

PLANNING COMMISSION
December 15, 2021

Meeting Minutes

The Planning Commission of Monroe County conducted a hybrid virtual and in-person meeting on **Wednesday, December 15, 2021**, beginning at 10:00 a.m.

CALL TO ORDER by Chair Scarpelli

PLEDGE OF ALLEGIANCE

ROLL CALL by Ilze Aguila

PLANNING COMMISSION MEMBERS

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

STAFF

Emily Schemper, Sr. Director of Planning and Environmental Resources
Mike Roberts, Assistant Director of Environmental Resources
Mayte Santamaria, Senior Planning Policy Advisor
Bradley Stein, Development Review Manager
Matt Restaino, Senior Planner
Devin Rains, Planning and Development Permit Services Manager
Peter Morris, Assistant County Attorney
Derek Howard, Assistant County Attorney
John Wolfe, Planning Commission Counsel
Ilze Aguila, Senior Coordinator Planning Commission

COUNTY RESOLUTION 131-92 APPELLANT TO PROVIDE RECORD FOR APPEAL

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

SUBMISSION OF PROPERTY POSTING AFFIDAVITS AND PHOTOGRAPHS

Ms. Ilze Aguila confirmed receipt of all necessary paperwork.

SWEARING OF COUNTY STAFF

County staff was sworn in by Mr. John Wolfe.

CHANGES TO THE AGENDA

There were no changes to the agenda.

Chair Scarpelli announced that the Commission had received some late items and asked if they could be considered. Mr. Wolfe responded that it would need to be voted on.

Motion: Commissioner Ritz made a motion to accept and consider late-received items. Commissioner Neugent seconded the motion. Commissioner Demes voted no. The motion passed 4 to 1.

DISCLOSURE OF EX PARTE COMMUNICATIONS

Regarding Item 1, Commissioner Ritz announced that he had spoken to Mr. Don Horton six months to a year ago about this topic. Since 1994, this is probably the most talked about item in Key Largo. However, those discussions would not impact his decision today.

APPROVAL OF MINUTES

Motion: Commissioner Neugent made a motion to approve the November 15, 2021, meeting minutes. Commissioner Ritz seconded the motion. There was no opposition. The motion passed unanimously.

MEETING

AGENDA ITEMS

1. SERGIO VELIKOPOLJSKI, 180 POMPANO DRIVE, KEY LARGO, FLORIDA, MILE MARKER 104 OCEAN SIDE: A PUBLIC HEARING CONCERNING AN APPEAL, PURSUANT TO SECTION 102-185 OF THE MONROE COUNTY LAND DEVELOPMENT CODE, BY THE PROPERTY OWNER TO THE PLANNING COMMISSION CONCERNING AN ADMINISTRATIVE DECISION OF THE SENIOR DIRECTOR OF PLANNING & ENVIRONMENTAL RESOURCES DATED MARCH 10, 2021, IN WHICH THE PLANNING & ENVIRONMENTAL RESOURCES DEPARTMENT DENIED THE ASSIGNED BUILDING PERMIT APPLICATION #17305163. THE SUBJECT PROPERTY IS LEGALLY DESCRIBED AS LOT 7, BLOCK 10, ANGLERS PARK, A SUBDIVISION ACCORDING TO THE PLAT THEREOF, AS RECORDED IN PLAT BOOK 1, AT PAGE 159, OF THE PUBLIC RECORDS OF MONROE COUNTY, FLORIDA, TOGETHER WITH A PARCEL OF SUBMERGED LAND IN KEY LARGO SOUND, HAVING PROPERTY ID NUMBER 00552670-000000. (FILE 2021-059)

(10:03 a.m.) Mr. Devin Rains, Planning and Development Permit Services Manager presented the staff report. The subject property, 180 Pompano Drive is located in Angler's Park in the IS land use district with a FLUM designation of residential medium, along Adam's Cut in Key Largo. The appellant and property owner, Sergio Velikopoljski, is appealing an administrative decision by the Senior Director of Planning and Environmental Resources Department in a letter dated March 10, 2021. Building Permit Application 17305163 for a new single-family residence subject to ROGO and current Land Development Code regulations was reviewed. As provided in the letter dated March 10, 2021, the proposed site plan reflecting a partially built structure on site cannot be approved because it does not meet the current Land Development Code

implementing the adopted Comp Plan. Within the building permit application, no alterations to the existing portions of the structure and no corrections were submitted, and therefore the application was denied relating to the elements of the letter.

The basis of the appeal as stated by the appellant is that the mostly complete single-family dwelling unit complied with the code at the time it was built and there is no requirement that the properly permitted and built structure has to comply in full with the current Land Development Code. The specific issues are identified in paragraphs one through seven in reference to the letter of denial. These specific issues do not apply and will not be addressed in the appeal. This building permit that is being appealed was submitted on December 4, 2017, and would be subject to the Monroe County Code of Ordinances, Chapter 6, Building and Construction, paren (c) permit issuance, “A building permit shall only be issued if the building official finds that it is consistent with the Florida Building Code and this chapter, and is compliant with part two of this code as determined by the Planning Director.” Part two is our Land Development Code. Within the LDC Section 101-3(a), purpose, “It is the purpose of this chapter, the Land Development Regulations, to establish the standards, regulations and procedures for review and approval of all proposed development on the property in the unincorporated areas of the County and to provide a development review process that is comprehensive, consistent and efficient in the implementation of the goals, objectives and policies of the Comprehensive Plan.” LDC Section 101-4(a) applicability goes on to state, “Generally, the provisions of the Land Development Code shall apply to the unincorporated areas of Monroe County. All development of whatever type and character, whether permitted as of right or as a conditional use, shall comply with the development standards and the environmental design criteria set forth in the Comprehensive Plan and the Land Development Code. No development shall be undertaken without prior approval and issuance of a development permit under the provisions of this Land Development Code and other applicable laws and regulations. A building permit is a type of development permit.”

There are some exceptions listed. “The provision of this Land Development Code and any amendments hereto shall not affect the validity of any previously and lawfully issued and effective building permit provided that construction authorized by such permit has not been commenced prior to the effective date of any amending ordinance from and provided that construction continues without interruption until development is complete. In the event a building permit expires, then all future development shall be permitted in conformance with the requirements of the Comprehensive Plan and the Land Development Code.” Paren (4), “Except as otherwise provided, all applications for development approval filed after the date of adoption of any ordinance amending the Comp Plan or this Land Development Code shall be considered for approval under the Comprehensive Plan policies and regulations in effect at the time at which the application was found complete.” This is a building permit application from 2017.

This property does have some building permit history, in particular the current application for which the denial is being appealed. The original Building Permit is C20532 and subsequent renewal is Permit 94302471. The original permit was issued in 1986 and closed in 1987. On February 15, 1994, the BOCC adopted an ordinance amending the prior ordinance providing the BOCC authority to grant a variance to the time limitations of this ordinance with conditions, the condition being the relief granted by the variance shall be limited to a time extension not to exceed one year, and further limited to the minimum extension necessary to obviate the

demonstrated hardship. September 21, 1994, the BOCC approved a variance for the expiration of Building Permit C20532 for the subject property and in a letter from the Building Official, the property owner was informed that the permit was reactivated and of the conditions of that approval, including that all inspections be made on a timely basis under standard Building Department regulations. Those regulations referenced in the conditions of approval are in Section 6-40(e) of the Monroe County Code, and include the following exception: “Unless specified otherwise by a current valid development order, under no circumstances shall a building permit that is older than five years be renewed after it is expired. No building permit shall expire if the principal structure for which the building permit was issued has received an approved framing inspection.” The appellant will speak to this but regardless, the conditions continue. “All other development or structures shall obtain a new permit issued in compliance with the dwelling unit allocation ordinance within two years of the approved framing inspection. The work must receive either an approved final exterior inspection or a certificate of occupancy. Otherwise, the structure shall hereby be declared a nuisance and the Growth Management Director shall direct the Building Official to institute proceedings as provided by law to require completion, removal or demolition of the structure in accordance with the standard.” Mr. Rains quoted the definition of final exterior inspections and what it includes. To obtain a final exterior inspection, every aspect of the permitted exterior work shall be completed and approved in accordance with the permit drawings.

According to the County records, the last passed inspection for Building Permit 94302471 was in September of 2000 for rough plumbing. The structure was not completed, and that permit was subsequently administratively closed. Since the closure of that building permit, a new building permit application was submitted for the subject property in order to develop a single-family residential dwelling unit and compete for the ROGO allocation under the new permit. As a new building permit application, the structure is required to be reviewed based on the current Comp Plan, the LDC and requires a ROGO allocation. As indicated in the request for corrections to that building permit application of 2017, as provided in the denial letter dated March 10, 2021, the proposed site plan as submitted with the application which reflects the partially-built structure on the site did not get approved because it does not meet the current LDC and implement the adopted Comp Plan. Staff is recommending the Commission uphold the decision of the Senior Director of Planning and Environmental Resources Department of the building application denial.

Mr. Bart Smith and Mr. Don Horton represented the appellant. Mr. Horton was sworn in. Mr. Smith confirmed that the underlying issue is whether this is an application for a new permit or to complete the building under the previously-issued permit that does not expire. The County highlighted that if you’ve obtained your final exterior inspection, the permit doesn’t expire, but did not highlight the section underneath that Building Official could provide for code compliance to require you to complete it, as it has passed the final inspection. The applicant’s position is that this is an application to complete the residence and that is what the application provides. The County identified this is an application for a new building permit, though that is not what the application stated. The structure complied with the code at the time it was constructed and does not need to comply with the current code as it is a vested right, because there has been meaningful construction; i.e., more than just platting the property. As will be shown through the

photos and history of the property, this structure is not only complete but has passed its final exterior inspection, and is allowed to remain through completion.

Mr. Smith then conducted direct examination of Mr. Don Horton. Mr. Horton has a bachelor's degree in business administration with a concentration in construction management, is certified as a building, plumbing, mechanical, residential, and electrical inspector, a building plans examiner, building inspector, and building official. Although he has opted to put his floodplain certification aside, he is also licensed as a building code administrator, and a state-certified residential contractor. Currently, Mr. Horton owns two companies, Island Construction Management and D. Horton Construction. Island Construction Management helps property owners with project management, permitting and code compliance issues acting as an owner representative. The construction company builds affordable houses up to high-end homes. Mr. Horton's work in the Florida Keys began in 1977 when he starting a company called Keys Construction working from Ocean Reef to Lower Matecumbe. In 1983 he got his contractor's license and started Don Horton Construction, building homes in the Upper Keys area until going to work for Monroe County in 1990 to around 1992 as a senior plans examiner. In two years he became the assistant building official from 1992 to 1998. In 1998 to 2000 he was the building official. In 2000, he left to work for the Village of Islamorada as their building official and director of code enforcement. In 2005, he left Islamorada and started his own companies.

Mr. Horton is very familiar with this property and the history of its development, becoming very familiar during the time when he was the assistant building official during the time when the BOCC granted the variance to complete it and many others. At that time, the County was trying to purge a lot of the leftover houses from before the September 15, 1986 plan adoption. Mr. Horton was involved in preparing the initial paperwork and having it presented to the BOCC for the variance to complete the structure. The then owner, Bill Cullen, used a special inspector, Daryle Osborn of Keys Engineering, and Mr. Horton was involved with the special inspector. Most of that work related to the interior of the structure because the exterior was basically done. Mr. Horton recalled there being plumbing, mechanical and electrical inspections, but does not recall an actual certification for the framing, though all of the framing is completed. Mr. Horton reviewed the inspections that were provided. During his time at the County, there were still a lot of manual inspections taking place. The County switched into computer inspections using a proprietary computer program, resulting in glitches causing some missing permits and missing inspections. Though it's been about two years since being at the site, Mr. Horton is familiar with the property and the structure.

Mr. Smith then presented a power point while examining Mr. Horton. Mr. Horton stated that from the exterior, the structure is basically completed, including roll-down shutters for the windows and is being fairly kept up. The interior is ready for drywall, flooring, cabinets and fixtures. It wouldn't take much to be move-in ready, which means it should have already passed its framing inspection. Mr. Horton believes the final exterior inspection had been done. Mr. Horton had walked the structure and entire piece of property with Mr. Rick Griffin, approved by Mr. Rey Ortiz, in 2018. At that time there was a determination by Mr. Ortiz, the building official, who agreed the structure should be able to be completed. There were some outstanding issues related to the floodplain and Planning had issues related to setbacks, but the building official deemed it a non-substantial improvement to finish the house, that the threshold of 50

percent had been far surpassed because it only needed flooring, drywall and finishes. Mr. Smith presented interior and exterior photographs of the structure. Mr. Horton described the home as a concrete monolith. There is one area that according to the current code does not comply with the waterfront setback, and to cut that area off would be a structural modification that could create failure. Mr. Horton described the exterior structure as being complete, and the interior as ready for drywall, all of which has been done since 1999, after the variance. Mr. Smith presented the final inspection report by Daryle Osborn of Keys Engineering. Mr. Smith then presented the 1994 ordinance that allowed for the variance. Mr. Horton explained that the code states once the improved framing inspection is received, the permit never dies or expires. But then it goes on to give a timeline to finish certain things. Mr. Smith read from the document, "Unless specified otherwise by a current valid development order, under no circumstances shall a building permit that is older than five years be renewed after it is expired. No building permit shall expire after the principal structure for which the building permit was issued has received an approved framing inspection. Building permits for a structure which has received an approved framing inspection shall authorize completion of only that principal structure which has received an approved framing inspection." Mr. Horton's understanding is the structure can be completed because a final inspection by the engineer has been documented. Mr. Smith then read, "Within two years of approved framing inspection the work must receive either an approved final exterior inspection or certificate of occupancy." Mr. Horton's understanding is that the final exterior inspection would satisfy that requirement. Mr. Smith continued reading, "Otherwise, the structure shall hereby be declared a public nuisance and the Growth Management Director shall direct the Building Official to institute proceedings as required by law to require completion, removal or demolition of the structure in accordance with the standard unsafe abatement code." Mr. Horton explained that if this threshold is not met, then something else has to take place and the Growth Management Director or Building Official never moved it to the next phase, and he believes it's because it received final inspection from Keys Engineering that met the threshold in Ordinance 04-1994.

Mr. Smith asked why, once the final inspection was done, the Building Official allowed it to remain and the permit not to expire. Mr. Horton responded that the code says once you reach a certain threshold, the permit does not expire. The intent was to try to purge structures started before the Comp Plan adoption. This structure had been completed sufficient to where it was not unsafe or a nuisance, so a Building Official would not start the unsafe abatement proceedings. Mr. Smith asked if the building permit that has been applied for is for a new structure or completion of the existing structure. Mr. Horton responded that it is to complete what is there, and the work left to be completed has been deemed not substantial by the Building Official based on a site visit. It only makes sense that the permit for completion of the structure should be granted. This would be a non-substantial improvement to a nonconforming structure and should be allowed to be completed. This structure can easily be certified to meet 200 mph winds. There are things that can be done to allow it to further comply with floodplain management issues if that's a problem, but the main issue is setbacks. It was built the way it was originally permitted and meets those setbacks.

Mr. Smith summarized that this is a home that obtained a variance that allowed for the completion of the structure. There were issues with permits being lost or not being turned in. The fact remains that this structure has gotten to the last step, the final inspection, and that was

turned in. The exterior will remain as being completed. This permit has been vested under the prior codes and has taken meaningful steps to be developed far beyond almost any property in existence. There is no precedence being set. We have a builder that builds homes and wants to complete this property as originally intended. If it cannot be completed it will be demolished, which would be a travesty considering the amount of work that's gone into this. The Planning Commission is the ultimate decider. There is no deference given to staff, and that is factually inaccurate. In 2018, the Constitution of the State of Florida would remove deference, and the deference that was given prior to that was to the administrative agency. The administrative agency is actually the Planning Commission, not the staff. The Planning Commission can decide whether this property has met the requirements to be completed and the permits have not expired. It is the right decision.

Mr. Derek Howard then conducted cross-examination of Mr. Horton, eliciting that Mr. Horton does not have a planning degree. This is a non-conforming improvement, which is regulated in the floodplain regulations, though it is termed substantial damage improvement. Mr. Howard read the Land Development Code Section 102-57(e)(1), "Where a non-conforming structure is voluntarily abandoned for 18 consecutive months, then the structure shall be demolished, removed, or converted to a conforming structure." Mr. Horton agreed that more than 18 months had passed since any work was done on the structure, but stated that work cannot take place without a building permit, which was applied for in 2017 and still not yet granted. It would be a violation of the code if work had taken place. Mr. Howard asked if the work could not be done under the prior permit because that permit had expired. Mr. Horton explained that the prior owner, Mr. Cullen, had passed away around 2015, and it took a while for his daughter to get ownership of the house. She wanted to complete the house, had the plans drawn up with minor interior modifications which required amending the building permit. That application was filed in 2017, and that is what is being appealed here is the denial of the 2017 application. Mr. Horton agreed that he does not recall seeing the final framing inspection, only an approved final inspection report by the special inspector on the project, which is what is normally accepted as an inspection. Mr. Howard confirmed that Mr. Horton did not have proof that the report was accepted by the County. Mr. Howard stated that the fact that there is an existing inspection report does not necessarily mean approval was granted. Mr. Horton stated that it would have been accepted and approved if it was certified by an engineer or special inspector. Mr. Howard asked if submitted reports are always approved. Mr. Horton responded that it is extremely rare for a structural engineer's reports and certifications to be questioned. There would need to be some outstanding reason. Mr. Horton does not ever recall denying a special inspector's report. Mr. Horton does not recall seeing a certificate of occupancy, and does not know whether the prior owner or current owner ever filed for a determination of vested rights. The prior owner had been granted a variance by the BOCC in 1994. Ordinance 004-1994 amended Section 640 of the Monroe County Code and provided, "The relief granted by the variance shall be limited to a time extension not to exceed one year, and shall be further limited to the minimum extension necessary to obviate the demonstrated hardship." Mr. Horton stated there were inconsistencies throughout that ordinance. That portion says it's limited to one year, but another portion says if you receive a certain inspection, the permit never dies. Then another section says if you have a final exterior inspection, your permit didn't expire and you have a certain length of time to finish the structure.

Mr. Howard asked where it says a permit that's been issued never dies. Mr. Horton pointed to page four or five of a prior exhibit and read, "Unless specified otherwise by a current valid development order, under no circumstances shall a building permit that is older than five years be renewed after it has expired. No building permit shall expire after the principal structure for which the building permit was issued has received an approved framing inspection." Mr. Howard asked if anything was being required by flood to make corrections or modifications to the plans. Mr. Horton responded that there were comments from the floodplain managers about the enclosure being too large. The enclosure can be modified if necessary to meet the current code. There was an electrical panel below base flood elevation that can be relocated at or above the design flood or the base flood elevation. There's a cistern on the property that is a functioning cistern and that would be difficult because it is structurally part of the house. A hydraulic engineer could probably certify that it wouldn't create a wave deflection or ramping or adverse condition to that particular property. Mr. Howard asked if a final exterior inspection means the completion of all work related to the exterior footprint of the structure, including but not limited to all exterior finishes, enclosures, porches, patios, screened areas, walkways, driveways, landscaping, stormwater management, etc. Mr. Horton agreed. Mr. Howard asked if Mr. Horton was with the Building Department during a controversy regarding building permits issued to Hemisphere Equity Realty around 1992, 1993; and if the County has, in the past, also made determinations that developments that were not timely completed within two years that the permit expired. Mr. Horton stated he did not recall that. There were a lot of changes going on before the enactment of ROGO, and the County was trying to purge a lot of structures that were partially completed. Several ordinances were passed leading up to 004-1994. Mr. Howard reiterated that the County has taken the position before, that projects not timely completed, and that permits do not remain open indefinitely. Mr. Horton agreed.

Mr. Smith then conducted redirect examination. There was discussion of the inspection report filed by the engineer and it was confirmed that Mr. Horton was familiar with the private provider statute, that if an inspection report is turned in and the Building Official does not object to it, it is deemed approved. In this case, the inspection was filed, Mr. Horton was the Building Official at that time, and he did not object to that inspection report, so it would then be deemed accepted. Mr. Horton confirmed that unsafe structures are not typically structures that have passed their framing and final inspection, and he would deem this a safe structure. Mr. Smith again requested the Commission allow this minor work inside the structure to be completed.

Chair Scarpelli then asked for public comment. There was none. Public comment was closed.

Commissioner Wiatt referenced line 205 of the staff report indicating a past inspection for rough plumbing that was performed on or about September 2000, and asked if there was a copy of that report or if Mr. Horton had any memory of that. That is six years after the permit was issued. If the permit is only good for five years as the County claims, why is a rough plumbing inspection being passed six years later. Mr. Horton recalled several extensions that had been allowed and available to everyone that had active building permits, and also recalled that particular permit getting those extensions, which should be in the inspection report. Ms. Schemper interjected that the inspection report by Daryl Osborn was actually a final roof inspection, and logged into the computer system on 12/30/99. For the final exterior inspection, everything under the sun has to

be done, including landscaping. Mr. Smith stated that exterior landscaping is not required for a residential home, and the roof is the last inspection.

Commissioner Ritz stated he is familiar with this property, that this structure was there in the early nineties and he remembers it well. The structure has looked similar since 1999, and has been described by almost everyone as a concrete fortress. This structure and the one on Craig Key were the ones everyone wanted to know about. This has been there a long time, the neighbors have lived with it for 20 years, and it does look like it's finished from the outside. Commissioner Ritz asked if there had been any damage after Hurricane Irma. Mr. Horton responded that the only damage was to the property itself, not the structure. Commissioner Ritz stated that this structure was not going anywhere, so if the only cure is to tear it down and get a new permit and build something new to meet current setbacks, that seems like an excessive cure to a problem. Ms. Schemper interjected that the 2017 permit applied for was as a new permit, not a completion, and it failed the floodplain review five times. It did finally get approved stating it includes demolition, substantial improvement, to meet the current floodplain regulations. Corrections were submitted to comply with that, and the only enclosure allowed downstairs is the elevator shaft itself. It will be a substantial improvement to what is already there, and everything on the ground floor will need to be demoed except the elevator shaft. So the structure is not being kept as is, according to these notes. Mr. Horton responded that to complete the actual structure would not be a substantial improvement. That was a decision made by Rey Ortiz with Rick Griffin. Removing the downstairs enclosure area to bring it into compliance with floodplain wouldn't render it a substantial improvement. Ms. Schemper said she did not know the answer to that, the calculations, or what engineering is required.

The applicant, contractor/builder, Mr. Sergio Velikopoljski, after being sworn in, stated he is a State of Florida certified general contractor and he purchased this property. All of the walls on the ground level are what floodplain wanted removed, and those are breakaway walls. It is very simple to remove them. They do not add anything to the structural integrity of the house and are not attached to the columns. This would not be a substantial improvement and could be done in a couple of days. Chair Scarpelli stated that the question is whether the County is deeming this to be a substantial improvement. Ms. Schemper did not believe that to be the question, rather that this discussion is going far down the path from should the permit have expired. She had sent an email to Mr. Horton in January of 2021, explaining the County's position on the 1994 ordinance that this permit had expired. There was a stop work order placed in 2006, and this is being considered a new permit. There was never any appeal of that email or that decision. Review of the 2017 permit was clearly a review as a new permit. A different agent on the permit at the time of application stated this structure could be made to meet the current code, so they had been told that it needed to meet the current code in terms of the shoreline setbacks. It did not meet one of the side setbacks. The canal side shoreline setback on the old plans showed 22 feet, and it's built only at 18. Ms. Schemper confirmed with both Mr. Horton and Mr. Velikopoljski that before denying the permit they had wanted her to deny the permit and not keep failing it and asking for corrections. All of the stuff about when it expired and the ordinances of the past were not part of the review. This was a review of a new building permit as if it was a vacant lot.

Mr. Smith stated it was his understanding this was an amendment to an existing permit through this application. The prior permit has not expired and they are applying for an amendment for

work to be done inside. The applicant has agreed to remove those walls as part of this amendment to the permit, though he is not required to. It is not a substantial permit and there is no record evidence otherwise. Mr. Smith is requesting the Commission approve that the prior permit has not expired and this is an amendment to the permit, which is what was appealed. Mr. Velikopoljski added that every department has approved the permit processing except for the Planning Department and this is the only issue remaining.

Commissioner Demes confirmed with Ms. Schemper that someone had acknowledged that a new permit was applied for, which is a huge point for him. Ms. Schemper added that they had applied for a ROGO permit with the understanding it must go through ROGO, implying it was a vacant lot, not something before ROGO started. Commissioner Demes stated that he can't believe that to make changes to the building to meet the setbacks, the building could collapse. With the level of engineering that went into this house structurally, he does not believe a retrofit could not be designed. Mr. Horton responded that one of the columns that support all the way up to and including the pool would have to be removed. This porch does protrude into the now-required 20-foot setback of the canal, but before September 15 of 1986, setbacks were measured to the walls of the structures, not the overhangs, so that's why there's a four-foot difference in that setback. There are a lot of existing houses that are not conforming to setbacks because the overhangs protrude into them.

Commissioner Ritz asked if there was some other problem other than meeting the setbacks. Ms. Schemper responded that the final fail is all about shoreline setbacks on both sides. Ms. Schemper also read some of the notes included in the Building Department file which indicated they were also looking at this as a new structure and having to meet the current code.

Commissioner Wiatt stated that he agrees this is an issue of the permit, and it may sound ridiculous, but the Building Department did inspections on a permit that was supposed to be expired after five years. They set precedent that they were not considering this permit to be expired at six years, yet the County is saying the permit expired in five. That seems to be the only thing to hang your hat on. This is a mess and he's grasping at straws, but that seems to be the only straw they've got. Ms. Schemper stated that in September of 2000, they passed rough plumbing, and that is the last passed inspection in the system. The computer system does not automatically expire permits. Someone has to manually go in and expire the permit. In March of 2006, there was a stop work order and the note is, "Last inspection, September 8, 2000," and that's when the permit was closed. Commissioner Wiatt acknowledged that he's grasping at straws to try to give some level of relief to this mess. If the County performed or approved an inspection after the five years that the permit should have terminated, then there's precedent that the permit was in fact at least viable until September of 2000. So then the question becomes, why was it viable until September of 2000 if you're saying it's only a five-year permit? Mr. Smith responded that he is trying to be practical, that the applicant wants to complete the home and there's not much to do.

Commissioner Demes reiterated that Ms. Schemper had stated that relief was granted for the five years. Mr. Smith responded that there is nothing in the file documenting that. Commissioner Demes understands there are a lot of assumptions being made, but as to the setbacks, he is not convinced that they can't be met structurally. Commissioner Demes asked Mr. Howard if there

was anything he had heard today that would change his recommendation for the outcome of this. Mr. Howard responded that there was not. The 1994 ordinance could not be made anymore clear. A variance is capped at one year. And the exception of amended Section 640-E is not at all ambiguous. It says, within two years of the approved framing inspection, the work must receive either an approved final exterior inspection or a certificate of occupancy. There is nothing in the system that indicates that they received the final framing inspection approval, or approval for a final exterior inspection. The engineer's report only relates to roofing. This permit was issued to a prior owner, and the new owner took ownership of the property knowing its history. They did apply for a new permit because they're going through the ROGO process. The constitutional amendment that Mr. Smith has argued only applies to state statutes and rules being interpreted by state courts and officers, and not to local government interpretation of county-level ordinances or regulations. As to the argument that this is a nonconforming structure, the County Code is clear that nonconforming structures that have been abandoned for 15 months must be demolished, or completed, or brought to code. This was clearly abandoned.

Mr. Smith addressed the requirement after 15 months and what occurs when it's not completed. The requirement is that the Building Official, which at the time was Mr. Horton, is required to seek enforcement to either have the structure completed, removed or demolished. There has never been that enforcement. This applicant is trying to complete it, one of the three options, by requesting the Commission find that the permit is not expired so the structure can be completed. The exterior is done, the interior is not a substantial modification, and the walls are not a substantial improvement. Chair Scarpelli asked if that is what is being appealed here. Mr. Smith clarified that he was appealing the decision that the prior permit had expired and that the code sections for the prior permit apply. The staff report is not his appeal. Ms. Schemper asked if Mr. Smith was requesting that the Building Official not consider it a new permit as well. Mr. Smith responded that they are requesting modification to the permit. The applicant, in discussions with the Building Official, agreed to the modifications. It's not his obligation, but he's agreed to it.

Mr. Peter Morris interjected that the letter that was appealed, the operative text is bolded at the bottom just above Ms. Schemper's signature which simply states, "Therefore, the Planning and Environmental Resources Department has denied the assigned building permit application number 17305163, consistent with the foregoing." Mr. Smith stated that they had appealed that and the decision that it was denied because it doesn't meet the setbacks. The applicant's position is that it does not have to meet the current setbacks because it is vested under the prior code. If the Planning Commission determines it was vested under the prior code, the structure can be completed because that's the only part that it's failed. Mr. Howard added that the applicant is coming in here and skirting the process. The code allows an owner who feels they are vested from new regulations to make an application for a determination of vested rights, which they never did. Mr. Smith fundamentally disagreed adding that the permit actually applied for was not for a new structure. Mr. Howard continued that they could only be exempt from the regulations that the Department is now imposing if they established that they had vested rights, but they never did that. Mr. Smith then presented the permit under detailed scope of work, "Complete single-family residence according to original expired permit 94-302471." That's the permit that was denied. An application to complete it under the permit they are claiming is expired.

Commissioner Neugent asked if there was a reluctance to compel these folks to tear this building down if there is justification to take that position, and if there would be any ramifications with the flood insurance program if some justification were found to not compel them to demo the structure. Ms. Schemper responded that it's her understanding they are compliant with flood, so it shouldn't affect flood. The ramifications of letting them build this noncompliant with the shoreline setback is it's not compliant with the code and Comp Plan, and those regulations are put into place for protecting the waters, overwater views, being careful with runoff, things like that. This is very close to the open water shoreline. There is no seawall retaining anything back. It's an open-water shoreline into the sound. The setbacks have been changed over the years to offer more protection. The original plans had a 20-foot setback, and in the 2017 plans it's only 17.8 in one location, which may have to do with roof overhang. On the open water side, it's actually only 15 feet away, and that's very close. Mr. Smith interjected that the submitted survey shows it at 20 feet away. Mr. Velikopoljski added that it does have the 20 feet, and the new regulations are at 30 feet. Ms. Schemper agreed. Mr. Velikopoljski added that it is only a small section of the canal side that encroaches into the setback. Mr. Smith reiterated that the request is for the Commission to overturn the denial of the application to complete the residence according to the original expired permits, and that the denial was solely due to the setbacks.

Commissioner Demes stated he does not think it's all or nothing. Understanding that it's a new owner, and the due diligence, and the permit extensions, he also recognizes the liabilities of having something fester for 20 years which should have never happened. He believes the setbacks could be met.

Commissioner Wiatt said that the applicant and appellant called the permit expired in the application so there is no way to now say the permit still has somehow survived when the applicant admits it expired. Mr. Smith clarified that that was how it was identified by the County, not the applicant.

Commissioner Ritz added that he first thought the same thing, but then realized they are appealing what the County is saying is an expired permit. It's a very convoluted case. The neighbors have been asking for decades, when is this going to be done. The owner is finally going to do something and he believes he should be encouraged to do something. When the home was completed, it was in compliance with the setbacks. The applicant has said he would remove the downstairs walls to help with the flood issue. To do anything but overturn the denial is unreasonable.

Chair Scarpelli asked what the grounds were to overturn the denial. Mr. Smith responded that the permit hasn't expired. Chair Scarpelli stated there was no final framing inspection. Mr. Smith stated that he had provided evidence that it has met all the requirements and inspections had been lost. Chair Scarpelli thought the '94 code was clear that a permit shall not expire for a principal structure for which a building permit was issued that has received an approved framing inspection, and he does not see that. Mr. Smith stated that there are many permits that don't have all inspections in the file.

Commissioner Neugent stated that he knew Bill Cullen and he died rather suddenly, and the family has to have settlement of the estate, et cetera, which creates problems where nothing took place in the interim.

Chair Scarpelli asked if the house was in compliance with setbacks when the variance was granted in '94. Ms. Schemper responded that she honestly could not tell if the house was built to plan or not on the canal side. Mr. Velikopoljski responded that the setbacks used to be measured to the wall, and now it's a little ledge. On the canal side, it's only the ledge that is going into the setback. The house is still within the setback. Mr. Raines interjected that in 1998, they received a revision to change the plan that was approved in '94 from a 2,824 square foot single-family residence to a 3,547 square foot single-family residence. That revision would have been reviewed and approved for the codes that applied at that time, so the date would be 1998 for that application for revision, and it would be the plans under that 1998 revision that would be used. Mr. Velikopoljski stated that it's built to plans within the setback as shown by the surveys.

Commissioner Wiatt reiterated that the only grounds the applicant has is the fact that the County accepted an inspection in September of 2000, and by doing that, acknowledged that the permit did not expire in the five years, though it is incredibly weak.

Commissioner Ritz made a motion for the Planning Commission overturn the denial that is solely based on the setbacks. Commissioner Neugent seconded the motion for discussion. Mr. Wolfe confirmed that Commissioner Ritz was including in his motion that the permit was not expired.

Motion: Commissioner Ritz made a motion to overturn the denial. Commissioner Wiatt seconded the motion.

Roll Call: Commissioner Demes, No; Commissioner Wiatt, Yes; Commissioner Neugent, Yes; Commissioner Ritz, Yes; Chair Scarpelli, No. The motion passed 3 to 2.

2. SANDY SPRUNT WILDLIFE AREA, VACANT PROPERTY ALONG OVERSEAS HIGHWAY, KEY LARGO, MILE MARKER 94: A PUBLIC HEARING CONCERNING A REQUEST FOR A VARIANCE OF THIRTY-TWO (32) FEET TO THE ACCESS STANDARDS SET FORTH IN CHAPTER 114, ARTICLE VII OF THE MONROE COUNTY LAND DEVELOPMENT CODE (LDC). APPROVAL WOULD RESULT IN ONE ACCESS DRIVE TO U.S. 1 ON THE SUBJECT PROPERTY THAT WOULD BE SPACED 368 FEET FROM THE NEAREST ACCESS FROM THE SOUTH. THE VARIANCE IS REQUESTED IN ORDER TO PROVIDE A PARKING AREA AND A PAVILION, FOR A DAY USE PARK ON THE SUBJECT PROPERTY. THE SUBJECT PROPERTY IS DESCRIBED AS A PARCEL OF LAND IN SECTION 23, TOWNSHIP 62 SOUTH, RANGE 38 EAST, ON KEY LARGO, MONROE COUNTY, FLORIDA, HAVING PARCEL ID NUMBER 00089000-000000. (FILE 2021-211)

(11:53 a.m.) Mr. Bradley Stein, Planning and Development Review Manager, presented the staff report. The applicant is requesting a variance to access standards set forth in Chapter 114, Article VII of the Land Development Code. The applicant is the State of Florida, with Agent Kristen Nowicki of WGI, Inc. The property is located in Key Largo at mile marker 94. The

nearest perpendicular road is Dove Avenue to the south. Sandy Sprunt is a natural area currently accessible to pedestrian traffic. It has a mixed land use zoning of SC and NA, a mixed FLUM of Mixed Use Commercial and Residential Conservation. It is Tier I natural area. The specific variance requested is a relaxation of Section 114-195 which requires any direct access to U.S. 1 by way of a curb cut to be spaced at least 400 feet from any other curb cut for this class of road. The applicant is requesting a variance of 32 feet, which would be 368 feet to the nearest access to the south. The diagram presented showed the distance to the nearest curb cut at 368 feet, and to the nearest road at 522 feet. Mr. Stein presented the site plan showing five regular parking spaces and one ADA space, an area for an information kiosk and an area for a pavilion. All requirements pursuant to Section 102-187 have been met. Staff is recommending approval. Some public comment had been received this morning that staff has not had a chance to fully review. However, this item is specifically for the Sandy Sprunt natural area and this access drive. The agent actually spoke with Susan and Donna Sprunt, who is the daughter and wife of Sandy Sprunt who the wildlife area is named after.

Chair Scarpelli then asked for public comment.

Dr. Henry Feddern, having a PhD in marine biology and theology from University of Miami, is an advisory panel member of the South Atlantic Fishery Management Council, and has lived on Dove Creek since the mid 1980s. He has no objection to a small parking and area and pavilion in this area since the land is already disturbed due to a prior nursery operation, but would object to any future plans to disturb the mangrove area or allow access to Dove Creek. There is already sufficient kayak access to the creek via rentals at the creek's outlet. Most of the upper creek and the sound are already barred to motorized access. Mr. Feddern had heard there was a plan to create an elevated walkway/boardwalk at the rock pit at about the 93.5 mile marker. He sees no problem in using the already disturbed area except that some of it is being used as mitigation. Since the area is already a wildlife environmental area, he strongly objects to any future fishing, concessionaire development or disturbance of the habitat. Dove Creek and Dove Sound have developed a viable ecosystem including stony corals, turtle grass, tarpon, snappers and shrimp. It consists of a large nursery area for important fishery stocks and wading birds. There has been a confirmed sighting of a saltwater crocodile. He has also seen turtles, snook and manatees in the area. Any disturbance of the creek or sound would involve many jurisdictions. Strong regulation and enforcement to prevent littering need to accompany these proposals.

Ms. Gail Feddern, a retired marine live fisherman, lives at 156 Dove Avenue in Tavernier. She has been a long-time residence of the Keys since the mid seventies. Ms. Feddern's house is located on the northwest point of Dove Creek and the dead-end canal. The two proposed County parks will greatly impact her and her neighbors as they bracket the entire Dove Creek Estates development. Her property would be impacted the most as it is the first house encountered going south on the creek, and is right next door to the Sandy Sprunt property. Ms. Feddern's objections are increased traffic on Dove Creek causing noise from voices, music and jet skis, and the pollution. The bottom of the canal consists of two inches of muck and four inches of beer cans. Jet skis and boat wakes wash out the seawall. She has spent \$10,000 to repair it. Late County Commissioner Nelson posted signs restricting wakes and motorized access to Dove Sound so the problem was solved but not in time to save her seawall from years of damage. Overnight fishermen and campers illegally trample on FWC-protected land which brackets the

east end of the dead-end canal. FWC planted native trees there. Overnighters ignore the no-trespassing signs, have uprooted young trees on the point across from her house to make themselves more comfortable, and they take away her privacy. Overnighters and day trippers increase the risk of thefts. Even without access to these parks, people will find ways to get to Dove Creek and Dove Sound and will blaze trails if necessary. The only way to stop them is to surround properties with fences without a gate to the water. Even so, she is afraid that future County Commissions might make it water accessible by adding gates. The much more useful thing to do which would make everyone happy would be to make the Tea Table Fills in Lower Matecumbe into a real park with two much-needed boat launching ramps constructed of concrete, a public bathroom, and a toll-taker's guard house. She would hate for these parks to be ruined like another park meant for neighborhood residents that was taken over and trashed by day trippers from Miami-Dade because the latter need a boat-launching ramp in the Keys. Please forget about creating new County parks in areas where the neighbors don't want them and give us boat launching ramps that everybody needs. Ms. Feddern asked if these were County or State parks. Mr. Stein responded that this is a State park. Ms. Feddern noted then, that it was to generate more revenue.

Mr. Morris interjected that there is no right to cross-examine the professional staff in an application. Mr. Wolfe also reminded everyone that while these are legitimate concerns, the only item before the Commission today is whether to grant the additional access point off the highway. Ms. Schemper confirmed that to be correct, adding that this is a preapproval to put the driveway in that location. The applicant will then have to apply for a permit to actually make the parking area. Today's decision will not approve the park or parking area.

Mr. Tim Maloney and Mr. Mark A. Payakovich were sworn in. Mr. Maloney thanked the Commission for accepting their late-submitted exhibits. He had received a letter about three weeks prior and that was all they had to react to this. The neighborhood is asking the Commission to hold off for a little while until they can gather more information. Mr. Maloney asked to see the shared map or accommodation map. This is going to put another situation on a high-speed area of U.S. 1 where the same state trooper sits at the old Red Cross building all the time. To come out of the neighborhood, residents use that area to make a U-turn to go south because coming out of Dove Avenue you cannot go straight across. There is nothing on the survey showing the nature trail, and he is concerned with how close that trail will come to Dove Avenue. Mr. Maloney asked who he should talk to and when, to make sure his questions get into the right hands. There are people saying they don't want the park, but he only wants to make sure the people on Dove Avenue are protected. Everyone found out about the area where the Rock Quarry is and that is on the agenda today, which is why everyone is up in arms asking about that, and all three of those maps are on the agenda. He is concerned about where people can gain access to Dove Lake on the other side, and his canal leads into that. Direction on who he should talk to about this would be appreciated.

Chair Scarpelli asked Ms. Schemper if a park is an as-of-right use for this area. Ms. Schemper confirmed this to be correct and believes this is already considered a park but doesn't have any improvements. Accessory improvements to the park are being proposed, and that can be done just with building permit approval so there is no additional step for a public hearing. Ms.

Schemper can give contact information for the people involved with the State. Commissioner Ritz also suggested contacting Jim Mooney, their state representative.

Mr. Mark A. Payakovich stated that Mr. Maloney covered everything, but he wants to know what the master plan is and that's why he's here. He's been a resident for 33 years.

Mr. Brad Stein interjected that on the first page of the application, there are email addresses for the agent and FWC, Katherine Bruce for FWS, and Kristen Nowicki with WGI. Ms. Schemper also clarified that the contact information is in the link on the agenda called "file."

Mr. Mike Burchill of Peace Avenue stated that he is concerned about the tremendous amount of traffic in this area and the curb cut. (Poor internet connection.) He believes this will cause a tremendous amount of accidents. He has personally come out of there many times and almost gotten waxed by a bicycle or other vehicles when they slam on their brakes trying to turn into the other areas and do U-turns. A highway study should be done before creating another curb cut.

Ms. Marcie Gonzalez of Peace Avenue believes allowing this variance will set precedence for future construction at this location. She is extremely concerned about increased traffic, increased noise by jet skis and kayakers, more pollution, and the obvious interference with wildlife. She has seen manatees, turtles, fish and coral in the canal and surrounding area. Overnighters and visitors will further affect safety. Her home was broken into two years ago.

Ms. Maria Gonzalez of Peace Avenue asked why an exception is being made for this shortened curb cut which will cause all this traffic. She wants to protect the nature that's already there.

Ms. Marcia Gonzolez asked if all of the trees would be removed to make room for the parking lot and the pavilions. She does not understand this and it shows no care for the environment or surrounding habitat or the neighbors.

Ms. Maria Gonzalez added that the mangroves need to be protected as they protect against hurricanes.

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

Commissioner Ritz stated he was very familiar with the site and he shares the neighbors' concerns. Since this is a state park, this Commission is only talking about the curb cut which is supposed to be 400 feet, and this is requesting 368, which is close to 400. Chair Scarpelli thought with the speed limit being 50 mph, the 35 feet wouldn't really make a difference. Commissioner Ritz agreed that anyone would have to be crazy to speed in that area because there is an officer out there running radar almost every day. He doesn't see an issue with the curb cut so he would make a motion to support staff's recommendation.

Ms. Schemper added for the benefit of the public that the reason for the variance is not because they don't have the distance to put the curb cut at 400 feet, but that they would have to cut down more trees to put it at 400 feet. By pulling it back a little bit, they are trying to preserve some of the existing vegetation there.

Chair Scarpelli stated that the FWC is trying to make this park more for the community and the public should contact them and give input. Additionally, the state is highly regulative of their parks.

Commissioner Demes asked if this is considered a new access to U.S. 1 and whether it would require an FDOT permit. Mr. Stein responded that it would.

Commissioner Wiatt was concerned that the nuisance and safety issue was being discounted and asked what review staff had conducted regarding the safety, health and public nuisance issues such as the U-turn. Mr. Stein responded that this is for a passive recreational use with five regular and one ADA parking space, a kiosk and small pavilion. In that area, staff does not have to review a traffic study, just a traffic statement. This is well under the required amount for a traffic study in that area because it has adequate capacity. Mr. Stein does not believe there would be a safety concern and the amount of traffic would be minimal.

Chair Scarpelli added that if people are seeing overnight campers in this area, they should call FWC and they will be glad to go out there and take care of any type of person that's not supposed to be there outside of designated park hours.

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

3. 26 EVERGREEN TERRACE, KEY HAVEN, MILE MARKER 6: A PUBLIC HEARING CONCERNING A REQUEST FOR A VARIANCE OF 10 FEET TO THE REQUIRED 15-FOOT SECONDARY FRONT YARD, NON-SHORELINE SETBACK, WHICH IS ADJACENT TO THE NORTHWESTERN PROPERTY LINE/EVERGREEN AVENUE RIGHT-OF-WAY. APPROVAL WOULD RESULT IN A SETBACK OF 5 FEET. THE REQUESTED VARIANCE IS REQUIRED FOR THE DEVELOPMENT OF A PROPOSED PRIVATE SWIMMING POOL. THE SUBJECT PROPERTY IS LEGALLY DESCRIBED AS LOT 13, IN BLOCK 4, OF KEY HAVEN – TENTH ADDITION, ACCORDING TO THE MAP OR PLAT THEREOF, AS RECORDED IN PLAT BOOK 5, PAGE 114, OF THE PUBLIC RECORDS OF MONROE COUNTY, FLORIDA, MONROE COUNTY, FLORIDA, HAVING REAL ESTATE NUMBER 00140410-000000. (FILE 2021-106)

(12:27 p.m.) Mr. Matt Restaino, Senior Planner presented the staff report. The applicants are requesting a variance to allow for construction of a private swimming pool on their property. Mr. Restaino presented a site plan showing the location of the proposed pool. The property is located within the IS district and developed with one single-family residence. There is an existing fence and landscaping that will help screen the pool from view of neighboring properties. The applicant is requesting approval of a variance of 10 feet from the required 15 foot secondary front yard setback along the northwestern property line adjacent to Evergreen Avenue right-of-way. As a result, the secondary front yard setback along Evergreen Avenue would be five feet. The Commission can grant the variance with or without conditions, providing the applicant demonstrates all standards are meant. The applicant has demonstrated compliance with all eight criteria. Staff found prior Planning Commission variance approvals for

swimming pools in Key Haven, and this variance is consistent in scope and kind with the prior approvals. Staff recommends approval.

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

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

Commissioner Ritz stated that he has a code and his attorneys have advised that he not participate in any of the discussions involving Item 4. So he will go sit in the audience for the next item.

Chair Scarpelli also announced that there will be no public comment on this item as it is a presentation being given, not a public hearing.

Mr. Wolfe confirmed that the last three items concluded the hearings for today, and this is just a staff presentation as stated by Chair Scarpelli.

4. STAFF PRESENTATION REGARDING THE "DECEMBER 1985 HABITAT CLASSIFICATION AERIAL PHOTOGRAPHS," USED BY THE COUNTY AS A GENERAL GUIDE TO HABITAT CHARACTERISTICS, SUPPLEMENTED BY RECENT AERIAL PHOTOGRAPHY AND EXISTING SITE ANALYSIS TO DETERMINE ANY INCREASES AND/OR LOSSES IN THE AMOUNT OF UPLAND NATIVE VEGETATION, AS REQUESTED BY THE PLANNING COMMISSION AT THEIR APRIL 28, 2021 MEETING.

(12:32 p.m.) Ms. Mayte Santamaria, Senior Planning Policy Advisor, gave the staff presentation responding to the request for additional information by the Commissioners back in April of this year when the Planning Commission was presented with two proposed amendments updating Chapter 114 and Chapter 118 of the Land Development Code. At that time, Commissioner Ritz had suggested additional changes not included in the package related to changing the date of the existing conditions maps or 1985 baseline maps. At that time, it was not included in the amendments and the BOCC has already approved that and it is effective at this point. But the Planning Commissioners still asked during board discussion that information be provided on how to amend it if there is going to be a future amendment.

The item discussed was specifically about Land Development Code Section 118-9, and Policy 205.2.12 of the Comprehensive Plan. Ms. Santamaria read the policy. "Monroe County shall use the December 1985 Habitat Classification Aerial Photographs as a general guide to habitat characteristics supplemented by recent aerial photography and existing site analysis to determine any increases and/or losses in the amount of upland native vegetative areas. The County Biologist shall review the best available data for the review of habitat areas." As discussed back in April, the existing maps today are the baseline maps, and those are supplemented with any additional information on the subject property to evaluate it for clearing limits and unlawful activity.

Specifically to answer the question of how to make the amendments, the process would entail a staff report outlining the basis, the purpose, the reason, and the data and analysis that is causing the amendment, and addressing if it's internally consistent as well as meeting any state statute or rule requirements. It would then go through the normal process of a community meeting, a DRC meeting, a Planning Commission meeting, a BOCC transmittal hearing for the Comprehensive Plan, and a review by the State including ten or eleven State agencies, an issuance of a report by the State, County review of that report and any adjustments related to it, and a BOCC adoption hearing both for a Comprehensive Plan amendment and a Code amendment, and then a State Land Planning Agency Compliance Review for those amendments. On average, it takes about 12 to 18 months to process both types of amendments.

While the preceding information was explaining how to do an amendment, staff does not recommend any particular changes, as stated back in April and continues to state today. The purpose of those maps is to establish a baseline and they were based on very specific requirements with the adoptions and creations of Comprehensive Plans for the County.

Specifically, statutes require that all amendments be based on data and analysis, that they are relevant and react appropriately to any data and analysis. Currently, there is no new information that would suggest that this requires a change. Statutes also state that we need to conserve and protect our natural resources and provide very specific standards on maintaining, restoring and enhancing the quality of our resources. Overall, the designation as an Area of Critical State Concern does not suggest that removing information would be beneficial in the review of clearing limits or potentially unlawful activities.

Going back at least from 1979 when the Keys were designated as an Area of Critical State Concern, one of the main reasons was to protect significant environmental and natural resources that were not only of importance to the Keys but regionally and state wide, and the state documented lots of concerns related to unregulated land clearing and not protecting the valuable resources that establish our community and our economy, and that support our way of life in the Keys.

The maps that are in question today or that were discussed in April and that staff is responding to were first developed in 1985. It was a requirement based on the 1985 Growth Management Act where the County and all other jurisdictions had to develop and adopt their first Comprehensive Plans, and there were specific statutes, rules, state and regional plans that they had to be compliant with. Additionally for the Keys, because we were an Area of Critical State Concern, we also had to comply with those provisions as well. So with the 1986 plan, the County took it upon itself to develop the data necessary to establish and delineate where the existing habitats were so that we knew what needed to be protected. Those maps were done by the Planning staff, and were extensively checked and ground truthed in terms of trying to outline the habitats correctly on those original maps. The whole basis was that the 1986 plan wanted to restrict the clearing of upland vegetation of the Florida Keys.

Ms. Santamaria presented policies from 1986 that showed all the different direction that the Board from that time had carried forward through today in terms of protecting valuable resources and restricting the clearing of those resources, and providing mechanisms to review that standard

and providing any guidance for code compliance if there is any unlawful activity in the future that is discovered. It continued on with the 1986 Land Development Code, and in that code itself, it stated that the maps could be refined, but only to reflect the Commissions legally in existence on February 28, 1986. In terms of reviewing archives and files, there really have not been many changes at all because the maps were extensively reviewed and ground truthed in terms of establishing that baseline information.

It carried forward the use of these baseline maps with the 2010 Comprehensive Plan, and that 2010 Comprehensive Plan was the subject of lots of litigation, including various settlement agreements, to come to the conclusion to find the plan in compliance. Part of the settlement agreement establishing the 2010 Comp Plan and the steps required to get to compliance was that the base map data would have to be used and mapped and updated, if it needed any updating, that the County must direct growth away from environmentally sensitive areas, and that we had to include adequate standards for the protection of natural resources. Ms. Santamaria presented on the screen, Policy 205.2.7 and Policy 205.2.12 that tried to mirror and carry forward the protections for upland habitat, including the continued use of the 1985 habitat maps that would be supplemented with additional information.

Based on the information, with all of the information provided, changing the habitat maps from 1985 to 2018 does not appear consistent with the purpose and intent of the Area of Critical State Concern designation, the overall Comprehensive Plan and Policies, and the vision that the County Commission has set based on public comment and vision for protecting that habitat, nor does it appear consistent with Florida Statutes and rules that dictate that we're supposed to protect that habitat. Additionally, changing the habitat maps to 2018 does not appear to be based on any specific data and analysis, changed assumptions, new issues or updates for data errors because, again, that 1985 information is supplemented with additional information and we have not had any mentions of things that would trigger change to that baseline use. In terms of changing the maps to 2018, it seems to eliminate the existing consistent manner that we've utilized for over thirty years of looking at that original map and supplementing it with lots of other information including, if we have it, site-specific analysis for property.

In terms of someone stating that it might be old data that is resolved as data is always supplemented with whatever information can be found. There are numerous years of aerials. There is a 2009 habitat layer. Staff typically gets existing conditions reports and site analyses for projects that are proposing development in upland habitat areas. In many cases, older plans have some sort of documentation from a biologist of what was on that site. We continue to supplement that with whatever information we have so that we can make the best determination of what has occurred on that property both for increases and losses of upland native habitat.

Lastly, staff does not recommend for it because it communicates a meaning that is contrary to what we have believed has been the County's position, the Board's position, and the community's priority in terms of protecting natural resources that are not only of local significance but of regional and national significance to the Florida Keys. Simply as a review of the older maps as an example, an excerpt of the 1985 baseline maps have been provided, side by side, with the 2009 habitat layer that was done separately and delineated by a separate entity looking at the characteristics of aerials as well as ground truthing certain areas and doing field

verification. Seen side by side, the habitats have been delineated quite well since 1985. There have been very little changes and when there are changes, we do outline them. In the green little circles, these are areas that match exactly what the 1985 maps had. The orange actually match as well, they're just not habitat layers. They are undeveloped land or disturbed land, but this shows that they also matches with what the old maps had. Where a change has occurred, you can see the yellow box. The maps have been fairly close in terms of the delineation of information. If there are updates such as the 2009 habitat layer, we use that information as well in terms of doing our evaluations.

With that, staff has provided the information of how to do an amendment, as well as the information on why we think it's not a good plan to try to change that information and showing examples of how these are a resource and a baseline used for making determinations in review of improvements as well as in review of code compliance issues.

Chair Scarpelli thanked Ms. Santamaria for all of the hard work she had put into this. Mr. Wolfe made a procedural comment that this had come about at the impetus of Commissioner Ritz' request, but because no single Commissioner can have the staff go off on things, the whole Commission discussed it and it was a consensus that staff make this analysis. There were no questions for Ms. Santamaria.

Commissioner Neugent also thanked staff for putting this together, adding that it was very informative, detailed and educational as to establishing the baseline and when it was established, et cetera. However, he had thought this was going to go before the BOCC to be reviewed. He has talked to the BOCC about this and they have received a lot of phone calls about what they think is an onerous application, without taking into consideration what Mr. Morris has said about a four-year statute of limitations on enforcing certain things. Commissioner Neugent is not referring to egregious actions by the citizenry as far as doing some clearing. We all know people take advantage of a situation after a storm event to clear properties, et cetera. Commissioner Neugent has had requests from three BOCC Commissioners to have this forwarded to them, and he is requesting this be forwarded to them for review. Ms. Schemper confirmed that Commissioner Neugent meant that this also be presented to the BOCC. Commissioner Neugent clarified that the BOCC want to address the '85 baseline and how it is applied without taking into consideration a statute of limitations. If a violation is discovered, violations run with the land and residential properties that have been sold where other residents have purchased this property unknowingly, the BOCC has been getting calls from people who feel like the application of the penalty part of this for those who have purchased properties unknowingly, that this has been applied to them. Ms. Schemper noted that the statute of limitations is outside of the Planning Department so Code Compliance would need to be pulled in with this.

Mr. Peter Morris interjected that it has been a recent experience that enterprising property owners have said their counsel have been utilizing these kinds of colloquies that seem to eclipse the guardrails of the subject matter of the item as sort of a listening post to try and preclude the department from asserting its independent discretion and judgment in specific disputes. Mr. Morris is advising the professional staff to be very mindful and be careful to stay on the straight and narrow and not veer too much into the world of Code Enforcement and litigation as opposed to this provision of the environmental side of the Land Development Code.

Mr. Wolfe added that one or more of the BOCC Commissioners should request that this be presented to them, and they can clarify exactly what they want presented. They can delve into other jurisdictional areas like the statute of limitations and so forth which have nothing to do with Planning, but the request has to come from the BOCC. Just as the request to put this together came from the Planning Commissioners to the staff, now the BOCC has to ask the staff to maybe present the same thing to them.

Commissioner Neugent responded that he thought this was always going to go to the BOCC to make a final determination on this, and he was then advised it was not. No public input is being taken on this issue here, though it is on the agenda and is public information. At the County Commission level, he is sure there will be public input on it. Commissioner Wolfe understands, but clarified that what was requested was the rationale of why we're using 1985 maps, and that's what the staff put together. Staff was not directed to actually make any changes, and are recommending against it. If they were going to propose changes, there would have been a public hearing and the whole process. Mr. Wolfe is confident the BOCC will request this and whatever else they want.

BOARD DISCUSSION

Commissioner Demes wanted to note that when the two late pieces of information were handed to the Commission and voted on, the Commission went quickly from a second of the motion to a vote. One of the things he would ask in the future is whether the person making the submittal is present or not. Dr. Feddern read everything that he handed the Commission, and Commissioner Demes looks at things differently if information only gets to the Commission to look at, but in this case the presenters were here and went over everything they submitted.

Mr. Wolfe added that next time, before voting, maybe to make a pause to hear if anybody wants discussion.

ADJOURNMENT

The Monroe County Planning Commission meeting was adjourned at 1:00 p.m.