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Mr. Morris objected to that process, indicating there is no direct examination for a non-party participant. The County is familiar with the two cases cited by Mr. Tobin in the memorandum of law that was filed a few business days before this meeting, and neither of them are legally germane to this proceeding which is an original administrative hearing on a development application. Only one of the two cases was fleshed out by Mr. Tobin in his time participating as a public speaker. The record should reflect Mr. Tobin was given an extra minute, and he spoke for six minutes. The Shidel case did not involve the granting of third-party property owners status as a party on a hearing for a development application submitted to an administrative tribunal. That matter involved the filing of an original action with a trial court challenging the consistency of a development approval. At this stage, there is no development approval. Mr. Morris did not want to go too much into different chapters of the Florida Statutes lest he inadvertently end up engaging in claim construction for third parties, but suffice it to say that case isn’t this one. Moreover, the County would like to note that there is no right of direct examination for a group of participants. While Mr. Tobin may have been retained by members of the public to articulate some aspect of the law that they share the view of, he has no right to call individual witnesses, cross-examine County staff or representatives of the developer. The individuals or groups for whom he has been retained to represent may present their views of the facts or qualified expertise as public speakers. Mr. Wolfe concurred, adding that it had been

stressed at the beginning that there are a number of speakers on behalf of the appellant, some of whom have expertise, and they will only be speaking as opponents of the project. The Chair has indicated a willingness to give them more time, but this is not a trial. This is an administrative proceeding for development approval. Down the road, if something is determined to be unlawful, there are forums to address that regardless of what happens at this hearing. The speakers are free to speak but there is no cross-examining of witnesses. Chair Scarpelli stated that he would call out the names on the list provided by Mr. Stuart Schaffer.

Mr. Stuart Schaffer, having been previously sworn, is the President of the Sugarloaf Shores Property Owners Association, SSPOA. Mr. Schaffer confirmed with Chair Scarpelli that their experts would be given a little more time, and requested that he be the one lay person on the list to be given a little extra time to expand his remarks to answer some points that were raised by Mr. Kirk who is also a lay person. Chair Scarpelli clarified that Mr. Kirk is the applicant but that Mr. Schaffer would be given as much time as possible.

Mr. Schaffer stated that SSPOA's members are the owners of more than 350 properties on Sugarloaf Shores, including South Point. A number of members have already stated in their own words why nearly all of the residents oppose this proposal. Mr. Schaffer then addressed some points that Mr. Kirk had made. Regarding all of the changes made by the developer to address community points and concerns, Mr. Schaffer acknowledged that, at the outset, the community requested a Keys-style design and that is what is being proposed. The community also prefers the separate entrance onto U.S. 1 and applauds staff for making that a condition. However, though it solves a problem of inordinate traffic on South Point Drive approaching U.S. 1, it does not solve in any way the left turn safety concern issues. As others have pointed out, those cars coming out of the separate entrance, most of them by car, will be making left turns onto U.S. 1 toward Key West and will be filling the gaps before anybody on South Point. That is the biggest traffic problem with this proposal.

Secondly, the roundabout is not something the residents requested and was always proposed by the developer. The residents are indifferent about the roundabout and after surveying the residents, it's 50/50. This is being proposed by the developers for their own benefit, and the reason is they're trying to get traffic mitigation for the bus stop. The bus stop doesn't work unless there's a way for the buses to turn around and that requires the roundabout. This is to their benefit, not that of the residents. Similarly, the bus stop is apparently moving the existing bus stop from east of the corner of Sugarloaf Boulevard and U.S. 1 to South Point just off U.S. 1. It will be beneficial to the folks in the apartment complex and also benefits the applicant because they're trying to get a reduction in number of trips being counted for this project to avoid or reduce mitigation or, rather, is their mitigation to move the bus stop. This is not something requested by the community. Next is parking under the buildings. The community never asked for parking under the buildings. Again, this benefits the applicant by allowing them to get more density onto this land and have more out-parcel space not included in the project. The adverse result for the community is it puts all of these buildings at maximum height.

The applicant correctly pointed out that the community wanted a barrier around the development along South Point and U.S. 1 and, in particular, along Cypress Road on the south perimeter, but the community asked for a wall, not just a fence. Mr. Kirk stated that the benefit of not doing a wall would improve the flow of water in a flood situation. He had stated at a community meeting that they were not inclined to do a wall because it's more costly than a fence. The community consistently has requested a wall. As to night sky lighting, the only thing Mr. Kirk has stated is that he would comply with county code. The residents have requested more than county code to continue to be able to see the stars at night. There will be 88 new apartments immediately adjacent to a neighbourhood of 105 properties and 97 existing single-family homes. This proposed development will bring hundreds more vehicles onto South Point adding more traffic to South Point Drive and, more particularly, adding more time and hazards to the process of making a left turn onto U.S. 1 at an uncontrolled intersection. The development will be at maximum density and height. Mr. Stein had stated this is not at maximum density. There is a one-hundredth of a unit per acre, absolutely the most number of units possible on this land and it is maximum density, and 24 percent of the land on these two lots is being held back for future development. The residents are not being told what that future development might be, but do know that both of those out parcels will only be accessible from the local streets. One will require customers that enter the property to drive on South Point to Cypress, make a right turn, drive in front of four houses, and then turn into a driveway to what could be a restaurant, bar and jet ski rental business.

The staff report gives two reasons why the proposed apartment complex will not be incompatible with the existing South Point and Sugarloaf Shores neighbourhoods. One, staff has concluded that the neighbourhood is not rural and thus this apartment complex will not be incompatible with the existing neighbourhood. Mr. Schaffer admits this is not a rural neighbourhood, but the fact that it is not rural does not in any way mean that these developments are compatible. Two, staff argues that the proposed development and the existing neighbourhoods are compatible because they are both located in medium-density zoning categories. The neighbourhood is in the Improved Subdivision zoning district limiting development to one home per lot. The existing density is roughly three to four homes per gross acre. The density of the new development in the Suburban Commercial zoning district would be 14.4 units per gross acre. Those densities are not comparable. Mr. Stein pointed out that the Lower Keys LCP specifically designates this parcel as being reserved for medium to high-density residential development. This is somewhat misleading. What the LCP does is has a series of maps that designate every Suburban Commercial lot in the Lower Keys, it colors them red, and in a description below it says the red is available for medium to high-density development. This isn't a specific discussion of this lot. This is just an acknowledgement that there are SC lots in the Lower Keys area. The reason is obviously as to why staff is really recommending approval here. The proposed development does not exceed maximum net density. That's it. But being within maximum net density does not give the developers the right to build this project. They need a conditional use permit which is why we're here. This requires that the development must be consistent with the Comp Plan and not be incompatible with the character of the existing residential community. The Lower Keys LCP is part of the Comp Plan and, as such, all new development on Sugarloaf Key must

comply with the LCP. Chair Scarpelli asked Mr. Shaffer to start wrapping it up, that he had another minute.

Mr. Schaffer stated that Goal 1 of the LCP requires rural or low-density development. Rural or low density, and this is not low density, it's 18 per acre. Community character under Goal 1 of the LCP requires that the scale of this development be comparable of that with the community. It is not. It is 88 apartments in nine large buildings at maximum height. It will dwarf the neighbouring community. Goal 4 says there can be affordable housing development in the Lower Keys but it says that development must be compatible with the existing residential development. The LCP says that new development along U.S. 1 must serve the needs of the local community. Evidence has been introduced that 72 percent of the commuting from this area goes to Key West and Stock Island. The applicant has not introduced any evidence that indicates that this housing will primarily serve the needs of the Lower Keys LCP.

Chair Scarpelli stated that Mr. Shaffer's time was up, and reminded everyone they would be limited to 10 minutes.

Mr. Juan Calderon, having been previously sworn, is a professional engineer and a professional traffic operation engineer with 23 years of experience. Mr. Calderon has done multiple traffic impact studies for cities such as Miami Gardens and Coral Gables, has worked with multiple private parties in the Upper Keys, and recently on larger-scale projects such as 600 units in Florida City and different types of land uses. He worked on the Dunkin Donuts in Tavernier, gas stations, schools and county line warehousing. Mr. Calderon has had public experience with the Miami-Dade County Department of Transportation, consulted for the City of Marathon, and FDOT. Mr. Calderon stated he is slightly younger than Carl Peterson, knows and respects him, but is in disagreement with him today. Mr. Calderon was hired to do a peer review under a very special context in place of a traffic impact study and confirmed he had received a copy of the traffic analysis performed by Mr. Peterson. The developer's traffic impact study indicates that adequate capacities are available for this project and there will not be adverse impacts. Mr. Calderon found the opposite and the County data indicates there will be adverse conditions that will occur once the project is implemented. There are four critical omissions in Mr. Peterson's report. In Mr. Calderon's peer review memorandum, he mentioned trip generation, the nature and context of this project, the aggregation of link analysis for community developments and the out parcels mentioned throughout, the trip distribution, and safety concerns. South Point drive is a 40-foot wide small residential road and this is not a road that is expected to have this type of intense use. It's a small intersection, no deceleration lanes, no acceleration lanes, meeting U.S. 1 which is a high-speed road. This is a purely single residential passivity type of intersection. The developer is presenting alternatives to access to U.S. 1 and Sugarloaf, and also the implementation of a roundabout a very few feet from Cypress. Staff agreed that access to South Point is not a good alternative for the northern part of the land use. However, a full median opening is expected at that location and requires approval from FDOT. Mr. Calderon is not against affordable housing as it is needed everywhere, but with affordable housing in a suburban environment at least two cars per apartment will be needed. Everyone goes to work in the morning to the employment centers and leaves at the same time. This is not like commercial

projects with staggered peak demands. It is concentrated in the morning and afternoon hours. That is the context of traffic for affordable housing.

Mr. Peterson stated that Land Use Code 223 was recently updated and did not contain enough information, and instead used Land Use Code 220. Mr. Calderon clarified the differences between 220 and 223. Land Use 223 presents three different contexts; suburban, dense urban and downtown core settings. Three different settings for one single land use type. Over 26 studies were collected versus 29 in Land Use Code 220, only three studies difference. This is a very robust study by ITE regarding affordable housing. The applicant's study documented 640 trips to be produced by this project. Doing calculations that traffic engineers are accustomed to do, over 1,000 trips could be generated by this project which is a 30 to 50-percent underestimate. Peak hour and daily traffic demands need to be forecast. The applicant's report does not include other critical items such as this being a minor road intersecting a high-speed road. Obviously, as traffic increases, accidents will increase exponentially. The applicant states that the peak analysis based on Keys numbers is acceptable. Mr. Calderon believes the level of service will be over capacity. The applicant failed and omitted the reserve parcels without provisions to access. There is nothing in the report to explain what will happen with those reserve parcels. The County gave the applicant a large list of community developments which would put a strain on segments such as Stock Island and Big Coppitt. This is recognized by County staff. The applicant stated he disagrees with the travel pattern distribution of Mr. Calderon's peer review report. It is important to know that travel patterns follow the centers of employment which here is Key West. The distribution of 60/40 is not reasonable and would more accurately be 80/20. There are some serious safety considerations such as acceleration and deceleration. Safety due to changes in access such as the additional driveway will also bring more accidents. The increasing left-turn movements will increase delay. Angle crashes are the most fatal oriented type of crashes in the Keys. The roundabout is extremely close to a stop-condition intersection and is not a natural intersection to follow a full stop condition. This configuration is not found anywhere with two un-signalized intersections within such a short distance. Chair Scarpelli called time. Mr. Calderon wanted to summarize that there are critical findings in the ITE that show the applicant's report is incomplete and does not accurately evaluate the impacts in the surrounding area.

Mr. Max Forgey of Forgey Planning, having been previously sworn, has a master's of public affairs degree in urban and regional planning from the O'Neill School of Public and Environmental Affairs at Indiana University. He is a 27-year member in good standing of the American Institute of Certified Planners, and has more than 30 years of planning experience in the State of Florida. Mr. Forgey provided a detailed resume of his experience and a 19-page response to the staff report which should be in the Commission's packet. Mr. Forgey has studied the staff report, the Lower Keys LCP, the traffic study and relevant portions of the Land Development Code, and has visited the site. Mr. Forgey has found that the proposed CUP with the 88-unit multi-family residential development is too large and too dense, and is out of scale with the neighbouring residential uses. The word "scale" appears in the Lower Keys LCP Goal 1 and says, "Community character includes the scale of the business that serves the local community in the Lower Keys area." It is also referred to in Policy 1.3.2 which sets Monroe

County on the course of enacting guidelines to ensure new development in and adjacent to existing improved subdivisions is compatible in scale and character with new and surrounding properties; scale and character. Scale in this context means high density. 88 units at 18.0 units per acre, which is at the top of the allowable density range, and you've already heard Mr. Tobin address that matter that 18 is the historic high, which is much higher than the low-density residential developments adjacent to it. It means large multi-family buildings adjacent to single-family detached. This proposed development will overwhelm the existing Sugarloaf neighbourhoods and will exacerbate automobile traffic, especially morning traffic, by generating a high volume of traffic on U.S. 1 from hundreds of vehicles at an uncontrolled intersection on trips in excess of 15 slow miles to and from Key West and Stock Island for which no long-term remedy is available.

The staff report ignored the Lower Keys plan's Goal 1 to manage growth and to maintain the Lower Keys as low density. Low density is what the neighbours have and is not what is being proposed and, if for no other reason, it justifies the denial of this application. Objective 1.1 pledges to continue to manage the rate of residential and non-residential growth in the Lower Keys. Managing growth is a recurring theme in the LCP but is not in this proposed CUP. The staff report ignored an important statutory definition of the crucial term "compatibility" found on page 11 of Mr. Forgey's report, quoting Section 163.3184(9) Florida Statutes. This is important. Compatibility means a condition in which land uses or conditions can coexist in relative proximity to each other in a stable fashion over time such that no use or condition is unduly negatively impacted, directly or indirectly, by another use or condition. It goes back to scale. There is an imbalance here and it is an imbalance that will not go away. Staff failed to recommend conditions which might have mitigated the impact of this out-of-scale development on its neighbours, and others have testified to this. These conditions would have, at a minimum, reduced the number of units and would have applied the County's aggregation rule which Mr. Tobin referred to, Section 130-165, to keep all internal traffic within the eight-acre parent tract, thereby not allowing the creation of two commercial out parcels whose ultimate impact remains unplanned, unknown and unknowable.

Mr. Forgey summarized the Rules of Evidence and case law which applies to this decision. At page two of his report, Florida Statutes Section 163.3187(6) requires that there be no public or private development permitted except in conformity with the Comp Plan. Section 163.3194(1)(a) says all actions taken in regard to development orders shall be consistent with the Comp Plan. At page 3 of his report, case law, *Machado v. Musgrove*, 1987, imposes a strict scrutiny test upon your review of this application. It states that the burden is on the applicant to show by competent and substantial evidence that the required conforms to the legislative plan. It does not because it is not low density, which is what Goal 1 and Policy 1.1 call for. Another case which Mr. Tobin foreshadowed, *Pinecrest v. Shidel*, 2001, the Fourth DCA ruled Section 163.3194 requires that all development conform to the approved Comprehensive Plan and that development orders be consistent with that plan. The statute is framed as a rule, a command to cities and counties that they must comply with their own comprehensive plans after they have been approved by the state.

Mr. Peter Morris objected that this case was already cited in the two-page memorandum of law submitted by Mr. Tobin, and the document speaks for itself. The issue of its legal relevancy is germane to subsequent action in a relevant administrative proceeding or court of competent jurisdiction. The reviewing hearing officer or judge can read the case in the record, but Mr. Morris does not believe it's necessary nor appropriate for a witness to make arguments which threatens to ripen into the unlicensed practice of law, nor is it in the interest of this hearing or sanctioned by law for a witness to just read case law of a decision that's already in the record.

Mr. Forgey asked Mr. Morris if quoting the laws of the State of Florida was inappropriate in such a hearing, and then withdrew the question. Mr. Forgey continued, those are the core standards that apply in the case before this body. Mr. Forgey added that he has also served on a local planning board and that the Commission's decision must be based upon meaningful and predictable standards, must be compatible with and further the text of the Comp Plan, and must be based upon competent, substantial evidence, and the applicant must strictly conform to the Commission's own standards, which are summarized at page 4 of Mr. Forgey's report and are not explained in depth in the staff report which found the application for the CUP to be in compliance with all criteria of approval including compliance with the Lower Keys plan. Foremost among those criteria are compliance with the County's Comp Plan and Code and the protection of community character, as Mr. Schaffer referred to. Ms. Ilze Aguila called time. Mr. Forgey continued, in finding the development to be in compliance, the staff report nods affirmatively but does not say why. Mr. Forgey has found, based upon close, careful study, that the application as proposed lacks competent substantial evidence to justify approval by the Planning Commission. The in-compliance finding is not based upon meaningful and predictable – Chair Scarpelli interrupted, called time, reminding everyone that experts would be given 10 minutes, and homeowners would be given five minutes.

Dr. Phil Frank, having been previously sworn, is an environmental consultant who lives on Upper Sugarloaf Key, a couple of miles from this site. Dr. Frank's resume in the Keys is extensive. He started Terramar Environmental Services in 2005. Prior to that, he worked for the U.S. Fish and Wildlife Service and the State Fish and Wildlife Conservation Commission. The Lower Density for Lower Sugarloaf group asked Dr. Frank to review the environmental documentation prepared for this project and the existing conditions report prepared by Mr. DeLashmutt. Dr. Frank had looked at the reports, current site photos and the existing conditions, had gone through the Monroe County LDRs and Florida Keys Wetland Evaluation Procedure, the KEYWEP. Dr. Frank stated he pretty much agrees with the report that Mr. DeLashmutt had prepared, differing on one finding, and that was the presence of some wetlands on Tract A. He did identify wetlands on Tract B, and Dr. Frank agrees with that layout and delineation. The wetlands are present on Tract A, Parcel D, having three habitats consisting of disturbed uplands, disturbed hammock, and mangroves along the canal, with a stressed wetland in the interior. The site has been filled over the years and has been impacted but that is the story for most of the wetlands in the Lower Keys. Dr. Frank also found the three legs of the stool of indicators. Hydrologic indicators were well developed consisting of extensive algal mats as documented in his report. Algal mats are basically evidence of standing water for periods of over two weeks, which is the rule of thumb. They wouldn't be there if the site wasn't holding water for a

significant amount of time to grow algae and provide some wetland function and benefit. There were several species of obligate vegetation or wetland plants that occur only in wetlands. Finally, these are altered soils that have been impacted and you cannot do the standard soil test where you dig a hole and see if water perks up. The altered conditions test must be used and Dr. Frank believes these elevations are low, the area is flat, it ponds and holds water, and the soils are hydric. Dr. Frank pointed out that Mr. DeLashmutt had included a disclaimer on page 17 of his report stating, "During development planning for this property, an assessment and final determination must be conducted not only for jurisdiction but about the permits. The identification and delineation of the wetland sites on the assessment by the undersigned may not be the final determinate for any wetland habitat delineation." Mr. DeLashmutt acknowledged that different experts have different opinions. Wetland science is not an exact science and is based partly on professional judgment, especially when in these type of disturbed settings. Dr. Frank's opinion is there are wetlands present and it needs to be looked at by the County, State and Federal Government eventually and the final determination made on how it might impact the site plan.

Mr. Bill Waldrop, having been previously sworn, has lived on Cypress Road for 18 years, directly across from the proposed Dockside development. Mr. Waldrop agrees with most of his fellow neighbours regarding traffic, but is also concerned with the height at 38 feet, which will be looking directly down into his house and lot and will deter from his privacy. Mr. Waldrop is also concerned about the undeveloped lot at the end of his part of Cypress Road where the entrance would have to be if it were developed as mentioned earlier. As to the wall versus a fence, the wall was talked about at open meetings and he believed that would be added and would definitely deter the sound as he will be within 75 feet of this larger building. It would also give him more privacy from the cars, parking and trash areas. Mr. Waldrop rides his bike and walks his dog up and down South Point Drive which has no sidewalks or overhead lights and no speed bumps. In the past three months, he has been run off the road twice walking and once while riding his bicycle, either by contractors or a resident. This large number of people that will be in this development will want to get out in the evening and walk up and down South Point Boulevard which will create a very unsafe condition. Mr. Waldrop noted that Mr. Stein had put up a map showing the square footage of the homes in the neighbourhood and the one for his house says it is 2,500 square feet, and it is actually only 1,764 square feet, so Mr. Waldrop is concerned about the numbers being presented not being correct. Mr. Waldrop is for a smaller, less-dense proposal, and 88 is too high, particularly with the additional remaining lots which could make it worse.

Mr. Scott Plymessenger, having been previously sworn, lives directly across the canal from where the Landings will be built at the end of Driftwood Lane. He is concerned with noise. Every month he gets in his boat and cleans trash out of the canal. With the trash dump there having no fence and with the wind, it will start flowing into the water which is not good for the environment. Additionally, with the heat, the smell will come directly across to where he lives. The lights and the height of the buildings look directly over the canal into his house and he does not want bright lights all over the place with over 60 people living in The Landings. The developer says they are not building docks there, but that will not stop people from getting into

their kayaks and swimming, getting into the water, which could be a problem with the boats going through there with no barrier to keep them from going in the water. Just like the traffic, if one person dies or one family dies, the Commission would not like that. Mr. Plymesser goes to work every morning at 6:00 a.m. and at certain times he spends over a minute to two minutes waiting to get onto U.S. 1. There are a lot of homeowners on Sugarloaf that leave at the same time. Mr. Plymesser believes this will be a problem. He supports low-income housing but not at this magnitude. The people in support of this do not live in the neighbourhood. Only one person in South Point stated he supports it. Ms. Aguila called time.

Mr. Ben Haas, having been previously sworn, is a homeowner on Lower Sugarloaf as well as a tax lawyer with over 26 years of experience including federal tax matters and litigation, and he is very concerned the applicant does not have the financial capacity to complete this project. The staff report concludes that they have no evidence to disprove the applicant's financial capacity, but he vehemently disagrees with this. He has studied the financing structure and over half of the funding for this project comes from the federal low-income housing tax credits. It is fairly common knowledge in the County that employer workforce housing is inconsistent with the federal low-income housing tax credit provisions of the Internal Revenue Code. McDermott Will and Emery, an internationally recognized law firm, has given their view on the qualification of the project for low-income housing tax credits after a very thorough, well-reasoned review taking both sides of the equation and going through both federal and state law and have determined the project does not qualify. Mr. Haas concurs with this conclusion. This project will be audited by the IRS, for better or worse, and staff should be very concerned, once the ultimate conclusion is made with the qualification of those credits, with what happens to the project at that point in time.

Mr. Jack Marchant, having been previously sworn, stated he represents South Point Homeowners LLC, and that he has lived full time on South Point Drive for 27 years. Back at that time, there were 80 single-unit homes on the 107 lots that make up Section F in Sugarloaf. Over the next 27 years, 17 houses were built for about a half a house a year. Today the Commission is considering adding 88 additional residences to the community, an increase of 91 percent. South Point has an average lot size of 16,279 square feet for a total acreage of 39.99 acres, which gives 2.7 living units per acre. The applicant is asking to place 88 living units on 6.1 acres for a density of 14.4. The applicant in their Community Impact Statement made some obvious mistakes, listing the total acreage at South Point as being 25 percent smaller than it actually is, and also stating the average lot size is 23 percent smaller than reality. Somehow, they couldn't correctly count the total number of lots adding another five fictitious lots. This large of an apartment complex does not belong here. The 88 units will bring hundreds more vehicles to these streets and unlike the existing vehicles, most of the additional vehicle-s will be going to and from work on a daily basis and traveling outside the Lower Keys to their places of employment. These two lots are zoned SC and 12 years ago, the original owner, Lloyd Good, proposed building a project consisting of small shops and offices with employee apartments above. Unfortunately, Mr. Good passed away before completing his vision of something truly SC, not just 100-percent residential. Years ago, the neighbours got permission to landscape along both rights-of-way from the highway up to Cypress Road, planting 20 mature-size royal

palms and 16 robellini palms, constructing a two-course block retainer wall as well as an underground drip watering system, all at the neighbours' own cost. When Mr. Joe Walsh purchased these properties he wouldn't allow the residents to do any of the landscaping activities, saying he would manage the maintenance of the landscaping that we had provided and maintained over the past 14 years. Mr. Walsh has done absolutely nothing with the landscaping and has continually not allowed the residents to correct this now deplorable entrance to the community. This development is proposed at max density, which is a mathematical formula plugging the number of units into the size of the land the units will go on. Of the affordable housing developments in the Keys, excluding the mega-developments on Stock Island and Rockland Key, only Key Lake Villas in Key Largo and Eastwind in Marathon have more acreage than South Point. The proposed density of this application is equal to or higher than all other affordable housing projects in the more developed areas such as Key Largo, Marathon and Stock Island. Those areas are closer to employment centers, are more developed and, most importantly, are not identified or subject to the low-density mandate in the Lower Keys LCP. All other affordable housing projects built or approved in the Lower Keys LCP are 20 units or fewer, not 88, which is a more acceptable size or scale than is being proposed here, regardless of their density. Compatibility involves density but it also involves scale. This development is not compatible to the community. Bottom line, 88 units is way too many. 100 percent of the affordable housing developments in the Lower and Middle Keys, excluding Marathon, have 36 or less units, not 88. The community has not been allowed to offer an alternative development to the Planning Commission. The Planning Commission should reject the proposal on the table and, more importantly, should ask the developer to come back with a new plan at lower density with far fewer units, and constructed on all eight acres with no out parcels; one that aligns itself with the character of the community as well as serving the purpose and needs of the existing residential neighbourhood of South Point.

Mr. Bill Hunter, having been previously sworn, stated he is representing Last Stand who has a technical issue. Last Stand is concerned that the purpose of Suburban Commercial is being subverted. This commercial zoning district is morphing into high-density residential in order to provide workforce housing for the municipalities. SC was created to serve the commercial needs of the immediate area, not a residential zoning district. SC was established on this property to provide low-intensity mixed-use commercial development in a location convenient and accessible to the residential areas. Such businesses would reduce trips on U.S. 1. This was done 32 years ago and the maps were signed by Mr. Don Craig. What's important to Last Stand is that SC is turning into residential and eliminating the possibility of small-scale commercial development like a grocery store to serve the local area. There is an affordable housing density bonus enabling small employee housing to be integrated with these local Suburban Commercial businesses. This density bonus was never intended to turn a commercial district into a high-density residential district. It has been done before but these were small projects, not out of character with the immediate area, and they did not generate opposition with the neighbouring community. Today, this affordable housing bonus is being proposed to develop a large-scale residential-only project that's going to add vehicle trips to U.S. 1. The Commission's decision today encourages this pattern for all of the Lower Keys, Tavernier and Key Largo. The Commission is aware that the Land Development Codes of the municipalities have not enabled

sufficient workforce housing and may feel compelled to help solve these municipal problems. Last Stand believes the Commission's obligation is to the current FLUMs of the County and the purpose of its Land Use Districts. The Commission balances the development within suburban and rural areas of Monroe County. This means preserving the capacity for low-intensity commercial along U.S. 1, and not converting it to large-scale urban residential housing for Key West, Islamorada and perhaps Marathon. Please deny this application as proposed and encourage the property owner to integrate this employee housing into low-intensity commercial designed and intended to meet the needs of the immediate area.

Mr. James Carras, having been previously sworn, is the principal of Carras Community Investment, a development and finance consulting firm based in Fort Lauderdale, and was retained by Lower Density for Lower Sugarloaf, LLC, to conduct a financial feasibility analysis of the Dockside and Landings projects based on the number of existing units and also scenarios of a reduced number of units as many have suggested. Mr. Carras' expertise is based on 35 years of consulting and teaching community economic development, including affordable housing finance. Mr. Carras has had a number of clients including public agencies, non-profit development organizations and private developers in preparing financing applications, including low-income tax credits and other financing incentives and options. Mr. Carras is currently working with three developers planning to apply for low-income housing tax credits, which is the source the proposed development is primarily looking to for its financing. Mr. Carras has been certified as a Certified Economic Development Finance Professional by the National Development Counsel, and has been teaching at Harvard University for the last seven years on urban development and financing of affordable housing, and has previously taught similar courses at Tufts University, University of South Florida, and MIT.

Mr. Carras has looked at this developer's information submitted to Florida Housing Finance Corporation as part of their application and modeled potential alternative development scenarios that are financially feasible, particularly with a lower number of units over the two parcels' eight acres. Since the developer submitted in 2018 to the Florida Housing Finance Corporation, the numbers are now over two years old. Mr. Carras built a new financial model to reflect 2020 construction costs and the lower value of low-income housing tax credits, since the market has shifted in two years. Once building that model, Mr. Carras created updated sources and uses for the existing proposed number of 88 units. Chair Scarpelli asked how this pertained to the project at hand, as the development being proposed is what's being used, and asked Mr. Carras to limit his comments to this particular project. Mr. Carras stated that a number of people have spoken about a smaller project, and his task was to see if a smaller project is feasible. In conclusion, the project as proposed in terms of 88 units, despite the higher construction costs in 2020 and lower value of the credits, the project is still financially feasible; but also, the project is financially feasible at a lower total number of units. The assumptions and variables were updated and it was determined that as few as 40 units across the two acres can be financially feasible, meaning they are profitable to the developer and the project can be accomplished. The model was run with all current assumptions, and also with a lower sales price since the sales price seems inordinately high. Chair Scarpelli thanked him for his input but reiterated that it didn't pertain to the project

at hand. Mr. Carras stated he would be happy to speak further with any developers in refining the model.

Commissioner Neugent pointed out that he knows there had been attempts by two County Commissioners to bring Sugarloaf POA to the table to discuss a settlement agreement, and they now show up with one towards the end of this week for discussion, so they haven't negotiated in good faith according to the Commissioners he's spoke to, and for them to bring up this proposal at the last minute is kind of out of the ordinary. If they were trying to reach some kind of compromise and settlement, that conversation should have been going on for the last three or four months. Chair Scarpelli stated that his stance is that they should have been out of that conversation, that it should be between the developer and the proposed objectors.

Mr. Neal Nathanson, having been previously sworn, lives on Cedar Lane, a hundred yards from the large lot. There is a legal concept called quiet enjoyment which means the right to the undisturbed use and enjoyment of real property by a tenant or a landowner, and that's why the community is here, to defend their rights not to be overrun by hundreds of additional cars. This is a neighbourhood of about a hundred houses on South Point. Many of the homeowners have lived there for thirty years or more. Yet when it comes to these proceedings, it seems a bar owner in Key West and some millionaires in Miami Beach who stand to make a great deal of money by hiding behind the screen of worker housing, they're the good guys, while those who are trying to defend their quiet enjoyment are the bad guys, the NIMBYs. Mr. Nathanson and his wife moved here six years ago, retired from federal government service, sold their house in Maryland and live here entirely on social security and retirement accounts. He is a Vietnam veteran with a disability from exposure to Agent Orange. This is a stable neighbourhood of long-term residents, not a random collection of houses, the majority of which are senior citizens. Prior to retiring, Mr. Nathanson was a professional economist working on public-private partnership developments with the U.S. Agency for International Development. Using his experience and expertise, he has looked at the financial structure of the proposed development, and also Mr. Carras' work. The analysis shows an unmistakable conclusion. The proposed scale of this project is driven to a very large extent by the enormous mark-up on the land that the current owner is expecting to get. If the land costs are structured such as the current owner receives just a normal and reasonable profit, the scale could be reduced by more than half. We know the numbers. He paid \$1.6 million for eight acres and he intends to flip about 75 percent of the land for \$4.4 million, while retaining almost 25 percent of the land for an unspecified future use. That's a 175-percent return on his investment after three years, plus whatever profit he stands to make from the future development. We've said all along that we expect worker housing to be built on the property. All we're asking is to keep it within the scale and character of the existing neighbourhood and, as a corollary of that, not to be overrun by hundreds of additional cars.

Regarding the two hold-back parcels, the waterfront on the west side and the small lot would be an excellent location for two or three market-rate houses which he wouldn't have a problem with because it conforms to the neighbourhood scale and character. But considering Mr. Walsh's business interests, more likely he's intending to put in a waterfront bar, maybe even a jet ski

rental, and along with that another hundred cars coming in every day. The other piece at the corner of South Point and U.S. 1 almost certainly would be turned into something that capitalizes on the highway frontage, a gas station or a drive-through McDonalds, bringing in another few hundred cars every day. Mr. Nathanson is asking the Commission to recognize the legitimate concerns about the density of the proposed development and cut the size by at least half, and do it by reducing the profit that Mr. Walsh expects to make on his land. Whatever is ultimately decided about the scale of the project, it must resolve the plan for the entire eight acres and do away with the proposed hold-back of the two sub-parcels. The County Commissioners and the appointed agents on the Planning Commission have an obligation to look after legitimate rights to quiet enjoyment of the residents who don't like being dismissed as a bunch of old memories. Contrary to a common belief, old people do remember things and those people who've done the residents wrong will be remembered at the next election.

Mr. Thomas Martin, having been previously sworn, is a full-time resident of Sugarloaf. Mr. Martin expressed his appreciation for the Commission sitting through this hearing. He totally agrees with Mr. Nathanson, Mr. Hunter, Mr. Marchant and Mr. Schaffer. It is not true that there has been no attempt at negotiating on behalf of the residents, who have repeatedly attempted over the last year to negotiate and have not been treated with any proper response. At this point, the only way effective negotiation could possibly take place is if the Commission denied this permit and told the application to come back with a better permit application. At that point, the residents would be able to effectively negotiate.

Mr. Barry Goldmeier, having been previously sworn, stated he is one of the owner-developers of this project and lives at 1000 Mariner Drive, Key Biscayne, and he has been developing affordable housing in the Florida Keys for the past 35 years. One of his projects, Mariner's Cove in Key West, had a 300-person waiting list, and Tradewinds in Key Largo has in excess of 200 people on the waiting list. As someone interested in the Florida Keys and its future, Mr. Goldmeier believes that denying this application would be tremendously harmful for Monroe County as a whole. Turning back any money to a government agency will severely damage the ability to get money in the future. CBDG money which is used for road elevation and sea level rise is handled by Florida Housing Finance Corporation and the DCA, and turning back this money would be turning it back to them, severely hampering chances of getting any other money for any other purpose. After Hurricane Irma when 2,000 units were destroyed, the Florida Keys fought and lobbied very hard to get this money, and the money they obtained was used for repairs of existing houses and replacement of some single-family homes, plus there was some set aside for replacement of workforce and affordable housing that was totally destroyed and could not be rebuilt. This was the purpose for the money. Florida Housing, in 2018, held a request for applications, and Dockside and The Landings were the only ones approved in that first round. There is an extreme shortage of available land of any scale to build the property, and unless you have some scale, it is very difficult and uneconomic to operate. There are 67 counties in the State of Florida. If money is turned back, it will be gobbled up by one of the other counties which will be glad to use it for their purposes. What happens when the next hurricane hits and when Monroe County goes hat-in-hand again to the state asking for money and relief? Turning

this money back will hamper Monroe County's ability to get any future money, even for units lost in a hurricane, because that's what this money is specifically meant for.

Mr. Martin pointed out that the reason there is a shortage of affordable housing, and none is built without some sort of subsidy, is because of the high construction costs in the Keys and it is extremely uneconomic given the divergence between wages and construction costs to build affordable housing. The only way it has been done in the past is either by Monroe County approving market rate development with high priced enough units to generate enough profit to subsidize the affordable units required, or with government subsidies. Chair Scarpelli requested Mr. Martin limit his comments to this item. Mr. Martin stated that this is for the benefit of Monroe County as a whole, on behalf of the employers who would like to have affordable housing, and waiting lists are an example. There has also been talk of utilizing affordable ROGOs as some sort of subsidy in order to compensate for the adverse condemnation lawsuit that the County may suffer after 2023, and if state and federal money is turned back and not made available, then the affordable ROGOs can't be utilized and they will be practically valueless. Then the County will have to hand it to the taxpayers' pocket for the money they are expecting to get from the utilization of affordable ROGOs that can't be used because there is no affordable money because the County decided, after begging for the money, to give it back.

Ms. Carrie Brechtelsbauer, having been previously sworn, stated that she owns property on Sugarloaf and has listened to the full hearing today. What screams out to her is the safety issues and she is asking that the Commission put safety first.

Chair Scarpelli asked for further public comment. There was none. Public comment was closed. Chair Scarpelli then asked if the applicant had any closing comments.

Mr. Don Craig acknowledged that the Commission had heard a lot today, had been patient and were tired, and expressed the appreciation of the applicant team. Having been in these types of meetings for 45-plus years, he understands the difficulty of making decisions when there are people who are passionate on both sides. Mr. Craig pointed out that Mr. Forgey had dwelled on Goal 1 of the Comp Plan and the burden of proof that is required in making a decision. Mr. Craig pointed out that Goal 4.2 of the Lower Keys LCP specifically directs that the County to find locations for the creation of affordable housing. That goal and all of the policies must be taken together with the staff determination based on good evidence, logical reasoning and the law that both Mr. Forgey and Mr. Craig identified. Staff's conclusion is that this location is appropriate. It's directed to be a community center. It's directed by the Comp Plan and LCP to identify these areas as appropriate for affordable housing. Mr. Bill Hunter correctly identified the fact that Mr. Craig had signed those zoning maps back in 1988, prepared by Ty Symroski who served as Planning Director after him, and the SC zoning district from 1985 always included density for affordable housing. The 18 units that was identified as the density that can be used for affordable housing was identified in 1995 with the adoption of the revised Comp Plan., so it's been there for a long time. A couple of people have said that the developer hasn't taken into account the desires of the neighbours or negotiated with them. The applicant listened long and hard at the community meetings about the size, location, number of buildings, landscaping, parking and location of parking, and all were in direct consequence of comments about not

enough parking, don't put parking where it can be seen, make sure there is sufficient landscaping, make sure the buildings meet the County Code. As to the kayaks in the water, this entire development will be fenced with a six-foot fence which will prevent people from wandering off into the waters. The applicant's experts were straightforward and concise, and as to the biology, Dr. Phil Frank agreed saying it's subject to professional opinion. The Commission heard the point-by-point analysis by Mr. Carl Peterson going through specific data of the requirements of Monroe County Code applied to the traffic counting, and reached that conclusion that there will be no impact, and staff concurred. This proposed project will benefit many workers in the Lower Keys going to the employment centers in Key West, Summerland Key, Big Pine Key and Marathon. Mr. Craig asked the Commission to consider the attempts to design something that is compatible, consistent and supportive of the community. The applicant concurs with the findings of the staff report and requests the Commission's approval, adding that he and the applicant team were available for any questions.

Commissioner Demes stated he had gone through the 452 pages of additional information and sees 641 total trips added for the project, but wanted to know the current vehicle trip number from South Point Drive. Mr. Craig interjected that the traffic counts were done in 2019. Mr. Carl Peterson deferred to the latest Monroe County data, considering not only the counts but the committed development that would impact this corridor, and presently with the counts and the committed development, this section of U.S. 1 in the vicinity of South Point has a remaining capacity of 7,400 daily trips. The 640 plus/minus additional daily trips leaves ample capacity to accommodate this project. Commissioner Demes understood but requested an estimate of existing current number of trips from South Point Drive. Mr. Peterson referenced his report in Figure 4 which states at the present time, exiting from South Point to U.S. 1 is approximately 18 in the PM peak hour, and inbound is approximately 12. These are counts conducted in March of 2020. Those counts were done pre-COVID when schools were still open in peak season under normal traffic conditions. Commissioner Demes asked for the daily contribution existing now coming in and out of South Point. Mr. Peterson said it would be speculation because it's not required nor customary to do daily traffic counts on the side streets, and those on the main line are from FDOT and Monroe County, so he could not present that number. The AM and PM counts were done, but not the daily counts.

Ms. Emily Schemper, Planning Director, asked Mr. Peterson if he had not only the existing AM and PM peak-hour counts, but also the proposed number of additional trips during those peak hours for comparison. Commissioner Demes said he wasn't asking for someone to do a PhD on this, but just a simple round number to compare apples to apples. There are people saying this project will exponentially increase the traffic with this project and he takes exception to use of that inciting term, because going up one exponent, which is the value of the data 641, and just using the next exponent which is two, they must mean some degree of geometric progression, not exponential, because it's nowhere near exponential. Commissioner Demes stated that when people use the term "exponential" to a forum or government entity, they should understand what it means. An exponential increase in traffic would be unbelievable on a daily count, which was his point. Commissioner Demes stated that it would be interesting to have that number to explain to people what the 641 means as it relates to today.

Chair Scarpelli asked Mr. Peterson what the peak numbers were for AM and PM. Mr. Peterson reiterated that he does not have daily counts on South Point Drive, but estimating for the existing approximately 100 homes with an average of nine trips per day, would be somewhere around 900 trips per day in a rough estimate. Commissioner Demes stated that squaring that number, which would be the lowest exponential increase, would be 810,000 trips per day. So his point is this is not an exponential increase. Mr. Peterson elaborated on the peak-hour impacts with two different access scenarios. Using South Point Drive only, in the AM peak hour, there would be about 22 additional outbound trips and about 7 additional inbound trips; in the PM, outbound would be an additional 14 and inbound would be an additional 23. That's solely for The Landings. Dockside would have approximately, in the AM peak hour, 11 outbound trips and 3 inbound trips; in the PM peak hour, 7 outbound trips and 12 inbound trips.

Mr. Peter Morris asked, since the staff report had been made the subject of extensive discussion, if he could call a couple of rebuttal witnesses. Chair Scarpelli acquiesced.

Mr. Morris then called Mr. Mike Roberts who is the Assistant Director of Environmental Resources, with Monroe County for 11 years, and having 25 years of experience in the private sector as a consulting biologist. Mr. Roberts had reviewed Mr. Stein's report and was very familiar with it, and Mr. Roberts had also prepared the environmental analysis to that report. There was nothing he had heard today that changed his mind as to staff's conclusions contained in the report. Mr. Roberts had only one difference between Mr. DeLashmutt's report and Dr. Frank's report. Mr. Roberts had also visited the site following the month of October with 20 inches of rainfall, which is eight to ten inches above normal for October, and there was no standing water anywhere on the northern or eastern tract that had been identified as containing freshwater wetlands. Mr. Roberts did not identify any wetlands on that site. As Mr. DeLashmutt had pointed out and Dr. Frank had mentioned as well, there are three components to wetland designation or delineation in the State of Florida for any plant coverage, hydrology and hydric soils. While all three of those situations occur separately on that tract, they do not occur in conjunction with each other in any area he was able to find. One minor point, Dr. Frank referred to plants that can only grow in wetlands, and the reality is that obligate plants are statistically more likely to occur in wetlands than anywhere else. Sawgrass does quite well on uplands, even though it is an obligate plant. The Commission recognized Mr. Roberts as an expert in the field of biology and environmental resources.

Mr. Morris then questioned Ms. Emily Schemper, Planning Director, who stated she has a master's degree in urban planning and a master's degree in urban design from University of Michigan, is a certified planner by the American Planning Association and has a Certified Floodplain Manager certification, had worked as Acting Director of Planning for eight months, and was confirmed as Senior Director for about two and-a-half years, also having worked for the County as a Planner for almost nine years prior to that. Ms. Schemper had reviewed and evaluated Mr. Stein's analysis, findings and conclusions, and agreed with them. Ms. Schemper had not heard any testimony today that would cause her to change her mind. The Commission recognized Ms. Schemper as an expert in the field of Planning.

Commissioner Ritz stated when he was last on the Planning Commission, there was the same discussion regarding the balance between commercial and residential development, and the need for affordable and workforce housing. In the nineties, there was even a moratorium on commercial development until the balance caught up with residential. Commercial development was required to include workforce housing to get that balance in check. One of the speakers stated they shouldn't be viewed as a bunch of old NIMBYs, people in favour of workforce housing but not in my back yard. It is clear the residents in the neighbourhood are passionate about their community and have spent their own money on landscaping, irrigation and the wall sign. They are concerned about density and related problems, noise, traffic, lighting, safety, and want the quiet enjoyment of their property. This must be balanced with the need of the County for workforce and affordable housing. Commissioner Ritz doesn't care about the profit of the developer, as the real need is workforce housing. The people who eventually live here will end up being friends and neighbours and need a nice place to live. Commissioner Ritz was concerned about taking away the basketball courts and access to the water with the six-foot fence since these aren't going to be prisoners, but are the workforce, friends and neighbours. A lot of places require recreation in large developments like this rather than taking away recreation, which should be considered in the future. Commissioner Ritz asked about the low-density requirements in the LCP, and staff said that this is in compliance with the FLUM and Comp Plan, and he wanted confirmation that this is in compliance with the LCP as well.

Ms. Schemper confirmed that to be correct, adding that density is in compliance with the general density requirements of the Code and Comp Plan, and further in the LCP. Although there is terminology used about lower density, it is referring to the entire community and the entire CommuniKeys Plan, which is a range of a number of islands across a number of miles. This area is specifically identified as a medium to high-density potential development area. The acreage is calculated for all areas that fall into that category within the CommuniKeys area. Staff's opinion is that this is not considered a restricted area to some sort of low-density development. Ms. Schemper added that the LCP points out that the current FLUM should be used when evaluating development proposals, including density requirements, and the adjacent neighbourhood in the LCP is not considered low density, but rather residential medium, so it is in a medium category. Commissioner Ritz confirmed that the applicant was not asking for any waivers or variances from the rules and regulations and was in compliance with the Code and all requirements. Ms. Schemper stated they had met all requirements and had actually exceeded them in certain cases such as parking and landscaping.

Commissioner Demes stated he appreciated staff efforts on this project and the efforts on both sides, Mr. Craig and the Sugarloaf Shores Property Owners Association of which he is a member. This is an emotional issue and he also sits in traffic there every day. Mr. Craig dates back to 1988 with the Comp Plan and the intent, which is important to follow through because he was there, and then the involvement that the SSPOA and others have had with the Comp Plan Amendments and revisions, and collectively have had the time to put checks and balances in the Comp Plan. In the years that Commissioner Demes has been an ex officio member of the Planning Commission for the County and the City Planning Board, it is rare to see a project that doesn't come in with some variance or conflict between land development regulations that didn't

mesh with the FLUM, but this project does. The workforce housing is extremely important and there is a big push towards the MIAI to solve a lot of things, and he has a resistance to that as well. Everybody did their homework and he applauds the SSPOA for their research and the degree that they have worked with the developer. Commissioner Demes thinks this is a worthwhile project and though he would like to see it not built, he doesn't see a basis to not go forward with it. Commissioner Demes also asked that when people put out data, it is important not to incite other people to say it will exponentially increase traffic when it really doesn't.

Commissioner Neugent stated that he understands this is emotional and he has great respect for the SSPOA, but there is also reality. Commissioner Neugent thanked Christine Hurley who is responsible for having such a staff, and thanked and complimented the whole team including Emily, Mayte, Cheryl and Mike on their good work. Every time Monroe County has built a park, there are always the not-in-my-back-yard people, but after it's all over and the park is built, people come in and say they love their park. After the affordable projects that have been built over the years, he has not seen any major issues after the operation has taken place.

Commissioner Wiatt made a motion to approve Item 2 with the nine conditions located on pages 31, 32 and 33. Commissioner Demes seconded the motion. Mr. Wolfe reminded them that these needed to be approved separately as 2(a) and 2(b). Ms. Schemper reminded the Commission that because surrounding property owners had submitted written protest forms totalling 20 percent or higher of the total surrounding property owners, a four-fifths vote would be required to pass these items. Commissioner Wiatt amended his motion to apply to Item 2(a), and Commissioner Demes seconded the amended motion.

**Motion: Commissioner Wiatt made a motion to approve Item 2(a) with conditions. Commissioner Demes seconded the motion.**

**Roll Call: Commissioner Demes, Yes; Commissioner Wiatt, Yes; Commissioner Neugent, Yes; Commissioner Ritz, Yes; Chair Scarpelli, Yes. There was no opposition. The motion passed unanimously.**

**Motion: Commissioner Wiatt made a motion to approve Item 2(b) with conditions. Commissioner Demes seconded the motion.**

**Roll Call: Commissioner Demes, Yes; Commissioner Wiatt, Yes; Commissioner Neugent, Yes; Commissioner Ritz, Yes; Chair Scarpelli, Yes. There was no opposition. The motion passed unanimously.**

### **BOARD DISCUSSION**

Commissioner Ritz asked if the meeting conflicts for July, September and December 2021, could be double checked. Ms. Schemper responded that that could be done, adding that the scheduling discussion would not happen as it had been resolved. Chair Scarpelli clarified that the meetings would continue to begin regularly at 10:00 a.m. Commissioner Ritz stated he had resolved his conflict. There was no further Board discussion.

### **ADJOURNMENT**

The Monroe County Planning Commission meeting was adjourned at 6:00 p.m.