murawski stated the land mass is not available in Key West. Commissioner Miller stated he knew the answer; the land is too valuable in Key West.

Mr. Dave Tarter, Executive Director for the Lower Keys Chamber of Commerce, was representing over 352 businesses in the Lower Keys from the foot of the Seven Mile Bridge to the Cow Key Bridge and Stock Island Oceanside, stated the businesses are for this project. They are looking for workers, which can't be retained in the Lower Keys because the commute is too far. Mr. Tarter has a business in Big Pine which buses in workers from Homestead, a five-hour-per-day round trip. The average worker lasts one month. By having a project in the Lower Keys, Stock Island seems to be the place. Key West property is more valuable; yes, we all understand that. The hospital needs nurses, staff, the restaurants, banks, the sheriff's office and fire department, they can't keep workers. This project would be greatly appreciated and would help in the long run for the Lower Keys to have more affordable housing. Yes, there is some difference in workforce housing and affordable housing, but if it can be for the workers in Monroe County where they're earning money, it will go a long way to having businesses survive. He has four business members in the Lower Keys that are closing their doors because they can't keep help.

Mr. Craig Cates, past Mayor of Key West, brought another perspective to help with the decision. He had an advisory committee for affordable housing four years ago, met for months and had ideas, and one of them was the 40 unit-per-acre project with increased density. It took quite a while to move that forward, but the zoning was changed on that property on Stock Island because of the bus service, the closeness to Key West, and the jobs. This project is another perfect site. It was very dense before, whether allowed or not. There were many people living in

the trailers there. There are other deals to be looked at and worked out, but he believes this location is perfect for Key West and businesses up the Keys to get employees. Affordable housing is the most dire need for workers and businesses to be able to survive. If anyone has any questions, as a past elected official, he stated he would be glad to answer them. Mr. Cates added that the new Key West Commission was in the process of increasing the density on the School Board property on Trumbo Road for affordable housing only. No increased density for market rate, only for affordable units.

Public comment was closed. Chair Werling asked for questions and comments. Commissioner Scarpelli suggested starting with the line items. For the marina and dockage, he suggested going with Ms. Cioffari's wording. Commissioner Coward asked her to repeat her wording. Ms. Cioffari responded that under Policy 111.1.1 (3) currently reads, "The maximum floor area ration for all non-residential uses within the subarea shall be zero." Mr. Smith spoke about potentially adding language for marinas or docking facilities. Sometimes marinas have restaurants or retail businesses associated with them, so an alternative would be something like a shoreside facility associated with a mooring field would be considered an accessory use in Residential High and Urban Residential Zoning District. Commissioner Miller asked how much property that marina would consist of. Mr. Smith responded that it's about a dinghy dockage and upland facilities such as restrooms and showers, and would be something determined based on the size of the mooring field and what is necessary to service it. There was no concept yet. Ms. Cioffari added that typically, a shoreside facility for a mooring field would be showers and bathrooms, trash area, and potentially some parking for people with the dinghies. Commissioner Coward thought the obvious concern is there not be a massive marina taking over, that it would be strictly support facilities for a mooring field. If there's language specific to that, Commissioner Coward stated he was all in, but not a loose dinghy dock kind of thing which would be too wide open. Commissioner Scarpelli agreed, adding that was why he liked Ms. Cioffari's language. Mr. Smith stated he and Ms. Cioffari could smooth out the language. Chair Werling let Mr. Smith know that Ms. Cioffari was capable of smoothing it out. Commissioner Coward added that some of the speakers had had very good points about items being within the Goal such as strictly rental. Mr. Smith thought he would be comfortable with some of the suggestions, noting that employee housing, for this project, rental is fine but not if the next project was a project for ownership. Mr. Smith pointed out there were 22 employee housing units in Islander Village all occupied by employees, and owned by them. For this property, the applicant is comfortable using the term rental, but putting it in the Goal or Objective means everyone is subject to it and he doesn't feel it's appropriate. Commissioner Miller stated that he was not comfortable with this being a template for the rest of Stock Island and would prefer this be for this property, if possible, in which case it could say that it needs to be rental if it didn't carry over to another project.

Ms. Cioffari suggested starting with the Goal, indicating that right now it is available to any property within Residential High on Stock Island, provided they get a Subarea Policy, and then it's limited to the specific land use mechanisms; increasing density up to 40 dwelling units per acre for affordable, transfer of ROGO exemptions within the Lower Keys, modification to height and alternate off-street parking. If the Goal is limited to this specific property, then this Goal 111 will only be for this property. So if another project comes before the Commission on Stock Island, the same process would need to be gone through to establish another Goal, another

Objective and another Subarea Policy. Commissioner Miller stated he has no problem with that, but does have a problem with creating a template right now without putting in specifics with this kind of density.

Ms. Cioffari suggested that it was not a template, but that there are very specific Policies to the property. So it's a question of limiting the overall Goal. If the Commission wants to say it's only for rental properties and has a certain distribution income, then that can be a recommendation of the Planning Commission. Commissioner Miller thought that if this was a template created for Stock Island, they need to be very careful. He suggested saying rental only and cap at ten percent moderate because the density on this property is extreme. Mr. Smith requested addressing one part at a time as to the Goal, Objective and Policy, because should there be an appeal or something else, he is very concerned about what was going on. There's a hierarchy because it's statutory, and there's a reason for what's supposed to be in every level to create internal consistencies and other issues. That's why the Goal is the broadest, Objective is a little more narrowly tailored, and then there's the Subarea Policy because it's a policy that goes to this subarea. There are other Subarea Policies in the Code, but there are not other subarea goals or subarea objectives. His concern is about how 163 is set up for governing Comp Plans and what is required, and going down that road is asking for someone to prevail in a challenge. Mr. Williams advised that Ms. Cioffari was on the right path. The Commission may have suggestions that differ, but there is a statutory makeup to Goals, Policies, which is most narrow and how they're used. To start micromanaging at the Goal level is not how this is anticipated. Commissioner Scarpelli noted that it specifically states in the Goal that a Subarea Policy must be established so therefore, anybody wanting to do anything on Stock Island under Goal 111 would have to come before the Commission with a new Subarea Policy so that project could be looked at site specifically and the Commission could set up the provisions they are comfortable with for that project.

Mr. Smith attempted to put the Commission at ease, explaining that anytime anyone wants to do a Subarea Policy, the procedure is the same, whether they add a Goal and Objective or just the Subarea Policy. Someone could do Goal 112, Objective 112, copy the exact language, and then do a Subarea Policy. Commissioner Miller stated he understands but is never at ease. His point is this being created and Stock Island becoming more of a mess with the traffic than it is already with this density. Mr. Smith stated that it doesn't provide the density until the Subarea Policy. Commissioner Scarpelli noted that it does. Mr. Smith clarified it says "up to 40." Ms. Cioffari added that was the reason the 40 affordable dwelling units in the Goal is because there were comments from the public during the DRC process. The public had come out and said if the Subarea is already proposing 40, why is that not in the Goal. Mr. Smith clarified that this was not 40, and was actually 32 units per acre with 20 percent open space. Commissioner Miller asked staff if that was true. Ms. Cioffari confirmed that was correct. Staff does max net for affordable housing where you take the gross acreage and pull out the open space requirements. City of Key West and Islamorada have it as a standard of affordable units per acre. Commissioner Miller noted that the original language was per acre, and Ms. Cioffari had made it per buildable acre. Ms. Cioffari stated that was done to be consistent with the existing Comp Plan. Commissioner Miller reiterated that he saw no problem with putting in rental only and a cap on moderate with this kind of density. Mr. Smith responded that a cap at 10 percent on moderate would prevent this project from getting financed. Mr. Smith noted that no one ever

mentions median, and gave an example of a deputy who made $4,000 more than low and couldn't have a low unit, but he fit in the median range and there weren't units offered, and Sheriff Ramsay has said none of his deputies make low, they make more than low. So it is needed at every level. Moderate in general is the most necessary for any project to be financed. A 10 percent cap on moderate and the project doesn't work because it doesn't meet a debt service coverage ratio in any world. Commissioner Wiatt commented that it probably would if there were 90 percent median, but he wants it to be at 50 percent low. Mr. Smith asked him why he believed median was market rate. Commissioner Wiatt stated that looking at monthly rents for moderate and median, both are very close to market rate. Mr. Smith completely disagreed. Commissioner Wiatt noted that at this point at the Goal, they didn't need to get into it at this level for the sake of moving things along, nor should the density be addressed at this level either, and wanted to move things on for the sake of time. Commissioner Miller asked why the County doesn't present a white paper that says what is needed. Instead, the Commission says one thing and Mr. Smith says another, when staff has been directed to look at this for years. Ms. Cioffari responded that the research shows that every level of affordability is needed, and that is shown both in the Keys and nationally, and that is her professional opinion as a certified planner working in the field for over 13 years. Commissioner Miller was asking about from Marathon to Key West, what is the best mix the Commission could do. Ms. Cioffari stated that under Section 139.2, the Affordable Housing Incentive Program, when transferring market rate ROGO exemptions from mobile home parks, the Code gives a specific breakdown and recommends through a development agreement that it's 25 percent very low, 25 percent low, 25 percent median, and 25 percent moderate, so it is already giving guidance. Ms. Cioffari was not sure if that paper was being updated now, but the County was updating other white papers. Commissioner Wiatt stated that the fact of the matter is using those numbers Mr. Smith would say it can't be done. One of the most important numbers to have would be market rate, what is the actual market rate, and then that could be compared to the low, median and moderate affordable housing rate. And he would be surprised if not only is moderate close to market rate, but median as well. The thing that most folks don't understand is when we settle for an affordable housing ROGO at median or moderate, we are basically saying market rate, and that's an issue. Mr. Smith disagreed, citing an example of 60 units on Stock Island, all at 800 square feet, all two-bedroom two-bath, at market, moderate, middle, low and median. The market rate units can be rented, right next door to the low unit, for $3,000. Moderate is 2,500. Median is about 2,300. Commissioner Coward corrected the amounts, moderate is 2,400, median is 1,980. Commissioner Miller said he hears the prices but wants to know what the demand is. Commissioner Wiatt stated the point is that people that need affordable housing can't afford 2,400. Chair Werling interjected, or 1,900 for that matter. Ms. Cioffari added that one other piece is it's hard for staff to predict what the best mix would be in generalities because the demographics, jobs and income levels are all changing. The Code gives a starting point as a general idea of what was contemplated previously. Commissioner Wiatt reiterated that this is very difficult to do unless they have a handle on what market rate is. If it's going to be called affordable housing, it needs to be materially less than market rate. He would guess that market rate on Stock Island is higher than in Sugarloaf or Marathon so there needs to be some fluctuation there as well. This is the 800-pound gorilla in every single affordable housing project that's proposed in Monroe County is what is really affordable. Then everybody gets on the bandwagon saying affordable housing is needed and the pressure gets to the point where you're just willing to pass it without actually looking at whether or not it's truly affordable.

Mr. Smith stated that the dynamics change and whatever the BOCC actually approves will dictate what can be done. That's why he would prefer to leave it out and come back to it at the Development Agreement stage because then the Comp Plan Policy will be in place. Commissioner Wiatt agreed, adding that the developers have to recognize the more concessions given, the higher the percentage for low income, and there are a lot of concessions going on here. Mr. Smith added that it's all based on the density and the ROGOs being able to transfer, and that won't be decided until it goes to the BOCC, and the DEO, and back to the BOCC. At that point, then there will be a solid number as to what was received in the subsidization. At that juncture it can begin to be quantified. Chair Werling added that the point she was trying to make is just because it's called affordable doesn't mean it's truly affordable. The word can't just be stuck in front of things and think that's the answer. It really needs to be affordable. Commissioner Wiatt added that it also needs to be materially less than market rate.

Mr. Smith asked the Commission if there were any more concerns on the Goal; and Ms. Cioffari asked for their recommendations. Commissioner Coward expressed concern about incentivizing affordable versus workforce housing with every speaker saying the intent should be workforce. Mr. Smith stated the applicant is fine with either. Chair Werling thought the biggest change was transferring the market rates and the density different from staff's recommendation. Ms. Cioffari asked to go through the Goal first and then the Objective. Mr. Wolfe agreed and suggested getting head nods on the Goal and then moving on to the Objective. Ms. Cioffari stated she understood and agreed that workforce housing is what is needed, but her concern was removing federal funding opportunities. This specific project is being enacted by the approval of the Subarea Policy which has stated it will be limited to the 70 percent. A recommendation can be made to have consideration given to workforce housing, which was reiterated multiple times by the public. Commissioner Miller asked what the point was of the increased density and transfer of market rate. Ms. Cioffari responded that the applicant's reasoning for wanting the increased density is to reduce construction costs by the increased number of units, as well as the transferring would be another funding mechanism. Federal funding may not need to be utilized for this project, but the Commission is being asked to consider the larger picture within the Goal. Head nods were acknowledged.

The Objective was then addressed. The first two items were agreed on, the third item regarding dinghy dockage had been discussed. The fourth was the monetary engine driver. The applicant wanted to leave the language as is for the maximum value of transferring all of the density and ROGO exemptions off, which would enable more value to be given for low income rather than transferring off only part of the density. Commissioner Scarpelli thought any transfers should remain on Stock Island, and the applicant stated they were comfortable with that. Chair Werling stated that made it better. Commissioner Coward asked for staff's position. Ms. Cioffari responded that if all of the allocated density is transferred off, there is nothing left to build. Mr. Smith is asking for the existing 80 market rate units to transfer, and allow the transfer of the allocated density that's above and beyond what would be permissible. Under the Urban Residential Zoning District there are six dwelling units per acre of allocated density. Ms. Cioffari stated that she did not enough information but believes the County would maintain a similar position that once you transfer off the allocated density, it's limited. It is kind of double dipping. Going from allocated density to max net density, they get the benefit to go to max net

by providing affordable housing or by using TDRs for a different type of project, but sticking with affordable housing it goes from the allocated to max net density. Staff can look at this and see if the recommendation can be modified but initially, staff maintains the current position.

Mr. Smith asked to break it up, first to the ROGO exemption transference to market rate, noting the policy is being changed on that, and asked if everyone felt comfortable with the ROGO exemptions being transferred within Stock Island. Commissioner Wiatt asked why this level of detail was being gone into at this point. Commissioner Scarpelli asked if this needed to be part of the Subarea Policy. Ms. Werling agreed, adding that this should be more site specific in the Development Agreement. Mr. Smith responded that the Comp Plan is about to be changed to limit transference to IS and URM, so this is the only way to preserve it for the future after that change is done but before it's transferred, is to keep it in the Subarea Policy. The door is being shut behind this project and that's why it has to be in the Subarea Policy. Ms. Cioffari added that the moratorium restricts the transfers and market rate exemptions to IS, URM, Tier III, not a VE and not a working waterfront. Putting this type of language in would essentially mean that the Comp Plan would trump the LDC and allow that transfer. Mr. Smith explained that this had been done once before in a 380 Agreement in 2004 that was done for Overseas Trailer Park on Stock Island, with 32 units of density, and the market rate units were transferred out to Ocean's Edge. This would be done for both the ROGO exemption and the market rate, and is the most valuable to do together. The ROGO exemption itself has been allowed for years. The applicant is asking to make sure they are the exception when the new rule comes into play as to the ROGO exemption. The density gives the most in return. Without that, money will be spent on another project buying density elsewhere. The ROGO is valuable but not as valuable. Commissioner Wiatt stated this is a very sweet deal, the sweetest deal the Commission has ever done. Chair Werling agreed. Commissioner Wiatt added that if they did this, when it comes back, it needs to be sweet back to the Commission. Chair Werling stated she couldn't do it, that it should be one or the other. Commissioner Scarpelli asked about doing the 32 and not the full 80, leaving the 48 on there that they have to deal with, which would be used to create the affordable units there. Chair Werling thought whichever was the lesser of two evils. Commissioner Scarpelli asked staff if the density change would be the lesser of two evils, to give them the 32 to take offsite or to leave the 48 onsite. Mr. Smith interjected that it could be a recommendation subject to staff finding a basis for it because this wasn't the end of the road. Commissioner Scarpelli stated he wanted to be sure about what was being done.

Ms. Cioffari explained that she understood what Mr. Smith is asking for, to transfer the density for 32 off and let 48 stay, but her reading of the Code is that once the allocated density is transferred off, there is nothing to build from. The allocated density is normally taken to go up to the max net and she views it as a double dipping. She understands the argument but she's had only one shower-thinking episode on it. The Commission could clarify their recommendation on both, at this point, but her initial reaction is no; deal with the density that you have and make it work. Commissioner Miller agreed with that. Mr. Smith stated he would ask for as much as the Commission could give. Ms. Cioffari then asked for clarification on moving the market rate exemptions, which was not the same thing. There's ROGO exemptions and density. The ROGO exemptions are the actual physical units and right now, only those market rate units can be transferred to an IS or URM, though it used to be allowed to transfer to multi-family. Mr. Smith wants the actual density, and staff's position is that it's double dipping, moving both. Mr. Smith

stated that without the language the project is, for all intents and purposes, dead. Commissioner Scarpelli said he did not want to do another hotel.

Commissioner Miller asked if density were being increased in the County to do this and why staff considered it double dipping. Ms. Cioffari explained regarding the ROGO exemptions, by striking through the language as proposed, the existing regulations allow those transfers, but it's limited to where it can go currently because of the interim development ordinance. The second piece is transferring the density associated with the land area. The Code says once you transfer off the allocated density, you have no more development rights. Mr. Smith is saying he has non-conforming density, except when there are additional ROGO exemptions they are not actually considered non-conforming. It's very confusing. Mr. Smith interjected that it can be rebuilt as non-conforming density. Ms. Cioffari continued, they're allowed to put back the 80 units, but does that mean you have the allocated land density available for 80 units. Commissioner Miller asked if that basically means they would no longer have that density on their property. Ms. Cioffar indicated that was correct. There is 80, they want to transfer off 32 and leave the 48, then go up from there to calculate max net. Chair Werling asked if it was to be used any way the person sees fit. Mr. Smith stated that was correct within the confines of the Code. Ms. Cioffari indicated that it would not be within the confines of the Code because there is an interim development ordinance. Chair Werling asked if it could be used for a resort. Ms. Cioffari stated it could not, that permanent market rate units could only be used as market rate units. Chair Werling wanted to clarify it was 80 market rate non-transient units. Ms. Cioffari stated that was what they have on site right now. Chair Werling asked if that's what they wanted to transfer off, that it would remain 80 market rate non-transient units. Ms. Cioffari confirmed that to be correct. Commissioner Miller asked if this was one of the three ways the applicant claimed this could be made affordable. Mr. Smith responded the first is increased density to 279, the second is the ROGO exemption transference which buys back the cost of the project because the land cost goes down, which is significant. Commissioner Miller thought that if the applicant got this, then they wouldn't need the increased density. Mr. Smith said they needed all three, it was an "and" not an "or." Mr. Smith continued with the three ways. The first is low-income housing tax credits. The second is a government subsidy such as when Monroe County buys your land and pays you a ton of money. The third way is utilizing increased density allowing transference of ROGO exemptions and allowing transference of the density because it can be sold, then another market participant would be paying for that. Mr. Smith stated that he saw four head nods on the ROGO exemption. Commissioner Miller corrected that, saying that he said no, Commissioner Coward was not sure. Commissioner Scarpelli asked if a provision could be added that the rights could only be transferred once the affordable housing development has been approved. Commissioner Wiatt agreed and hoped that would go without saying. Commissioner Scarpelli added that the applicant could only get what they want if this development moves forward so that it's in the interest of affordable housing. Mr. Smith stated that was fine, but he needed to make sure about the timing of it. Commissioner Scarpelli clarified that that was on the ROGO exemptions, he would approve the transfer of the 80 units only if the affordable housing project gets development approval and moves forward. Commissioner Coward added, and breaks ground. Mr. Smith stated the transference is going to need to be facilitated before the bank loan closes because that would be the equity that allows for the bank loan to close. Mr. Wolfe asked if it could be tied to the development agreement which would lock it all in because

it gives the specifics. Mr. Smith said he could not take a position on that. Commissioner Scarpelli stated that is what he would be willing to approve.

Ms. Cioffari summarized the proposed language be with the caveat that it's only if the affordable housing project receives County approval, tie it to the Development Agreement associated with the project. Commissioner Scarpelli added, and only transfer within in Stock Island. Commissioner Wiatt agreed. Commissioner Miller asked if Ms. Cioffari was still trying to work out what happens when this density is removed from the property. Mr. Wolfe stated that the density was coming up.

As to the density, Mr. Smith stated he saw a head nod from Commissioner Wiatt. Commissioner Wiatt stated, no, that the same language was needed for density as well. Chair Werling agreed with Ms. Cioffari, that it was double dipping and they can't have everything. Commissioner Wiatt added that they won't have anything unless it gets all the way to the point of completion, so if it's possible, it would be worked out; if it's not possible, it won't be worked out. Mr. Smith suggested adding the language, "if legally permissible," as there will be multiple steps where this will be vetted. Commissioner Scarpelli stated he would want to include the "legally permissible" language, and also only allow the transference of the 32. Chair Werling still didn't like it. Commissioner Wiatt stated if they can do it, the deal gets sweeter and needs to come back sweeter. Commissioner Miller stated that he wasn't nodding, but nodding off and was a maybe. Ms. Cioffari clarified the Commission was going with the density, if legally acceptable. Commissioner Scarpelli reiterated, if legally acceptable and only on Stock Island.

Mr. Smith stated the only thing left was the height. Ms. Cioffari responded that she had not had a full opportunity to explore that. Mr. Smith stated that it was in the Comp Plan, a site-specific policy, that it can be accepted from the other height limitations. Habitable space up to 38 feet, but allow the mechanical equipment and the elevator shafts be allowed to exceed that, and the mechanical equipment can be pushed back five feet from the buildings and shielded. Commissioner Miller asked why they wouldn't go with the Code. Commissioner Scarpelli stated there had been plenty of units kept under 40 feet. Mr. Smith stated 40 feet was different than 38. Commissioner Scarpelli stated that five feet above 38 is how he was reading it. Commissioner Wiatt stated 43 feet would be five above the 38, and was closer to what the City allows. Mr. Smith stated that the applicant would be fine with 40 overall. Commissioner Scarpelli thought 40 feet would be the maximum allowed on any structure. Ms. Cioffari stated that the Code does not exempt elevator shafts; that was an interpretation, but Mr. Smith had given three examples which she had not had a chance to look into. Commissioner Miller asked why the Code had to be rewritten for this development. Commissioner Wiatt asked why they were going into this level of detail here. Mr. Smith stated he would go with staff's recommendation and he would take it up later with Ms. Cioffari after she had done her research on elevator shafts. Mr. Smith was okay with leaving parking with the data and analysis review as he was confident it would meet that.

Ms. Cioffari summarized the Commission's discussion: There is no change recommended to the Goal, there is no change recommended to the Objective. As to the Policy; (1) no change, (2) no change, (3) add language to allow for a docking facility that would be shoreside of a mooring field, (4) for market rate ROGO exemptions, use language provided by the applicant and specify

that the transfer of those market rate units can only occur if the affordable housing project receives County development approval, which can be tied to the Development Agreement associated with the Wrecker's Cay project and limit those transfers to Stock Island.

Commissioner Scarpelli asked for confirmation that those could never be transient market rate units. Ms. Cioffari stated they could not be transient but they could potentially apply for a vacation rental. She does not have the exact receiver site they would be going to, but market rate residential units can be used as vacation rentals in certain zoning districts. Commissioner Scarpelli stated he would want something included saying no vacation rentals. Mr. Smith stated that would decrease the value. Chair Werling responded, "oh, well." Commissioner Coward agreed. Ms. Cioffari stated that where some of those units exist in URM, it doesn't currently allow vacation rentals. Commissioner Scarpelli stated in that case, then nothing was being taken away. Chair Werling wanted that restriction in there. Mr. Smith stated that all of them allowed for vacation rentals right now. Ms. Cioffari was going to double check, but Mr. Wolfe stated it's moot because the Commission doesn't want it.

Ms. Cioffari continued with the summary: Limited to Stock Island and no vacation rental use of those units. The second part of (4) is the density, utilize the applicant's provided language if legally acceptable and limit the transfer of density to Stock Island. The new number (4) not stricken through, no change; (5) no change; (6) include language for a shoreside facility or docking facility; (7) no change, (8) no change; (9) no change; (10) no change; (11) no change.

Commissioner Scarpelli asked if the Commission also wanted to add rental only to the Subarea Policy. Mr. Smith suggested calling that number (12) and adding it to the Subarea Policy, which was added by Ms. Cioffari, and she clarified that in Urban Residential Mobile Home, transient use would only be permitted in gated communities with controlled access and an association which specifically regulates and manages it, but it's a moot point because the Commission has made their recommendation.

Motion: Commissioner Scarpelli made a motion to approve with modifications as documented by Ms. Cioffari. Commissioner Wiatt seconded the motion.

Roll Call: Commissioner Scarpelli, Yes; Commissioner Wiatt, Yes; Commissioner Miller, Yes; Commissioner Coward, Yes; Chair Werling, Yes. The motion passed, 5-0.

7. <u>AN ORDINANCE BY THE MONROE COUNTY BOARD OF COUNTY COMMISSIONERS</u> AMENDING MONROE COUNTY LAND DEVELOPMENT CODE SECTION 130-157, MAXIMUM PERMANENT RESIDENTIAL DENSITY AND REQUIRED OPEN SPACE, TO PROVIDE A DENSITY BONUS ABOVE THE MAXIMUM NET DENSITY FOR A PROPERTY SUBJECT TO A SITE-SPECIFIC SUBAREA POLICY ESTABLISHED UNDER PROPOSED GOAL 111 OF THE COMPREHENSIVE PLAN, AS PROPOSED BY SMITH/HAWKS, PL ON BEHALF OF WRECKERS CAY APARTMENTS AT STOCK ISLAND, LLC; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL OF CONFLICTING PROVISIONS; PROVIDING FOR TRANSMITTAL TO THE STATE LAND PLANNING AGENCY AND THE SECRETARY OF STATE; PROVIDING

FOR INCLUSION IN THE MONROE COUNTY CODE; PROVIDING FOR AN EFFECTIVE DATE. (File #2019-063)

(5:46 p.m.) Ms. Cheryl Cioffari presented the staff report. This is the companion LDC piece to allow for the increased density in Urban Residential by adding in note (k) which is identical language to that in the Comp Plan Policy. Staff recommends approval. Mr. Wolfe interjected that to the extent relevant, the relevant portions of the Comp Plan testimony in the hearing would be incorporated into this item. Chair Werling asked for public comment. Mr. Smith clarified that this Land Development Code will only go to the BOCC to be adopted if the Comp Plan Policy is ultimately adopted.

Mr. Bill Hunter of Sugarloaf Key, recommended the Commission approve this and asked that they consider, when transferring the density off of these three parcels, to please recognize that this parcel is not UR. All of the calculations shown by the applicant showed this as UR and it is not. This parcel should be looked at as it's zoned today with its allocated density. Mr. Smith interjected that it would actually be less, that he was being conservative on that number.

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

Commissioner Scarpelli thought this was pretty cut and dried with the same language as the prior agenda item. Ms. Cioffari interjected that if they looked back at the Comp Plan, this was the first 101.5.25. Chair Werling asked for a motion.

Motion: Commissioner Scarpelli made a motion to approve with modifications as documented by Ms. Cioffari. Commissioner Coward seconded the motion. There was no opposition. The motion passed unanimously.

8. AN ORDINANCE BY THE MONROE COUNTY BOARD OF COUNTY COMMISSIONERS AMENDING THE MONROE COUNTY LAND USE DISTRICT (ZONING) MAP FROM URBAN RESIDENTIAL MOBILE HOME (URM) TO URBAN RESIDENTIAL (UR), FOR PROPERTY LOCATED AT 6325 FIRST STREET AND 6125 SECOND STREET, STOCK ISLAND, MILE MARKER 5; AS PROPOSED BY SMITH/HAWKS, PL ON BEHALF OF WRECKERS CAY APARTMENTS AT STOCK ISLAND, LLC; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL OF CONFLICTING PROVISIONS; PROVIDING FOR TRANSMITTAL TO THE STATE LAND PLANNING AGENCY AND THE SECRETARY OF STATE; PROVIDING FOR INCLUSION IN THE MONROE COUNTY CODE; PROVIDING FOR AN EFFECTIVE DATE. (File #2018-121)

(5:50 p.m.) Ms. Cheryl Cioffari presented the staff report. This is a Land Use Map Amendment for two of the three parcels currently zoned Urban Residential Mobile Home. It is developed with two mobile home parks known as Tropic Palms and Woodson's Trailer Park. The community meeting was held on April 30, 2019, and public comments related to rental/ownership of units. The community meeting was for the Comp Plan Text Amendment and this item both. This went before DRC on June 25, 2019. The existing FLUM category is Residential High. On page four of the staff report the blue portion of the table shows the

proposed development potential reflecting an increase of 11.16 units in market rate housing, and with the Subarea Policy the allocated density for residential would zero because the Comp Plan Subarea would control. TDR market rate residential without the Subarea Policy would increase by 40.26 units; again, that's reduced to zero through the Subarea Policy. The affordable residential max net increases with the land use up to 83.7 units. The transient allocated, again with the Subarea Policy, would be zero. The non-residential square footage would be zero. Staff conducted a mobile home relocation study which was completed by the Miami Economic Associates though comments and corrections to that study have been requested. However, between the time the study was requested and present, the property owner has submitted justification to staff that 723 no longer applies because each tenant of the mobile home park had conveyed their title, thus removing being subject to 723. Since staff was required to do a relocation study and the applicant paid for it, it's important for the record to be corrected with the most up-to-date information even though it's no longer required at this point. Staff finds the proposed changes to be consistent with the 2030 Comp Plan, the Key Haven Stock Island Livable CommuniKeys Plan, and the Land Development Code, and recommends approval.

Chair Werling asked for public comment. There was none. Public comment was closed. Chair Werling asked for comments, questions or a motion.

Mr. Bart Smith interjected that what's going to happen is this would stop and wait for the Comp Plan Policy to be transmitted, come back down, and everything would be approved at the same meeting. This is what makes it all Urban Residential. Commissioner Scarpelli asked if this was putting the cart before the horse. Mr. Smith added that in order for it to be approved at the same time as the other items, this had to be done. Commissioner Miller asked for staff to comment on that. Ms. Cioffari responded that it was all tied together. The property owner could apply for the zoning change without the specific Subarea Policy, but staff kept it grouped together because it all related to the same project. The Comp Plan Amendment goes before the BOCC in August 2019, and then gets transmitted to DEO, they have 60 days to review it and provide comments. Then these same three pieces will come before the BOCC for adoption and they also want to look at the project holistically. Mr. Wolfe added that it is traditionally done this way because it makes sense, to prevent going through steps one and two and then, for some unknown reason, step three never gets approved. Commissioner Coward asked for clarification where the request says, "Amend the Land Use District from Urban Mobile Home to Mixed Use." Mr. Smith and Ms. Cioffari both indicated that was a typo, that should be Urban Residential.

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

Items 9 and 10 were read together.

9. <u>AN ORDINANCE BY THE MONROE COUNTY BOARD OF COUNTY COMMISSIONERS</u> AMENDING POLICY 101.3.2 OF THE MONROE COUNTY 2030 COMPREHENSIVE PLAN TO EXTEND THE TIME PERIOD OF ROGO THROUGH 2026; 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 2019-043)

10. AN ORDINANCE BY THE MONROE COUNTY BOARD OF COUNTY COMMISSIONERS AMENDING MONROE COUNTY LAND DEVELOPMENT CODE SECTION 138-24, RESIDENTIAL ROGO ALLOCATIONS, TO EXTEND THE TIME PERIOD OF ROGO THROUGH 2026; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL OF CONFLICTING PROVISIONS; PROVIDING FOR TRANSMITTAL TO THE STATE LAND PLANNING AGENCY AND THE SECRETARY OF STATE; PROVIDING FOR INCLUSION IN THE MONROE COUNTY CODE; PROVIDING FOR AN EFFECTIVE DATE. (File 2019-044)

(5:58 p.m.) Ms. Cheryl Coiffari presented the staff report. On January 30, 2019, the BOCC directed staff to extend ROGO from 2023 to 2026. The reason behind that is the County is waiting for census data that comes out in 2020 which will work with hurricane evacuation and basically show how much room is in the model and how many units are left. To build in buffer time, ROGO would be extended out for three years, and the allocations granted each year will be reduced. The reductions will start in July of 2020, because if this is approved, that would be the first time period that staff could realistically implement this change. It will go down from 126 allocations per year to 64 for years '20, '21 and '22. Beginning in 2023, '24 and '25, it's 62 allocations per year. The total isn't changed, but spread out. There is no change to the number on Big Pine Key and No Name because that area is regulated through the Incidental Take Permit and the Habitat Conservation Plan. The Comp Plan is more general. The specifics of the Land Development Code start on page three of the staff report and lays out the distribution between the Upper Keys, Lower Keys and Big Pine Key. Again, it doesn't change the overall number but just updates the table. Staff recommends approval. There were no questions.

Chair Werling asked for public comment. There was none. Public comment was closed. Chair Werling asked for a motion on Item 9.

Motion: Commissioner Wiatt made a motion to approve Item 9. Commissioner Scarpelli seconded the motion. There was no opposition. The motion passed unanimously.

Motion: Commissioner Wiatt made a motion to approve Item 10. Commissioner Scarpelli seconded the motion. There was no opposition. The motion passed unanimously.

ADJOURNMENT

The Monroe County Planning Commission meeting was adjourned at 6:10 p.m.