

PLANNING COMMISSION  
**May 28, 2014**  
Meeting Minutes

The Planning Commission of Monroe County conducted a meeting on **Wednesday, May 28, 2014**, beginning at 10:00 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

**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
Rich Jones, Sr. Administrator, Marine Resources	Present
Tiffany Stankiewicz, Development Administrator	Present
Matt Coyle, Senior Planner	Present
Cassi Scanlon, Planning Tech.	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 informed the Commissioners that the applicant for Agenda Item 3 failed to post the property and they have requested a continuance to the June 25, 2014 meeting.

**Motion: Commissioner Werling made a motion to continue Item 3 to the June 25, 2014 meeting. Commissioner Lustberg seconded the motion. There was no opposition. The motion passed unanimously.**

**SWEARING OF COUNTY STAFF**

County staff members were sworn in by Mr. Wolfe.

**CHANGES TO THE AGENDA**

Ms. Creech stated that Items 4 and 5 would be heard as Items 1 and 2.

**APPROVAL OF MINUTES**

**Motion: Commissioner Lustberg made a motion to approve the minutes of the April 15, 2014 and April 30, 2014 meetings. Vice Chair Hale seconded the motion. There was no opposition. The motion passed unanimously.**

**MEETING**

**New Items:**

**4.A PUBLIC HEARING TO CONSIDER AND FINALIZE THE RANKING OF APPLICATIONS IN THE DWELLING UNIT ALLOCATION SYSTEM** FOR JANUARY 14, 2014, THROUGH APRIL 14, 2014, ROGO (3<sup>RD</sup> QUARTER YEAR 22). ALLOCATION AWARDS WILL BE ALLOCATED FOR ALL UNINCORPORATED MONROE COUNTY. (File 2013-147)

(10:04 a.m.) Ms. Stankiewicz presented the staff report for the ROGO ranking. Ms. Stankiewicz recommended the following market rate rankings: Lower Keys applicants ranked 1 through 5 are recommended for allocation award; Big Pine/No Name applicants ranked 1 through 2 are recommended to defer due to pending ongoing litigation; and Upper Keys applicants 1 through 15 are recommended for allocation awards. Ms. Stankiewicz recommended approval of six affordable housing applicants in the Moderate category located in the Lower and Upper Keys. Ms. Stankiewicz confirmed for Commissioner Miller that the maximum number of Tier I applications have been allocated for this year.

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.**

**5.A PUBLIC HEARING TO CONSIDER AND FINALIZE THE RANKING OF APPLICATIONS FOR NON-RESIDENTIAL FLOOR AREA** FOR ALL UNINCORPORATED MONROE COUNTY FOR THE NROGO (3<sup>RD</sup> QUARTER YEAR 22) JANUARY 14, 2014-APRIL 14, 2014. ALLOCATION AWARDS WILL BE ALLOCATED FOR ALL UNINCORPORATED MONROE COUNTY. (File 2013-148)

(10:06 a.m.) Ms. Scanlon presented the staff report. Ms. Scanlon reported that there was one applicant in the Upper Keys requesting square footage available for the quarter and there were no

applicants in the Lower Keys or Big Pine/No Name Key sub-areas. The Director of Planning has recommended allocation of 1,495 square feet of floor area for Bayside Beach Resort, LLC.

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.**

Mr. Schwab acknowledged Ms. Scanlon's imminent departure from the County and thanked her for all of her work, particularly with NROGO.

**Continued Items:**

**1. AN ORDINANCE BY THE MONROE COUNTY BOARD OF COUNTY COMMISSIONERS** AMENDING MONROE COUNTY CODE SECTION 101-1, DEFINITIONS, AMENDING SECTION 114-19, LIVE-ABOARDS, AMENDING SECTION 138-19, RESIDENTIAL RATE OF GROWTH ORDINANCE (ROGO), REVISING PROVISIONS ADDRESSING LIVE-ABOARD VESSELS, 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 CODIFICATION; PROVIDING FOR AN EFFECTIVE DATE.

(File 2014-025) Continued from April 30, 2014

(10:09 a.m.) Mr. Haberman presented the staff report. Mr. Haberman reported that this text amendment came in from a private applicant who will give a presentation on why they submitted the application. Mr. Haberman stated the applicant is proposing to change three sections of code that all relate to how live-aboard vessels are permitted in the county. The first change is to the definition in Section 101-1. Right now the wording in statutes and the wording in County code do not match verbatim. The applicant is proposing putting a reference to the statute section where that definition can be found. Staff proposes taking the statutory definition and inserting it into the code. The second proposed change by the applicant is in Section 114-19, which pertains to live-aboards using density of the upland portion of the site. The applicant proposes removing that, which staff agrees is somewhat consistent with other parts of code because right now submerged land cannot be used for density, which is where the live-aboard is. Staff recommends then including language to ensure that live-aboards are going in an appropriate location, such as in marinas that have adequate facilities. Mr. Haberman stated there is a high level of review for new live-aboards under the way that staff recommended the language.

The third proposed change by the applicant pertains to ROGO Section 138-19. Right now live-aboards are not included in the 101-1 definition of dwelling units, but they are expressly included in the definition for ROGO, which then makes them subject to ROGO. That creates a variety of problems and conflicts with the comp plan, the first of which is that essentially puts a live-aboard vessel in the same category as a regular house on a dry lot in terms of hurricane evacuation when they impact hurricane evacuation differently. The second conflict created is that there are policies that say submerged land should be 100 percent and not used for density. It can be

argued because the live-aboard vessel slip is on submerged land that it is using density. Also, tiers were not assigned to submerged land and right now under existing code a live-aboard is subject to ROGO. Mr. Haberman questioned how a tier would be assigned to submerged land.

Mr. Haberman explained that right now staff interprets that a live-aboard cannot be transferred upland because it is different than upland development. Approving this text amendment would essentially codify that a live-aboard could not be moved upland. Mr. Haberman reminded the Commissioners that they have discussed this issue among the comp plan policies and the County is moving in the direction in the comp plan to treat live-aboards differently and get them into marinas and this text amendment would be consistent with that. Mr. Haberman recommended approval of this text amendment with staff's noted changes.

Commissioner Miller asked how many existing marinas have live-aboards in the County. Mr. Haberman explained that the only way to know that would be by the extensive process of doing a development determination of properties along the coastline of the Keys, so staff does not have exact numbers. Ms. Santamaria noted that the 2010 Census indicated the number 100 live-aboards, which is obviously not true. They are not counted in the hurricane model. Chair Wiatt voiced concern that the requirement for the marinas to have adequate facilities might entice marinas that have extra parking on site to build new live-aboard slips for rentals. Mr. Haberman asked the Commissioners to provide any suggestions to make it more restrictive for the areas in which this could become a problem. Mr. Haberman explained that because live-aboard is not an express use in County code, it has to fit in with another use allowed in commercial fishing, and marinas are really the only place where it fits. Staff specifically chose marinas because that level of redevelopment would come before the Planning Commission as a conditional use. Chair Wiatt reiterated his concern of a marina with adequate parking being a way to create more live-aboard slips and suggested other conditions be added. Commissioner Werling agreed that the language should be tightened up in that regard.

Mr. Haberman explained that the word "live-aboard vessel" was used because that essentially prohibits houseboats, which are floating structures not considered vessels. The requirements of parking and pump-outs is consistent with the comp plan. Chair Wiatt suggested restricting the percentages of slips used in a marina for live-aboards as an added safeguard against creating live-aboard communities, as well as not adding to hurricane evacuation. Mr. Haberman noted that there is a comp plan policy that requires any redeveloped marina or new marina to have a hurricane plan approved as part of their development process.

Commissioner Miller questioned why new live-aboards would not be put under ROGO. Mr. Haberman explained that live-aboards are under ROGO right now, but if this amendment does not get approved this issue will have to be addressed in the LDR update. This proposal by a private applicant in general solves the problem of how to permit live-aboards, although the language can be further refined. Mr. Williams cautioned the Commissioneres not to confuse floating structures with live-aboards. In terms of jurisdiction, the County has no control over navigable waterways, but only out to the marina line. Commissioner Lustberg agrees that marinas with pump-out facilities and facilities on land are the best places to have live-aboards, but does not want to make restrictions at marinas such that the live-aboards are forced out and

encouraged to anchor out on the bay bottom. Commissioner Lustberg also wants to avoid marinas turning into floating household communities, which reduces access to the water.

Bart Smith, Esquire, was present on behalf of Longstock II, LLC, the applicant. Mr. Smith stated the goal of this proposal is to promote navigation into and out of the Keys, not to displace live-aboards, nor to turn floating structures into transient rentals. The applicant agrees with and accepts those recommendations made by staff. Mr. Smith made suggestions to tighten up the language further. Mr. Smith suggested adding language that this is to clarify existing law regarding not being able to move density upland. Mr. Smith agrees with having the express condition that any marina that permits live-aboards must have a pump-out. Mr. Smith commented that every zoning category that permits marinas would require a major conditional use that would come before the Planning Commission. Except in two zoning categories live-aboards are prohibited. Mr. Smith suggested adding the language that a live-aboard is not defined as a floating structure. Mr. Smith stated this is a marina-friendly amendment to ensure that the entire system of ROGO is not eviscerated by an incorrect interpretation.

Chair Wiatt recommended the language “commercial” use of a live-aboard is prohibited to ensure it would only be used by the owner or a long-term renter. Mr. Haberman cautioned against putting something is prohibited into the code because it then implies that everything that is not expressly prohibited is allowed. Mr. Haberman suggested adding the language that vacation rentals are prohibited within the definition of live-aboard since that has been done elsewhere, but that would have to be approved by Legal staff. Transient use live-aboards can be restricted in certain zoning categories without restricting it everywhere or they could be restricted everywhere. Commissioner Werling cautioned how difficult that would be to enforce. Commissioner Lustberg is concerned that could result in restricting recreational chartering businesses. Mr. Smith noted that is why expressly stating a live-aboard is not a floating structure is so important. Commissioner Lustberg asked about the implication of adding “and not for navigation” into the definition of a live-aboard vessel. Mr. Haberman reads that to mean that the vessel is not constantly going in and out, that they can stay in one place for a long period of time. Mr. Smith explained how “live-aboard vessel” is defined separately from “floating structure.” Mr. Smith suggested prohibiting floating structures in marinas. Mr. Haberman cautioned against adding a definition that is not used anywhere else in that document.

Mr. Haberman clarified for Commissioner Miller that vessels are excluded from the allocation system because they do not occupy a space, but the slips would occupy a space, much like an RV in an RV park. Commissioner Miller pointed out that there is a moratorium on new RV spaces in the Keys. Mr. Haberman differentiated that there is a moratorium on receiving a ROGO allocation for a new space. Mr. Smith noted there is a moratorium on new marinas also. Mr. Haberman clarified only until the Marina Siting Plan is completed, which will be in the near future. Ms. Santamaria further clarified that there are a lot of limiting factors for marinas through the comp plan. 1.5 parking spaces are also required for each live-aboard. Commissioner Miller asked how many more marinas could be built in the Keys under those factors. Ms. Santamaria replied the exact number is not known, but it is believed it will be very limited. Commissioner Lustberg commented that a moratorium cannot be put on live-aboards, and she does not want live-aboards to take over all of the marinas and squeeze out other marina functions.

Commissioner Lustberg asked about the implication of expressly excluding commercial fishing boats from the term “live-aboard vessel.” Mr. Haberman responded that if a commercial fisherman wanted to stay on their boat at a new commercial fishing facility that was not considered a marina they would not be allowed to. Mr. Jones clarified that the statute expressly excludes commercial boats from the definition of “live-aboard vessels.” Mr. Smith added that a commercial fishing boat is defined separately in state statute as well, and the code specifically states where it is not defined under the code it falls back to state statute. Mr. Haberman recommended that staff research statutes to see if commercial fishing is expressly excluded from “live-aboards” and then just taking that definition and putting that into County code. Mr. Smith agreed to include that sentence to make it clearer.

Commissioner Miller asked that this issue be approached in a comprehensive manner, such as knowing how many new live-aboard slips would be possible. Mr. Haberman stated through the Marina Siting Plan the number of locations where new marinas could hypothetically go could be determined, but not how many slips would be able to be permitted at each of those marinas. Mr. Jones explained determining the number of live-aboards is impossible because it is only a snapshot in time and changes every day. Commissioner Miller asked for the number of live-aboard slips that can be permitted in the Keys based on this definition of new live-aboards. Mr. Schwab added that there are too many variables to be able to come up with what could be done. Mr. Haberman explained the County can only control the number of live-aboards within marinas.

Commissioner Lustberg urged the use of balance by not making the restrictions so onerous on a marine facility that they would not want live-aboards and not making it so onerous on the live-aboards that they would choose to anchor out rather than be in a marina slip. Chair Wiatt commented that these amendments are a move in the right direction, but believes additional work needs to be done. Commissioner Lustberg stated that since this has been worked on for so long, specific recommendations need to be made so this issue can move forward. Commissioner Lustberg proposed under the first change in definition keeping the language “A commercial fishing boat is expressly excluded from the term live-aboards vessel” for clarity and asked staff if “and not for navigation” could be added. Mr. Haberman suggested adding the definition of “vessel.” Mr. Smith believes that is too broad and agrees with adding the language requested by Commissioner Lustberg at the end.

Chair Wiatt asked for public comment.

Dottie Moses agrees the language requested by Commissioner Lustberg would clarify the point. Ms. Moses does think that live-aboard vessels have an impact on the community and agrees there is probably not much that can be done to limit live-aboard vessels at large. Ms. Moses asked about the Marina Siting Plan restricting the ability for any new mooring fields to be installed. Mr. Jones explained that live-aboards would be permitted on mooring buoys. Commissioner Miller stated that defies the land-based definition that a new live-aboard would have to be in a marina. Mr. Jones further explained that in the comp plan there is language moving forward differentiating between vessels that are anchored and vessels that are docked to land. The vessels that are docked to land are only appropriate to be docked at a marina or marine facility. Vessels anchored out are a different situation. Mr. Haberman added that a major conditional use

permit is not needed for the mooring field because it is not over the land which has the zoning assigned to it. The upland facilities where the boats are coming into may need a marina approval, depending on if it has all of the things a marina is required to have. Ms. Moses believes the impacts are the same as a marina onshore. Ms. Moses asked about the distinction made in the U.S Supreme Court decision regarding floating structures. Mr. Haberman responded the wording in the code does not and will not permit floating structures at marinas. The word “vessel” was placed after use of the word “live-aboard” to be crystal clear on that.

D.A. Aldridge stated there is confusion about the difference between a houseboat and a live-aboard. Ms. Aldridge’s biggest concern is about the 1.5 parking spaces used to park cars that will be evacuating for a hurricane that will not be accounted for in the hurricane evacuation model. Ms. Aldridge believes the slips need to be counted in ROGO in some way.

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

Chair Wiatt commented that the parking issue is a double-edged sword because if parking is not required for the live-aboard at the marina, then people are going to park on the side of the road. Yet if parking is promoted for live-aboards, they are more likely to bring vehicles down to have and use in conjunction with their live-aboard vessel. Chair Wiatt encouraged the Commissioners to focus on the amendments and recommend refinement of the language to move this along or vote them down if it is felt they need to be completely overhauled. Commissioner Lustberg agrees with the second change on Page 6 of the staff report regarding live-aboard slips shall only be permitted in marinas that have adequate off-street parking, 1.5 parking spaces per slip, and pump-out facilities. Commissioner Lustberg asked if more definition needs to be added to the “amenities for the occupants of the live-aboard vessels.” Mr. Haberman explained a conditional use permit would come before the Planning Commission and those amenities can be decided upon on an individual project basis.

Commissioner Lustberg asked where further restrictions on live-aboards should be located. Mr. Haberman responded that Section 114-19 is the most appropriate spot to put restrictions to sites that are proposing new or redeveloped live-aboard vessel slips. Commissioner Miller voiced concerns that limitations on new slips or live-aboards will be taken out of ROGO without getting a handle on how to limit the number of live-aboards permitted. Ms. Santamaria clarified that live-aboards today do not go through ROGO and get an allocation and get a permit. They are counted against the upland density today, not counted as a ROGO allocation, which conflicts with the comp plan that says submerged lands do not have density. Mr. Haberman cautioned against placing an arbitrary percentage on the number of slips used for live-aboards in a marina. Commissioner Lustberg commented that the amendment before the Commission does not address all concerns, but is better than what currently exists.

Commissioner Lustberg asked if there is a theoretical way in the definitions of public access and waterfront to clarify that vessels solely for navigation purposes in terms of the waterfront public access trump live-aboard vessels. Mr. Haberman replied that there are already code requirements that prohibit the loss of public access, particularly through the conditional use process. Public access will be something looked at when rewriting the LDRs. To address Commissioner Lustberg’s concerns, Mr. Smith noted that marina operators want the boaters, not

the live-aboards, because they use a lot more fuel. The live-aboard is the least desirable customer in a marina.

Commissioner Werling asked staff about any possible unintended consequences. Mr. Haberman stated the County could end up with a lot more live-aboards than anticipated. Live-aboards will be addressed in the code one way or the other. The question to be determined is whether they will be subject to ROGO or not. This amendment at least gives consistency in the code, because right now live-aboards are clearly contemplated by the code, but there is no way of approving them. This amendment as it is written would effectively say that a live-aboard is under no circumstance subject to ROGO, which means they have no exemption to transfer. That is not really the purpose of this amendment, but is a consequence of it. Commissioner Lustberg added that this will also allow for a greater density in upland development.

**Motion: Commissioner Lustberg made a motion to recommend approval to the BOCC with staff's recommended three changes as well as the Planning Commission's changes to the definition of "live-aboard vessel" to add the word "solely" after "not" on Line 2, add "or" before B, and reinstate "A commercial fishing boat is expressly excluded from the term 'live-aboard vessel.'" Mr. Haberman pointed out that is not a direct reading of the statute and as a result "as defined in Florida Statute Section 827.02" would have to be deleted. Mr. Williams suggested tying it into the definition of "vessel" to eliminate any fears of confusing it with a floating structure. Commissioner Werling seconded the motion. There was no opposition. The motion passed unanimously.**

#### **New Items:**

**2. Stock Island Marina Village, 700 and 7009 Shrimp Road, Stock Island, mile marker 5:** A public hearing concerning a request for a Development Agreement between Monroe County, Florida and Longstock II, LLC. The requested agreement relates to the redevelopment of an existing mixed use marina, to include commercial retail, office, light industrial and hotel uses. The residential density would not exceed 100 transient residential units. Not including accessory structures related to residential uses, the nonresidential floor area would not exceed 80,000 square feet. New residential or nonresidential buildings shall not exceed 35 feet in height. The subject property is described as parcels of land in Section 35, Township 67 South, Range 25 East, Stock Island, Monroe County, Florida, having real estate numbers 00123720.000100, 00123720.000200 and 00123760.000200.  
(File 2014-026)

(11:57 a.m.) Mr. Haberman presented the staff report. Mr. Haberman reported that this is a development agreement where the applicant is proposing to redevelop what is known as Stock Island Marina Village. A major conditional use permit has been submitted which will be reviewed by the Planning Commission later to redevelop the site and add a hotel among other things. Today the applicant is asking for a development agreement to lock in the code for ten years and to allow for that longer time frame because this is an involved project that will involve transferring units onto the site and possibly some TDRs. The development agreement is to conceptually approve the site plan locking the code in as it is today. Mr. Haberman stated there are some issues with the wording of the agreement. Sometimes the zoning category and the



future land use map category are misstated in the agreement, which needs to be corrected, but the bigger change staff is making is citing the TRE process verbatim into this agreement rather than paraphrasing it. A second change by staff of some consequence is stating only a solar apparatus is allowed by code above the 35-foot height limit. Other than those changes and ensuring the right official documents are attached to the agreement, staff recommends approval.

Mr. Haberman clarified for Commissioner Lustberg that 100 hotel rooms can be moved to this property by code because the FLUM is mixed use/commercial, but it is stated in this agreement as well. The specifics of the site plan will be considered by the Planning Commission when the applicant comes back for their major conditional use.

Bart Smith, Esquire, present on behalf of the applicant, stated the applicant has agreed to all of the changes suggested by staff and a revised development agreement has been sent to staff addressing their concerns. Mr. Smith described Stock Island Marina Village as a location that has revitalized the neighborhood and has turned into a part of the community where people gather. Historical photographs of the area were shown and described by Mr. Smith. Mr. Smith gave a history of how this area was developed, being originally dredged for the aggregate, resulting in a deep port harbor used by shrimp boat fleets. Mr. Smith explained this property will be developed within the confines of the code. More history of the area was recited. Mr. Smith described this project as being about the community, describing the area as the downtown area of Stock Island, including things such as an artists' co-op, a dog park and a community garden that uses reused water. Bocce courts have been added with plans for volleyball courts in the future. The applicant is proposing a 100-room hotel with a theme of a fish camp that would include a 10,912 square foot fish house, a 2,448 square foot fish retail building, a 1440 square foot hotel tiki bar, a 9,450 square foot tiki bar and grill and, finally, a 29,000 square foot boat barn. Mr. Smith described in more detail the north side of the property that would have the working waterfront commercial area where fishermen unload their catch and have outdoor sales. The applicant wishes to meld the new development into what is already there. Mr. Smith stated Commissioner Wiatt has raised a concern about the close proximity of the Key West Engine Service business to the parking lot of the proposed hotel. Mr. Smith suggested gates would be one way to ensure that the area is more protected from the activities at the engine repair business. Mr. Smith reiterated that the Planning Commission will have more detailed drawings at the time of the conditional use. The hotel is going to be Florida green building certified. The layout of the development was further described. Mr. Smith believes this development will employ many Stock Island residents.

Commissioner Miller asked about the adequacy of Shrimp Road for this project. Mr. Haberman explained that a traffic study has been received and it will move ahead with the major conditional use. Mr. Smith suggested the traffic study include any issues with other proposed developments in this area. Chair Wiatt stressed that Key West Engine Services provides an absolute essential service to mariners in Key West and the Lower Keys. Chair Wiatt is concerned that the majority of the folks that own boats in the marina will be parking close to Key West Engine Services, causing a safety issue. Mr. Smith stated the applicant will address the safety concerns as well as possible. Chair Wiatt would like those safety concerns addressed ahead of time. Mr. Smith illustrated a tentative plan of moving the location of the proposed building across the walkway to make it safer. Commissioner Werling noticed a significant loss of parking in the newer site plan

submitted. Mr. Smith explained the hotel has been completely revised, including the deletion of a proposed restaurant. The proposed bicycle lane was also deleted due to a lack of width of the road necessary.

Mr. Smith pointed out that the applicant is requesting a recommendation of approval for the development agreement so it can then go to the BOCC, at which point it will come back to the Planning Commissioner with the major conditional use application which has more detailed architectural renderings and providing for a closer look at the details of the project. The safety issue will be addressed before that time. Mr. Haberman added that this development agreement caps the applicant to asking for no more than 100 hotel units and no more than 80,000 square feet of other floor area, even though the code would allow more.

Commissioner Lustberg questioned whether the applicant could make changes to the development agreement in the future. Mr. Haberman explained they would have a choice to abolish the development agreement or amend it by the terms of the agreement. Mr. Wolfe added that a development agreement and a major conditional use travel together, so a major change cannot be made in the development agreement which would be in conflict with the major conditional use without asking for an amendment.

Chair Wiatt asked for public comment.

Donald Trujillo, owner/operator of a neighboring boatyard, stated his business is part of the traditional working waterfront and he intends to keep it that way. Mr. Trujillo is concerned about possible complaints about dust or debris emanating from his property. The docks that the applicant has on their property has already taken away the Trujillos' ability to dock boats bow-out, which they have done since 1979 and allows for more boats being docked there. Mr. Williams informed the Commissioners that there is pending litigation in the Monroe County courts regarding some of the issues being discussed and are not for the Planning Commission to resolve. Chair Wiatt mentioned there are existing state regulations that address the amount of particulate allowed to leave a certain property. Mr. Haberman reminded the Commissioners that a buffer could be required as part of the conditional use process.

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

Commissioner Lustberg asked if the commercial fishing boats would come in, unload their catch and leave, or if they would dock in this area permanently. Mr. Smith explained that the intent is to bring in a fleet of boats to lease and use the slips, as well as having a commercial charter fleet right in front of the hotel. The applicant agrees to reserve a certain amount for commercial fishing, such as 10 percent. That is an operation that space always needs to be available for the vessels to come and go. Commissioner Lustberg asked for that use to remain at this location. Commissioner Lustberg requested some protection for the use of the Key West Engine Services space that extends beyond a three-year lease. Mr. Haberman pointed out that Policy 101.4.5 is going to require the designation of a certain number of slips for working waterfront purposes. Mr. Smith is comfortable with the conditional uses including the preservation of the north seawall for commercial fishing, but stated it is very difficult with commercial leases to predict three years out. Chair Wiatt stated preserving the working waterfront with immediate access to

the water is more the focus as opposed to addressing individual leases. Mr. Haberman noted that the comp plan language states 35 percent of upland area of property zoned MI shall be preserved for working waterfront, as well as 20 percent of certain slips will have to be reserved for working waterfront-related things. That language can be copied and pasted right into the agreement. Mr. Wolfe believes this is better addressed in the conditional use. Commissioner Lustberg wants to see some protections specifically for the marine industrial repair use for the commercial fishing boats. Mr. Haberman explained that tourist-related water activities are tied into working waterfront, which could be a fallback use if commercial fishing does not excel at this development. Commissioner Lustberg would like language put into the conditional use requiring a certain number of slips used for commercial fishing vessels. Mr. Wolfe agreed certain concerns are best addressed in the conditional use because it far outlasts the development agreement and is more specific. Commissioner Werling reiterated that the parking seems inadequate.

**Motion: Commissioner Hale made a motion to recommend approval to the BOCC including the conditions and changes set forth by staff. Commissioner Miller seconded the motion. There was no opposition. The motion passed unanimously.**

### **BOARD DISCUSSION**

Commissioner Lustberg asked staff to brief the Commissioners on what will be coming before the Planning Commission in terms of public access and waterfront protection. Mr. Haberman explained there are quite a few comp plan policies that say public access should be preserved where it has historically been located. There is nothing precise in the Land Development Code that states how and when to do that. That will be worked through as part of the LDR rewrite. Commissioner Lustberg believes it would be best to have the rules in place as soon as possible since there has been an increase in waterfront development occurring. Commissioner Lustberg asked staff to advise the Commission about certain sections being worked on so the Commissioners could give their suggestions. Commissioner Lustberg requested this issue be addressed at the next meeting.

Commissioner Miller voiced his concern about the level of development that will occur associated with the mooring fields being proposed by the County. Chair Wiatt reemphasized that the parking spots required for the live-aboard slips will have an effect on hurricane evacuation. Mr. Williams suggested the Commissioners' concerns in that regard may be better addressed to the BOCC as opposed to staff.

Mr. Williams informed the Commissioners that Mr. Matovski from Ramrod Key who had his variance request denied by the Planning Commission has appealed that decision.

### **ADJOURNMENT**

The Monroe County Planning Commission meeting was adjourned at 1:36 p.m.