

PLANNING COMMISSION

**April 30, 2014**

Meeting Minutes

The Planning Commission of Monroe County conducted a meeting on **Wednesday, April 30, 2014**, beginning at 10:02 a.m. at the Marathon Government Center, 2798 Overseas Highway, Marathon, Florida.

**CALL TO ORDER**

**PLEDGE OF ALLEGIANCE**

**ROLL CALL** by Gail Creech

**PLANNING COMMISSION MEMBERS**

William Wiatt, Chair	Present
Jeb Hale, Vice Chair	Present
Elizabeth Lustberg	Present
Ron Miller	Present
Denise Werling	Present
Ron Demes, Ex-Officio Member, NAS-Key West	Present

**STAFF**

Townsley Schwab, Senior Director of Planning and Environmental Resources	Present
Steve Williams, Assistant County Attorney	Present
John Wolfe, Planning Commission Counsel	Present
Mayte Santamaria, Assistant Director of Planning and Environmental Resources	Present
Joe Haberman, Planning & Development Review Manager	Present
Mitch Harvey, Comp Plan Manager	Present
Mike Roberts, Sr. Administrator, Environmental Resources	Present
Rey Ortiz, Planning & Biological Plans Examiner Supervisor	Present
Barbara Bauman, Planner	Present
Karl Bursa, Planner	Present
Gail Creech, Planning Commission Coordinator	Present

**COUNTY RESOLUTION 131-91 APPELLANT TO PROVIDE RECORD FOR APPEAL**

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

**SUBMISSION OF PROPERTY POSTING AFFIDAVITS AND PHOTOGRAPHS**

Gail Creech confirmed receipt of all necessary paperwork.

**SWEARING OF COUNTY STAFF**

County staff members were sworn in by Mr. Wolfe.

## **CHANGES TO THE AGENDA**

Ms. Creech stated it was requested that Item 6 be continued to May 28, 2014 and Item 5 will be heard first. **Motion: Commissioner Werling made a motion to continue Item 6 to May 28, 2014. Vice Chair Hale seconded the motion. There was no opposition. The motion passed unanimously.**

## **APPROVAL OF MINUTES**

**Motion: Commissioner Lustberg made a motion to approve the minutes of the March 26, 2014 meeting. Commissioner Werling seconded the motion. There was no opposition. The motion passed unanimously.**

## **MEETING**

### **New Items:**

**5.811 South Jade Drive, Key Largo, approximate mile marker 97.5:** A public hearing concerning a request for a Variance of four (4) feet from the required five (5) foot side yard non-shoreline setback, which is adjacent to the southeastern property line. Approval would result in a setback of one (1) foot. The requested variance is required for the development of a proposed platform lift allowing access to the existing elevated residence. The subject property is legally described as Lot 811, Silver Shore Mobile Home Park, said Lot 811 comprising a portion of Tract 1 of Lime Grove Estates Property in Sections 12 and 13, Township 62 South, Range 38 East (Plat Book 5, Page 52), Key Largo, Monroe County, Florida, having real estate number 0048652.013300.  
(File 2014-035)

(10:05 a.m.) Ms. Bauman presented the staff report. Ms. Bauman reported that this is a request for a special accessible setback variance in the Silver Shores Mobile Home Park. The lots are all symmetrical and 50 feet wide. This is a request for a four-foot variance from the five-foot side yard setback along the northeastern property line to install a platform lift. The applicant states that the platform lift is necessary for medical purposes due to physical disabilities. The resulting setback is one foot. Pictures of the property were shown. Staff recommended approval and Ms. Bauman believes all the requirements needed for a special accessibility variance have been met.

Commissioner Miller asked about the alternate placement of the lift on the south side. Ms. Bauman explained either side would require a variance, but the alternate placement on the south side would give them access to a sliding glass door rather than their front door. Staff has received no comments from any surrounding property owners.

Martha Cederberg, the applicant, was sworn in by Mr. Wolfe. Ms. Cederberg stated the reason the north side was chosen is because it is the least obtrusive for the neighbors. The landscaping on that side hides the elevator.

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

**Motion: Commissioner Werling made a motion to approve. Vice Chair Hale seconded the motion. There was no opposition. The motion passed unanimously.**

**1.95231 Overseas Highway, Key Largo, mile marker 95:** A request for approval of a major conditional use permit in order to develop the subject property with a new antenna-supporting structure. The subject property is legally described as Block 4, Lots 1, 2, 27 and 28, Revised Plat of Sunrise Point subdivision (Plat Book 3, Page 11), having real estate number 00484790.000000.  
(File 2013-144)

(10:11 a.m.) Mr. Ortiz presented the staff report. Mr. Ortiz reported that the applicant is asking to install a 130-foot tall cell phone tower. The proposal meets the required setbacks and meets the criteria outlined in the code. After going to the Development Review Committee (DRC) revisions to drawings were submitted that met the concerns of the DRC. Staff recommended approval with recommendations. Those recommendations were then outlined.

Commissioner Miller asked for the background on the alternative locations looked at by the applicant. Mr. Ortiz deferred that question to the applicant. Commissioner Miller noted that this parcel abuts a heavily wooded lot. Mr. Ortiz clarified that the IS lot to the rear of this parcel is not part of the application.

Lauralee Westine, Esq., was present on behalf of the applicant. Ms. Westine stated the applicant agrees to all of the conditions outlined by staff. This project is for a 130-foot monopole. Ms. Westine described the parcel. Ms. Westine explained the compound is going to be L-shaped consisting of 1908 square feet which will be surrounded by an eight-foot wooden fence with the required landscape buffer around it. The pole is designed to hold five antenna arrays. The two interested carriers are AT&T and Verizon. The applicant has received their FAA determination of no hazard to air navigation. No lighting is required. This pole has been designed with a 30-foot collapse point. The traffic study determined there is no traffic impact. There is no sewer or water impact. Residential development is not being increased. This will be an unmanned site. The proposed development is well within the 20 percent open space and well below the FAR allowed on this site. All setbacks are met. The closest residents to this site are 491 feet from the tower. Commissioner Miller disagreed with that distance cited. Ms. Westine will have the applicant's surveyor check that measurement. Ms. Westine added that all landscaping and buffering requirements will be met and then described the proposed landscaping. Letters have been sent to DEO and the surrounding property owners. Ms. Westine's office received only one call from a seasonal resident who was pleased to know the tower was coming. The applicant has met with the Tavernier Community Association and answered several of their questions. Ms. Westine has received a letter from the Harry Harris Park Neighborhood Association, located at Mile Marker 92, who support the tower.

Ms. Westine addressed the alternative sites. Ms. Westine stated Verizon's two closest towers are about three to four miles away in each direction from the proposed site. AT&T has met their requirement of providing documentation showing that there is a deficiency of coverage in the area. One alternate site's zoning further south of this parcel does not allow towers. Commissioner Miller noted there is a site that currently is 1.8 miles south that currently has a

tower on it. Ms. Westine responded that if AT&T or Verizon could put their antennas on that property, they would have. Ms. Westine pointed out that the proposed tower is designed for 140-mile-an-hour winds.

Chair Wiatt asked for public comment.

Omar Gadalla, neighbor, was sworn in by Mr. Wolfe. Mr. Gadalla mentioned he is a professional engineer with over 15 years' experience in the environmental field. Mr. Gadalla has reviewed the documents and finds them extremely concerning. Mr. Gadalla stated there is a lack of due diligence when it comes to notifying the direct public associated with this neighborhood. This tower is going to decrease the value of homes in this area and by code the applicant is required to address that and has not. There is no community impact statement. A letter from the applicant demonstrating alternative locations, configurations and that facility types have been examined and addressed has not been submitted. Mr. Gadalla emphasized the houses affected by this proposal are closer than 491 feet. No notice was sent to any of the residents affected by this development. Mr. Gadalla pointed out that the public meeting held was with a different community in a different municipality. Mr. Gadalla explained how Sections 110-67(2), 110-67(3) and 110-67(4) of the Monroe County Code have not been fulfilled. Mr. Gadalla believes this conditional use permit is not about public safety, as the permit states, but is about putting up a piece of property that can be rented out to make money. Mr. Gadalla noted that no tower from Key Largo down to Marathon directly abuts a residential area. Mr. Gadalla asked the Commissioners for protection for his neighborhood.

Danny Redruello, neighbor, was sworn in by Mr. Wolfe. Mr. Redruello stated the first house behind the heavily wooded area described is 60 feet away from this site and each lot in the neighborhood is 60 feet wide.

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

Mr. Williams read aloud Section 110-67(4) of the Monroe County Code. Commissioner Miller believes the Commissioners need to consider the fact that this could devalue the residential properties in this area. Mr. Miller wants to see the alternative locations fleshed out and this item continued until there is a better picture of where alternative locations are and what can be done in the area that might be more acceptable. Ms. Westine had no objection to that request. Ms. Westine requested a continuance. Mr. Wolfe suggested how much time needed to address the concerns raised be discussed. Chair Wiatt is also concerned that multiple locations have not been looked at. Commissioner Werling stated a collocation would be most preferable. Ms. Westine replied that the AT&T engineer provided an affidavit stating that all the existing towers in the area have been looked at for that purpose. Commissioner Werling believes some type of discussion with the more immediate property owners needs to be held. Commissioner Hale asked about the existence of a community impact statement. Ms. Westine explained she perceives her 13-page letter describing how the applicant has met the code and each criteria as her community impact statement, but Ms. Westine will provide a document entitled "Community Impact Statement" before the next meeting. Chair Wiatt summarized the three things the Commission is asking for are the impact statement, the review of alternative locations and some appraisal of property value. Ms. Westine stated she will have a local realtor familiar with the

area provide testimony regarding property values. Ms. Westine asked for a continuance of 60 days. Ms. Creech stated the meeting in 60 days would be June 25, 2014.

**Motion: Commissioner Miller made a motion to continue this item to the June 25, 2014 meeting. Commissioner Werling seconded the motion. There was no opposition. The motion passed unanimously.**

**2.Key West Harbour Yacht Club, 6000 Peninsular Avenue, Stock Island, Mile Marker 5:**

A request for approval of an amendment to the major conditional use permit memorialized by Planning Commission Resolution #P11-07, in order to allow the redevelopment of an existing boat barn to a hotel consisting of 74 transient residential units, 2,500 square feet of hotel office space, and a 2,000 square foot conference room. The subject property is located on lots 5, 6 and 7, Square 61, Maloney Subdivision, and parcels of land within Section 35/36, Township 67, Range 25, Stock Island, Monroe County, Florida, having Real Estate #(s) 00127474-000128, 00127475-000132, 00127480-000000, and parent Real Estate #(s) 00127471 and 00127477.

(File #2012-132)

(10:43 a.m.) Mr. Haberman presented the staff report. Mr. Haberman reported that in 2006 a previous property owner applied for a development at this site. It previously had been used as a working marina and they redeveloped it into three large boat barns with some wet storage around the basin with some other types of uses consistent with that marina. At this point the applicant is not looking to redevelop the site as a whole, but is looking to replace the smallest boat barn with a hotel, 74 transient units. The applicant's earlier plan submitted showed a lesser number of transient units, but after the DRC meeting they modified their plans and increased it from 34 to 74. The applicant proposes to redevelop the area around the hotel with parking and some different site modifications, such as turning an accessory clubhouse into a restaurant to fulfill that required component of a hotel. Staff recommended approval of the project with conditions.

Mr. Haberman outlined and explained the conditions. The first condition is prior to the issuance of a resolution approving the application the applicant shall submit a stormwater management plan that meets code that contains maps, charts, et cetera, and any additional information deemed necessary by the Planning Director. The stormwater management plan must be sealed by an engineer registered in the state with experience in stormwater management and drainage design. Next, prior to the issuance of a resolution approving the application the applicant shall submit a landscape plan for the site showing compliance with the required landscaping for both existing and proposed development and all parking throughout the site. Prior to the issuance of a certificate of occupancy for the hotel all required landscaping shall be formally approved by a building permit, planted and pass a final inspection by a County biologist or his or her designee. Next, prior to the issuance of any building permit involving the hotel building the applicant shall either: A, successfully transfer 74 transient ROGO exemptions from eligible off-site locations to the subject property via the transfer of ROGO exemption TRE process; B, successfully be awarded 74 transient ROGO exemptions via the ROGO permit allocation system (there is currently a moratorium prohibiting such awards); or C, a combination of A and B. The ROGO exemptions associated with the 50 transient live-aboard vessels shall not be transferred upland to be developed as transient dwelling units. Mr. Haberman reminded the Commissioners that at the next BOCC meeting the Board will be considering extending the transient moratorium to 2021,

which is almost beyond the ROGO allocation current horizon. The purpose of this condition is the applicant has the rights to 50 live-aboard slips, which under code are considered subject to ROGO, and they want to use those towards the hotel. ROGO exemptions cannot be converted from one type to the other because they all impact hurricane evacuation differently and are all defined differently. Staff does not support the applicant's proposed changes to the ROGO exemptions.

Mr. Haberman further outlined the conditions. The next condition is following the issuance of a minor conditional use permit approving the transfer of 74 TREs to the subject property and prior to the issuance of a building permit approving the 74 hotel rooms derived from the 74 transient or transferred TREs, the appropriate number of live-aboard vessel slips shall be converted to standard wet slips in order for the property to meet the cumulative land use intensity requirements. The next condition, which is standard, is a major conditional use permit is not a final approval for certain development and the applicant shall obtain a building permit for any improvement requiring such approval. Next, again standard, prior to the issuance of building permits new development and structures shall be found in compliance by the Monroe County Building Department, Flood Plain Administrator and Office of the Fire Marshal. Next, prior to the issuance of any building permits the applicant shall submit a hurricane contingency plan for the marina approved by the Planning and Environmental Resources Department, which is required by the comp plan. Next, areas approved as accessory to the hotel and marina, including but not limited to the ship store, clubhouse, pool bar and hotel office space may only be utilized by occupants of the hotel and members of the marina. Conversion of such areas to another use shall require additional approvals, if allowed. Next, prior to the issuance of a certificate of occupancy for the hotel the applicant shall collaborate with the County Attorney to develop a public waterfront access point. This is a carryover condition from the last approval, and Mr. Haberman recommended replacing "County Attorney" with "the Planning and Environmental Resources Department." Next, the boat barns may be used for storage of boats and associated equipment. Retail sales will not be allowed within the boat barns without the applicant going through the appropriate amendment process or deviation process. The final condition is the proposed architectural style and design of the hotel building as illustrated in the proposed floor plans, building elevations and renderings included in the application has been reviewed and conceptually approved by this major conditional use permit. Any modifications shall be reviewed by the Planning and Environmental Resources Department for consistency with this approval. Any minor modification of consistent design shall be approved administratively as a minor deviation by the Senior Director of Planning and Environmental Resources. Any modification that does not utilize consistent design as determined by the Senior Director of Planning and Environmental Resources shall be approved as a major deviation falling under review by the Planning Commission.

Upon questioning by Mr. Williams, Mr. Haberman testified his job title for the last four years is Planning and Development Review Manager, but it was a reclassified position and he has had the same responsibilities for six or seven years. Mr. Haberman has been with Monroe County as a planner since December of 2005. Mr. Haberman has a Bachelor's in urban planning from the University of Cincinnati and a Master's in planning from the University of Louisville. Mr. Haberman is an accredited planner through the AICP. Mr. Haberman testified given his

education and experience, he would recommend approval with the conditions as written, specifically Item 9, but any deviations to the amendment may change his recommendations.

Commissioner Miller asked if a DRC meeting has occurred since receiving the new revisions. Mr. Haberman explained the DRC closed the matter, but the revisions since then do not change the proposal and use, but only change the number of units. The density and the permitted use section allows 74 units at the site. Chair Wiatt pointed out that a 74-unit hotel would likely attract some customers that will show up with boats on boat trailers and there is nothing on the site plan for boat and boat trailer parking. Mr. Haberman deferred that comment to the applicant, but noted the previous approval included a parking variance that waived that trailer parking because at that time they were proposing to put the trailers in the boat barn in the lower areas, not outdoors. Commissioner Miller pointed out Judy Clarke's comments on Page 9 stating that the traffic study did not include the proposed Oceanside Marina redevelopment as a committed project in its calculations and Ms. Clarke is concerned about the lack of analysis of local roadways in the area. Mr. Haberman responded that there has been no more analysis done. Mr. Haberman pointed out this application came in before the Oceanside application originally, but the fact that changes have been made after Oceanside was approved is something to consider whether the Commission wants to require the applicant's traffic study to show that project.

Owen Trepanier, present on behalf of the applicant, was sworn in by Mr. Wolfe. Mr. Trepanier stated there is agreement that the redevelopment project to the hotel is in full compliance with the land development regulations and the comprehensive plan. The applicant agrees with the conditions recommended by staff with the exception of the property owner's rights to redevelop existing ROGO exempt transient dwelling units. Mr. Trepanier explained in 2006 when this project started with the prior owner there was a letter of development rights determination (LDRD) where the County identified 50 transient live-aboard vessels, and they identified those as ROGO exempt transient dwelling units that count for upland density. The 1993 Monroe County Marina Survey identified within the LDRD stated there were in place 55 transient live-aboard slips, 50 of which were occupied on that day. In the LDRD the Director at that time would only agree to the 50 slips that were occupied at the time the survey occurred. That LDRD led to the proposed project which exists today that was approved in 2007 with a resolution which identified the 50 live-aboards as ROGO exempt transient dwelling units that count as upland density. The 2012 DRC staff report again confirms the 50 units. Mr. Trepanier stated they are identified as dwelling units because under Section 138-19 it expressly includes live-aboard vessels. Mr. Trepanier disagreed with staff's statement in the DRC staff report that the redevelopment of these particular lawfully established transient dwelling units is not permitted by the land development regulations. Mr. Trepanier finds that to be a confusing statement because the land development regulations and the comp plan both allow it because they define live-aboard vessels as dwelling units and specifically permit the redevelopment of dwelling units on site.

Commissioner Miller asked for a copy of the DRC staff report to be able to follow along with what Mr. Trepanier is saying. Mr. Trepanier addressed the traffic issues while copies of the report were made. Mr. Trepanier said the applicant complies with the code and will be happy to provide any other information the County Engineer would request. Mr. Trepanier explained to Chair Wiatt that when people come to the marina with a trailer they will rack the trailers in the

boat barns. Mr. Trepanier asked the applicant, Jon Finstrom, to address the question regarding the staging areas. Mr. Wolfe was not present to swear the witness. A brief recess was held from 11:18 a.m. to 11:26 a.m. while copies of the DRC staff report were made.

Mr. Trepanier then directed the Commissioners to Page 8 of 15 at the top where it states, “The applicant may wish to maintain all 50 live-aboard vessels due to staff’s interpretation that the ROGO exemptions associated with the 34 existing live-aboard vessels cannot be utilized for the upland hotel.” Mr. Trepanier pointed out that the land development code nor the comp plan prohibit this, but only staff’s interpretation prohibits this. Mr. Trepanier stated staff’s language in the staff report that conversion of live-aboard vessel slips to upland dwelling units is not permitted by the Land Development Code or the comp plan is patently untrue and is based on the DRC’s step beyond the code and their interpretation of what the intent of the BOCC is. Mr. Trepanier asked the Commissioners to amend Condition Number 3 to not only allow, but require this property to move the live-aboards ashore and be used as hotel rooms. The applicant agrees with staff’s proposed condition to forbid any further live-aboard use on this property. The current live-aboard slips will become recreational slips, forbidding anybody to stay on their boat more than three days. Mr. Trepanier asked James Hendrick to address the live-aboard units being redeveloped on a site under the existing code.

Mr. Hendrick was sworn in by Mr. Wolfe. Mr. Hendrick submitted a copy of his curriculum vitae. Mr. Hendrick explained that the Commissioners received the history of the Faro Blanco redevelopment of 2005, 2006. Faro Blanco had property on both sides of the highway. On the Atlantic side they had a live-aboard community, which was destroyed as a result of a hurricane. They proposed to move those ROGO exemptions that were attributed to those houseboats across the highway to the Faro Blanco upland portion. At that time the County’s staff report stated, “Applicant is entitled to ROGO exemptions for the Boot Key Marina houseboat transient units because they were lawfully established more than 20 years ago. Further, they are hotel rooms and live-aboards, both of which are recognized as residential dwelling units entitled to an exemption under ROGO.” Mr. Hendrick stated the precedent is identical to the current situation. There is now pending a proposed amendment to the LDRs that would eliminate use of ROGO exemptions from live-aboards for upland development. Mr. Hendrick provided long-established authority for the principle that enactment of an amendment implies a change in the existing rule. The fact that an amendment to the LDRs is being proposed to close the door to future use of this process implies that the door is now open. Mr. Hendrick concluded that when the new LDR becomes law, then staff will be correct, but until then the applicant is entitled to utilize the process that currently exists and established by precedent.

Vice Chair Hale pointed out that the Faro Blanco redevelopment was a prior existing resort and they were houseboats. Mr. Trepanier proposed a revision to the last sentence of Condition Number 3 to read, “C, or utilize a combination of A and/or B and the 50 ROGO exempt transient units currently existing on site in the form of transient live-aboards pursuant to Monroe County Code Section 138-22(1).” Mr. Trepanier quoted a special magistrate from a case in Key West: “Just because staff says it’s so doesn’t make it so.”

Mr. Haberman clarified that a DRC staff report is written by a staff planner to the Director of Planning and to the DRC. It is not from the DRC and is not from the Director of Planning. It is



crystal clear that the Planning Director has the authority to interpret the comprehensive plan, the Land Development Code and the maps associated with them. Mr. Haberman further clarified that the text amendment that was mentioned was not initiated by staff, but by a private applicant. Mr. Haberman noted that Marathon does not have the same code as the County. The example given of Faro Blanco did not involve Monroe County.

Ms. Santamaria stated Page 9 of 12 of the LDRD discussed says, "A live-aboard vessel may only be replaced by another live-aboard vessel and, therefore, cannot be transferred upland." It has been a continuing interpretation by both Planning staff, the Planning Commission and the BOCC in terms of converting units. Ms. Santamaria further clarified that the Faro Blanco project involved live-aboard vessels that were houseboats that did not move. After that time the City of Marathon tried again through an applicant to try to transfer wet slips specifically with live-aboards. That was challenged and an administrative law judge recommended denial of that. It went to the Governor and Cabinet sitting as The Florida Land and Water Adjudicatory Commission and they denied the request stating the LDRs and comp plan do not allow wet slips and vessels to be transferred upland. Upon questioning by Mr. Williams, Ms. Santamaria provided her history of working for the Department of Community Affairs and Department of Environmental Protection. Ms. Santamaria joined the County as the Assistant Planning Director in March 2011 and has a Bachelor's degree in zoology and wildlife ecology and conservation and a Master's in business.

Chair Wiatt asked for public comment.

Bart Smith, Esquire, was present on behalf of Oceanside Investors, LLC, the neighboring property. Mr. Smith submitted a hard copy of the Banana Bay ruling that goes to the attempt to move live-aboards upland. Mr. Wolfe noted the submission is coming in after the five-day rule. Commissioner Miller would like to review both submissions from today, but will not have time.

**Motion: Vice Chair Hale made a motion to deny the late submissions.** Mr. Haberman explained the 63-page submission by the applicant was part of the file and it was staff that was unable to get it to the Commissioners. Commissioner Lustberg proposed using the submission from Mr. Smith for purposes of following along, but not to accept the whole document as something analyzed for this meeting. **Vice Chair Hale amended his motion to state that Mr. Smith's submission not be included in the record, but only used for purposes of his presentation. Commissioner Werling seconded the motion. There was no opposition. The motion passed unanimously.**

Mr. Smith stated Oceanside Investors are directly affected by what occurs next door to it. Oceanside Investors objects to transferring the live-aboards from the water to the upland and does not believe the code supports this. Mr. Smith clarified that the application that is being applied to revise the ROGO exemption is a clarification of what the ROGO exemptions are and what they can and cannot do. The ROGO section defines all different types of residential dwelling units that can be a ROGO exemption as of July 1, 1992 if they were in existence, but that does not mean one can replace the other. Mr. Smith differentiated the Faro Blanco project as involving houseboats that do not have an engine and are not capable of navigation. Those specific houseboats were used as hotel rooms and were transiently leased. Mr. Smith described

the progression of the Banana Bay case. Mr. Smith requested that the Commissioners support staff's conditions, specifically Condition 3. Mr. Smith clarified for Commissioner Miller there are transient residential dwelling units, there are permanent market rate residential dwelling units and live-aboards, and all three types have different effects on hurricane evacuation.

Pritam Singh, member of Oceanside Investors, stated the proposed project is a good project, but takes issue with converting a live-aboard vessel into an upland unit. Mr. Singh asked Ms. Santamaria about Rebecca Jetton's opinion of this proposal. Ms. Santamaria replied that Ms. Jetton is supportive of the staff conditions within the staff report. Mr. Singh countered that just because Mr. Trepanier and Mr. Hendrick say it's so doesn't make it so. Mr. Singh believes this is a clever attempt of the applicants to avoid dealing with the proper ROGOs and moving them and purchasing them as appropriate. Mr. Singh strongly urged the Commissioners to approve the project with the staff recommendations exactly as written.

Mr. Trepanier emphasized the applicant is taking lawfully established transient dwelling units and redeveloping them as transient dwelling units. Mr. Hendrick clarified that Banana Bay had wet slips and were trying to use the precedent established with Faro Blanco, which was inappropriate. Mr. Hendrick stated houseboats, live-aboards and hotel units are all residential units entitled to exemption and the other issues are distinctions without a difference for the purpose of this proposal.

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

Commissioner Miller voiced a continued concern with the traffic analysis. Mr. Haberman explained the Commissioners can add a condition that the applicant has to revise the traffic study to be approved by Public Works. Mr. Haberman believes Ms. Clarke's comments regarding levels of service relate to Maloney Avenue, and the study could be revised to show that Maloney Avenue would meet adequate levels of service as determined by a transportation engineer to the satisfaction of Planning and Public Works. Commissioner Miller asked about the public access point proposed as part of the previous major conditional use permit that was never completed. Mr. Haberman explained the site was previously redeveloped. There was a mangrove area people had been using as a de facto dinghy dock for all the live-aboards that are out in the channel there. What the County wanted to do was not require, but look at the possibility of putting some kind of access point there. Chair Wiatt commented that at a minimum staff ought to revisit parking based on the different uses now regarding boats on trailers. Mr. Haberman pointed out that the applicant meets the code as far as parking. Mr. Schwab stated the code does not address the boat trailer parking functionality, but believes staff needs to evaluate this based on this new type of function. Mr. Haberman corrected his prior statements and stated the level of service is in the code and is in the comp plan that the applicant has to maintain a level of service of D on all County roads. Chair Wiatt would like the traffic study for this project to take into consideration Oceanside.

Commissioner Lustberg pointed out that while she does not argue this project meets Criteria Number 1, the proposed development takes a water dependent use and changes it to a water enhanced use. Commissioner Lustberg does not believe this project meets Number 8 or Number 9. Under Number 8, the requirement for public access was not done. Commissioner Lustberg

believes public access to the water should be thought of as broader than a walkway or a public ramp that is owned by the County. Under Number 9, the project does not comply with all additional standards imposed on it by the land development regulations. The ROGO for the transients is not in compliance. Commissioner Lustberg further stated the minimum yards are not clearly met. Number 16 under Condition Number 9 has reduced the number of car parking in order to accommodate scooters instead. Mr. Haberman clarified that there is compliance to be determined when it relates to the building because full construction-ready building plans are not asked for as part of the conditional use phase. The other compliance to be determined are not so much for the Commission, but to put the applicant on notice that they are going to have to do those things. The standards of the shoreline setback can be waived as part of the conditional use approval if they have a water monitoring plan approved by the County biologist. Although staff has severe reservations of what is being proposed in terms of live-aboards, staff still recommends approval because if this is approved today with these conditions, when the applicant comes in for building permits their building permit will be denied because they did not have the TREs.

Commissioner Lustberg made some proposals for alterations to the conditions. Condition 9 would be changed to say, "Prior to the issuance of a certificate of occupancy for the hotel the applicant shall have developed an open or public waterfront access point approved by staff." A condition would be added that says, "Prior to the issuance of a resolution approving the application the applicant shall show that the shoreline setbacks comply with County code." Condition Number 13 should be worded appropriately by staff to address the parking space issues. Mr. Haberman suggested the change to Condition 9 be made consistent with Oceanside to say public access is going to be open to a degree, such as a gated front that will be open from dawn to dusk or something of that nature. Commissioner Lustberg stated staff could work with the applicant in that regard. Mr. Haberman clarified that this carryover condition regarding water access had nothing to do with what was happening on the site at that time, but was intended to be north of the site, and the reason it was not required was because what was proposed was on County right-of-way at that time. Mr. Haberman explained the condition regarding shoreline setback compliance would require moving all of the parking in the shoreline setback that was previously allowed under a special exception. Mr. Haberman suggested that condition apply to new development. Mr. Haberman also pointed out that parking and water-dependent things are allowed in the shoreline setback if the applicant performs water-monitoring. Commissioner Lustberg suggested staff phrase the condition to indicate before things move forward that the applicant can clearly demonstrate that the shoreline is protected. Mr. Haberman explained their site plan is clear about what they are proposing in the shoreline setback, but it cannot be approved by right.

Mr. Demes commented that a military installation area of impact has been developed, which this particular project is in. Mr. Demes is concerned about this development's compatibility. Mr. Demes wishes this developer would have met with NAS-Key West before this meeting to cover the military's concerns. Mr. Demes would have like to have received disclosure statements. This site is mostly in the 70 and above DNL range. The Navy has no recommendation other than approval of the recommendations 3 and 4. Having dealt with the DEO closely over the last few years, Mr. Demes believes there is strong opposition to transferring the live-aboard rights ashore and the Navy is very supportive of the adversity to doing that. Mr. Demes once again asked for

disclosure statements to ensure that the noise level reduction criteria is consistent with the noise contour in which the units are built.

Commissioner Werling noted she agrees with the recommendations that staff made and is not comfortable changing any of the verbiage the applicant has requested. Mr. Wolfe asked for clarification from Mr. Demes regarding noise attenuation. Mr. Demes recommended for all new development using the indoor noise level reduction of at least 25DB in DNL 65 to 69, noise level reduction of 30DB should be incorporated in DNL 70 to 74, as well as at least 35 DB should be incorporated in DNL 75 to 79. Commissioner Miller questioned why this major conditional use should be approved without knowing where the ROGOs would come from. Mr. Haberman replied that usually at this stage it is not known where they are coming from because the steps of negotiating those rights is not begun until there is a conditional use in hand. The applicant has three years to find them and transfer them once the conditional use is approved.

Mr. Wolfe advised Chair Wiatt to proceed first by seeing if there is consensus among the Commissioners with respect to the existing conditions, with the exception of Condition 9, and then going additional condition by additional condition because of the wordsmithing that will be required. Mr. Williams cautioned the Commissioners in creating their conditions to not impose a condition of the applicant that is not already existing.

There was consensus among the Commissioners to accept staff's recommendations, adding Mr. Demes' recommendation for noise level attenuation for all new development as Condition Number 12, incorporating the Oceanside development in any traffic studies with this development prior to the application of the building permit as Condition 13, and requiring five spaces for boat trailer parking with a minimum size of 14-by-55 feet be provided at the time of the site plan submission prior to the signing of a development order as Condition 14.

**Motion: Commissioner Lustberg made a motion to approve the conditional use with all of staff's conditions, including staff's change to Condition Number 9 as discussed today, and the addition of Mr. Demes' condition as worded as Condition 12, a traffic study including Oceanside prior to the issuance of a building permit related to the hotel as Condition 13, and the parking for boat trailers as Condition 14. Commissioner Werling seconded the motion. The roll was called with the following results: Commissioner Lustberg, No; Vice Chair Hale, Yes; Commissioner Miller, Yes; Commissioner Werling, Yes; and Chair Wiatt, Yes. The motion passed four to one.**

**3. Key Largo Hospitality Land Trust, 97450 Overseas Highway, Key Largo, Approximate Mile Marker 97:** A request for a time extension to the major conditional use permit approved by Planning Commission Resolution #P40-07, for property at 97450 Overseas Highway in Key Largo. The site is legally described as Tract 4-B and Tract 5-B and Adjacent Bay Bottom, Amended Plat of Mandalay, (Plat Book 2, Page 25), Key Largo, Monroe County, Florida, having real estate number 00555010.000000.  
(File #2014-014)

(1:14 p.m.) Mr. Bursa presented the staff report. Mr. Bursa reported that this application is a request for a time extension to a major conditional use permit for Key Largo Hospitality Land

Trust. The project is bayside at Mile Marker 97.5 named Playa Largo. The applicant has pulled their permits and are well underway. However, they do require additional time in order to complete construction. Right now their conditional use will expire January 29, 2015. The applicant is asking for a two-year extension of time to January 28, 2017. Staff recommended approval of this application. Mr. Bursa explained if this application is not approved, the applicant will have until next January to complete construction, which would be nearly impossible.

Larry Abbo, CEO of Prime Hospitality Group, was sworn in by Mr. Wolfe. Mr. Abbo explained this parcel of land had previously gone through a number of the permitting processes and ultimately was foreclosed on by the bank before the applicant purchased it in October or November of 2012. The applicant has been working with staff very closely with regards to the permitting objectives to develop an A-Class resort that would be part of the Marriott Autograph family. All of the environmental requirements have been carefully carried out. Mr. Abbo assured the Commissioners the applicant is fully committed to completing this development and has already poured some significant foundations and are making their way to the second floor.

Commissioner Miller asked if the new development will be open to the public. Mr. Abbo responded that the location is not, per se, closed to the public, but the resort is intended to be an exclusive resort to primarily serve their guests. Commissioner Miller commented that during the slower times of the year local entities sometimes count on the local community for business and urged the applicant to be community-friendly.

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

**Motion: Commissioner Werling made a motion to approve. Commissioner Miller seconded the motion. There was no opposition. The motion passed unanimously.**

**4. AN ORDINANCE AMENDING THE MONROE COUNTY LAND USE DISTRICT (ZONING) MAP FROM SUBURBAN COMMERCIAL (SC), SUBURBAN RESIDENTIAL (SR), AND NATIVE AREA (NA), TO INDUSTRIAL (I), AND CONSERVATION DISTRICT (CD), FOR PROPERTY LOCATED AT 101075 OVERSEAS HIGHWAY, APPROXIMATE MM 101, KEY LARGO, DESCRIBED AS A PARCEL OF LAND WITHIN SECTION 27/28, TOWNSHIP 61 SOUTH, RANGE 39 EAST, ON KEY LARGO, MONROE COUNTY, FLORIDA, HAVING REAL ESTATE #00087100-000500, AS PROPOSED BY PARADISE PIT, LLC; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL OF CONFLICTING PROVISIONS; PROVIDING FOR TRANSMITTAL TO THE STATE LAND PLANNING AGENCY AND THE SECRETARY OF STATE; PROVIDING FOR AMENDMENT TO THE LAND USE DISTRICT MAP; PROVIDING FOR AN EFFECTIVE DATE.**

(File #2012-141)

(1:23 p.m.) Ms. Santamaria presented the staff report. Ms. Santamaria reported that this is the second half of an application previously before the Planning Commission of a future land use map amendment. It went to the Board of County Commissioners in August of 2013 and they recommended transmittal to the State. It went to the State, and in mid-December the State issued

an Objections/Recommendations report requesting a site-specific amendment for Paradise Pit to reduce some of the potential development to the existing cleared areas and to provide a buffer landscape around the pit and signage and fencing to reduce the potential encroachment into the natural habitat. That site-specific sub-area policy has been submitted. That reduces the amount of area that would go to industrial to 22 acres and increases the remaining parcel to go into the conservation FLUM to now 36 acres. The industrial acreage includes a nine-acre pit. The zoning districts now requesting to go to industrial and conservation are consistent with the FLUM and sub-area policy and is contingent on that FLUM being adopted and becoming effective. The net change of this zoning change will be zero residential development, zero transient density, and about 225,000 square feet of nonresidential development that is limited to the cleared areas within the industrial district. The overall reduction of nonresidential is 283,000 square feet. This parcel is all Tier I and the hammock area will almost entirely be in the conservation district. This proposal is compatible with the surrounding uses, is consistent with the comp plan and eliminates the nonconformity of the light industrial on site. Staff recommended approval.

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

Commissioner Miller asked if this borrow pit was restored. Ms. Santamaria explained that the buffer landscape was part of a settlement agreement, which was completed and approved by the County biologist. Some of the vegetation has died away. This new sub-area policy requires the landscape buffer be replanted.

**Motion: Commissioner Werling made a motion to approve. Commissioner Lustberg seconded the motion. There was no opposition. The motion passed unanimously.**

#### **ADJOURNMENT**

The Monroe County Planning Commission meeting was adjourned at 1:29 p.m.