

PLANNING COMMISSION
SPECIAL MEETING – LDC UPDATE
April 9, 2015
Meeting Minutes

The Planning Commission of Monroe County conducted a meeting on **Thursday, April 9, 2015**, beginning at 10:04 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

Denise Werling, Chair	Present
Beth Ramsay-Vickrey	Present
Elizabeth Lustberg	Present
Ron Miller	Present
William Wiatt	Present

STAFF

Mayte Santamaria, Sr. Director of Planning and Environmental Resources	Present
Steve Williams, Assistant County Attorney	Present
Pete Morris, Assistant County Attorney	Present
John Wolfe, Planning Commission Counsel	Present
Mike Roberts, Sr. Administrator, Environmental Resources	Present
Rey Ortiz, Planning & Biological Plans Examiner Supervisor	Present
Emily Schemper, Comprehensive Planning Manager	Present
Matt Coyle, Senior Planner	Present
Timothy Douma, Biologist	Present
Jay Berenzweig, Biologist	Present
Gail Creech, Planning Commission Coordinator	Present

MEETING

Presentation:

Presentation by Keith & Schnars of draft Land Development Code Updates to implement the updated goals, objectives and policies of the proposed 2030 Comprehensive Plan (EAR-based Comprehensive Plan amendments); streamline and simplify processes; address internal inconsistencies; and provide greater clarity for both staff implementation and public utilization. Documents can be reviewed on the project website at www.keyscompplan.com.

Ms. Santamaria opened the meeting and thanked everyone for participating. Ms. Santamaria stated this is the second meeting on the Land Development Code and Chapters 106, 114, 118,

122, 134 will be reviewed, as well as Chapter 101 if there are any questions that come up relative to the definitions. Two public copies are available in the back of the room, as well as agendas. Debbie Love, Project Manager from Keith & Schnars, was introduced. Ms. Love explained two other members of the Keith & Schnars teams, Kenneth Wenning and Erin Deady, will also be presenting certain chapters.

Chapter 106, AREAS OF CRITICAL COUNTY CONCERN

Ms. Love stated in this particular chapter there is only one change. **Page 1**, The time of the annual report was changed to a biennial report. That is the only change in this chapter.

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

Chapter 114, DEVELOPMENT STANDARDS

Ms. Love explained that a lot of the changes in this chapter were made to match the comp plan, as well as changes specific to processes, clarification and trying to deal with issues that have arisen necessitating clarity for staff as well as the public. **Page 1**, The level of service standards have been separated out. Di minimus was added for single-family. Ms. Santamaria explained that single-family units do pay the impact fee, but are not counted against the concurrency because they have typically less than ten trips per day. Development of a project with multiple single-family residences would not be part of that exemption. **Page 2**, Monitoring criteria was added in “f.” Ms. Love explained that the level of service standards were updated from the technical document into the comp plan and the technical document looked at projections of both permanent and seasonal residents. The statutes have redefined how the timing of the facilities to be in place can be asked for and some of the changes in this section talk about that. The statute now says it must be coordinated with the “water supplier,” which is FKAA in this document. Ms. Santamaria explained the capacity report will be done every other year. Commissioner Miller asked that that be spelled out in this document. Ms. Santamaria clarified for Commissioner Miller that lowering of a speed limit would have to be done through FDOT and it is based on the road design and configuration and safety issues. Typically they have not reduced speed limits.

Page 3, Again, the level of service and the treatment standards have been updated, matching the Florida Administrative Code. Although in the comp plan recreation and open space is no longer subject to concurrency, staff has elected to maintain concurrency. The level of service was updated based on the functional population. **Page 4**, Contains changes to the process and has editorial changes. **Pages 5-6**, Reflects the changes in the statutes and the timing of the facilities. A concurrency process was created for the different facilities. Commissioner Lustberg suggested under 2 changing the language to “the necessary facilities are in place no later than one year after the issuance of the building permit” to limit the amount of time allowed for construction. Ms. Santamaria will double-check that against the comp plan language. Ms. Love explained that the same thing was done for roads as was done for recreation and open space because roads are no longer subject to concurrency, but staff has elected to maintain it. **Pages 7-8**, Single-family was exempted from the requirements to prepare this facilities capacity analysis. Commissioner Ramsay-Vickrey commented that since utilities could not be included in the definition of “development” in Chapter 101, the work by any utilities being a form of development should also be excluded in this chapter. Commissioner Ramsay-Vickrey asked that an exemption for

the installation of concrete cisterns for water collection be added. Ms. Santamaria clarified that the language would be that work by a utility on an established right-of-way consistent with Chapter 380 would be exempt. The Commissioners agreed with that. Ms. Love then stated it is clarified here who has to do what related to stormwater runoff.

Page 9, Contains editorial changes. **Page 10**, Contains editorial changes of renumbering and reference changes. **Page 11**, Impaired waters were added to the list of environmental features that must be considered in relationship to water management criteria. **Page 12**, Contains updates to citations. Commissioner Lustberg questioned whether historic discharges based on natural site drainage patterns includes where inappropriate discharges have occurred. Ms. Love responded it is based upon the natural discharge. **Page 13**, Additional treatment requirements for sensitive receiving waters have been added. **Page 14**, Sensitive waters are defined. **Page 15**, Contains no changes at all. **Page 16**, Contains editorial changes. **Page 17**, Contains editorial changes at the beginning of the page. At the bottom of the page it is acknowledged that other agency permits are required before final concurrency determination. **Page 18**, Contains editorial changes. **Page 19**, Contains editorial changes and the section at the beginning was stricken because of the stormwater ordinance. Some renumbering was done on this page. **Page 20**, Contains editorial changes.

Pages 21-23, These items have been relocated into the plat section. Commissioner Miller asked why the pedestrian/bike path on the bayside in Key Largo narrows to less than ten feet. Ms. Santamaria is unsure if that would be considered the required sidewalk in this section or a separate bike path that FDOT is building through their own process in the right-of-way. Ms. Love stated this chapter would be for all County projects as well as any private development requesting to install these type of facilities. Commissioner Ramsay-Vickrey asked to add the language “when financially feasible” to the installation of utilities and driveways. Chair Werling wondered who would interpret the financial feasibility. Commissioner Ramsay-Vickrey pointed out an article written by the Engineering Department of the University of Miami stated putting the utilities underground in an environment such as Monroe County has actually causes more damage and is more susceptible to salt intrusion than if above ground where they can be accessed. Commissioner Lustberg feels adding the “financially feasible” language would not be taking into consideration all of the other factors to consider when determining what to do and what not to do. Commissioner Ramsay-Vickrey then suggested the language “when feasible, including financial consideration.” Vice Chair Wiatt believes including that language might actually drive someone to think that financial consideration is the most important thing and feels that the current language allows for flexibility. Commissioner Miller pointed out that “should” has been struck out and “may” has been inserted, allowing for a little protection.

Page 24, Has been rewritten just to make it easier to read, but has not changed anything substantively. **Page 25**, The sentence structure has been changed to allow for easier reading. In the middle of the page some flexibility has been added for the Planning Director to be able to work with a developer or a property owner on type of construction materials. On Number 2 the districts have been expanded where fences can go up to six feet. **Page 26**, The type “E-B” was changed to “B-E”. The sentence structure was changed for readability purposes. More flexibility was added for fencing. Commissioner Miller pointed out that “e” should have been stricken. Ms. Love agreed. **Page 27**, Flexibility was added for the Planning Director to work

with citizens. Some clarity was added to the sentence structure. Ms. Santamaria clarified for Commissioner Lustberg that the 12-foot fence allowance is not for improved subdivisions or sparsely settled urban residential. **Page 28**, Clarifies a fence is allowed on the perimeter of a vacant lot, especially for security purposes, and barbed wire and razor wire are only allowed in the airport and industrial zoning districts. **Page 29**, Clarifies this deals with both recycling and solid waste collection. **Page 30**, Clarifies the minimum size of the collection areas. Some flexibility was added for the Planning Director to work with the applicant regarding the location and the size of these areas. **Page 31**, Some required accommodations for mass transit and bike and pedestrian facility requirements were added.

Ms. Santamaria clarified for Commissioner Miller that Section 114-19 has been renumbered as 114-12. Ms. Santamaria clarified for Commissioner Wiatt that a triplex would be considered three residential dwelling units and would require them to have 144 square feet for solid waste management. Ms. Love noted that is one of the other reasons why some flexibility by the Planning Director was added. Commissioner Ramsay-Vickrey asked that accommodations for a covered bus stop waiting area be added under mass transit. Ms. Love pointed out that is considered under the transit facilities, but will look at adding the language “including covered bus shelters.”

Chair Werling asked for public comment.

Alicia Putney, resident of No Name Key, submitted a five-page document containing her comments. Ms. Putney asked why the Level of Service Task Force Methodology referred to on Page 1 was being changed. Ms. Santamaria explained it is not actually being changed, but that methodology is just for US-1. The other one is for County roads. Ms. Putney asked if under “b” on Page 5 language regarding posting the applications on the internet should be added. Ms. Santamaria replied this would not be the section for that because this is about concurrency and how a development proposal would be viewed against the concurrency of level of service standards. The language Ms. Putney proposed is contained in the community participation section in another chapter of the code. Ms. Putney then asked for an explanation of 3(d) on Page 6. Ms. Santamaria explained that language comes directly from statute and it is a requirement in the transportation concurrency section. It includes other modes of transportation. Ms. Putney stated she feels that the language on Page 8 regarding the exceptions from development is in conflict with the di minimus language in the code. Mr. Williams disagreed. Ms. Putney then asked that more specific language be added to Page 28 by mentioning the Incidental Take Permit and including “required permits of Monroe County and US Fish & Wildlife where applicable” in the section that addresses permitting. Mr. Roberts explained that the specific conditions from the Habitat Conservation Plan are included because those are what are currently used to evaluate a permit for fences on Big Pine and No Name, but has no objection to including those requested specifications into the code. Commissioner Ramsay-Vickrey prefers that the language remain as is so as not to have to refer to other documents every time there is a change with US Fish & Wildlife. Chair Werling agreed that the more generic language should be used.

Julie Dick with Everglades Law Center on behalf of Last Stand and the Florida Keys Environmental Fund submitted a comment letter to the Commissioners. Ms. Dick stated the agencies she presents have been very pleased overall with the level of detail and thoroughness of

the Land Development Code and its update. Ms. Dick then asked how “per capita” is being defined in (2) on Page 2. Ms. Santamaria clarified it is the functional population, both permanent and seasonal. The technical document contains all of the background data regarding the recycling rates and all the different types of waste and their collections. Ms. Dick then asked how “sufficient potable water” is defined or calculated on Page 2. Ms. Santamaria explained this is again based on functional population and “sufficient potable water” means within FCAA’s permit for water withdrawals. Ms. Dick then asked that the numbers with respect to sanitary sewer be calculated using peak flows, which more accurately captures the amount of wastewater flowing through the system. Ms. Santamaria explained the language has to match the statute. Ms. Dick then asked that (7)a on Page 3 include at the end of that section “within each of the Upper Keys, Middle Keys and Lower Keys subareas.” Ms. Santamaria explained that this language matches the comp plan and was done intentionally because passive, resource-based includes the state park, the federal refuge and other conservation lands where it is not a specific item that you need to find subarea by subarea. Ms. Dick then asked that the section on Page 5 regarding applications for development include language that the County shall post all applications for development and corresponding reports to the County website within 15 days of submission for access by the general public. Commissioner Ramsay-Vickrey responded that this was discussed previously and, while things are posted on the website for the public’s consideration, it cannot be made a condition. Chair Werling agreed that is an unfair burden for staff.

Bill Hunter, resident of Lower Sugarloaf, encouraged the Commissioners to consider at what point numerous single-family units become no longer di minimus. Ms. Santamaria explained that this item is just for one single-family residence being considered di minimus. As soon as that development includes more than one home, it is no longer exempt. Mr. Hunter then commented that (1)c on Page 1 should read “entering and/or leaving the development.” Ms. Santamaria agreed. Mr. Hunter then asked what time the biennial reports referred to on Page 4 will be done. Ms. Santamaria replied it would be around the middle of the year every other year and would include all of the assessments. Mr. Hunter then asked if on Page 23 the six-by-six-inch wire mesh should include a specific number of wire mesh. David Debrule of Upper Keys Marine Construction stated it should be left as “six-by-six-inch wire mesh.”

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

Page 32, Contains Article II, Energy and Water Conservation Standards. The first page is editorial changes. **Page 33**, The old requirements were replaced with requirements that include other types of conservation methods.

Commissioner Miller stated in Key Largo some sidewalks end in a hedge and there is no attention to detail being given. Ms. Schemper replied when the starting point is no sidewalks at all this is an issue, but there has to be a certain threshold for the redevelopment of a neighboring parcel to require them to put in the sidewalk. The alternative is that nobody is required to put in sidewalks.

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

Page 34, Contains Article III, Parking and Loading. The first page contains editorial changes. **Page 35**, “D” was added to the legend for the graphic. A notation was added that the width is actually subject to ADA requirements. **Pages 36-38**, A notation at the bottom of the table states an ADA space has to have 12 feet plus a five-foot aisle. It is clarified that the number of spaces listed comes from the ITE manual. The table has remained unchanged. **Page 39**, The rounding issue is clarified and the ability to include smaller parking spaces for motorcycles and scooters was added. **Page 40**, The width requirements for ADA spaces as well as golf carts, scooters and motorcycles are given. **Page 41**, Contains no change at all. Commissioner Miller noted the change on Page 40 under (h) goes from 300 feet to 600 feet. Ms. Schemper explained that was a request from the BOCC as a compromise to provide people additional options to have off-site parking, but not have an outrageous walking distance. **Page 42**, Contains no changes. Ms. Love asked staff to talk about the highlighted area. Ms. Schemper explained a placeholder was put where there is nonconforming parking to figure out whether a specific section is needed for this. This will be resolved by the final LDC update meeting. **Page 43**, The minimum size of the nonresidential that had to include unloading spaces was increased to 100 square feet or larger. **Page 44**, Bicycle parking was added. Some criteria for the bicycle parking was included.

Commissioner Miller commented that the 100 square foot minimum on Page 43 might be excessive in some instances. Ms. Schemper stated that threshold could be increased by the Commissioners, but consideration as to what is happening on the entire site, not just the building, must be given. Ms. Schemper pointed out in Subsection C there is an option for the Planning Director to reduce the required loading.

Chair Werling asked for public comments.

Dottie Moses, resident of Key Largo, commented that in the Upper Keys there is no requirement for the outdoor businesses to meet any parking or loading requirements, resulting in parking and loading all over the place. Ms. Moses believes something needs to be done to manage this more effectively. Ms. Schemper explained many of the sites being referred to are sites that have been approved under what is currently in the suburban commercial district, outdoor storage areas are allowed as of right up to 25 percent of the area of the parcel. At the last meeting that was stricken and now all outdoor storage areas are considered light industrial use, as they are in all the other zoning categories, and it would require a minor conditional use permit. That is one step towards fixing that problem. Many light industrial uses do not have any interior floor area, so standards could be added for outdoor uses. Ms. Santamaria added that staff is working on developing standards for outdoor uses and outdoor storage.

Bill Hunter asked why, on Page 39, Stock Island gets a 20 percent discount on the required parking spaces. Ms. Santamaria explained it is adopted into the comp plan as part of the Stock Island Livable CommuniKeys Plan because it is a developed area with limited space, which applies to any development in Stock Island. Mr. Hunter then noted he does not remember the BOCC ever asking with regard to off-site parking for the 300 feet to be changed to 600 feet. Ms. Santamaria clarified they did not give a specific number, but asked staff to address it and make it larger. Mr. Hunter feels 600 feet is too much.

Sandy Walters, resident of Lower Sugarloaf, pointed out that the application fee for a minor conditional use, not even considering the cost of putting the application in, is \$8500, which would probably eliminate many applications for very small outdoor uses. Ms. Schemper clarified it is for light industrial uses and only for outdoor storage.

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

The next article is Article IV, Landscaping. Ms. Love stated one of the ideas talked about both at the EAR and the comp plan development is how to better encourage water conservation methods and increase biodiversity. Ms. Love asked Kenneth Wenning to discuss this section. Mr. Wenning stated he is a planner at Keith & Schnars with ten years' experience in landscaping, planning and environmental consulting.

Page 45, Contains the purpose and intent and provides the minimum standards to improve the water quality and promote the best management practices for design, installation and maintenance. Commissioner Ramsay-Vickrey asked to add to the purpose and intent to reduce the usage of public water resources on landscaping. Commissioner Wiatt agreed with that request. Mr. Williams suggested speaking to Kevin Wilson and Judy Clarke from the Engineering Department about that. There is no reuse type of availability here in Monroe County. Ms. Schemper will discuss this idea with the engineers. Ms. Schemper suggested changing the proposed language from "public water" to "potable water." Commissioner Lustberg suggested changing (a)3 to read "help improve water quality, help conserve water, and screen unattractive views." Commissioner Ramsay-Vickrey agreed with that language. Mr. Wenning then explained Section 114-100 on the same page adds districts and landscape standards for parking areas containing more than six spaces. **Page 46**, Is a continuation of the standards. (b) through (e) adds standards for interior landscaping and parking lot landscaping. **Page 47**, (f) through (h) talks about terminal islands, island landscape minimums and peninsula landscape areas. (i) through (l) speaks about tree requirements and (m) through (o) speaks about no turf grass in islands, allowing existing plant material to satisfy requirements and visibility standards. **Pages 48-50**, Contain graphics. There are no changes to these. **Pages 51-52**, Speaks about the required irrigation and the water conservation methods through design. There are added incentives for no irrigation requirement. (i) through (viii) talks about the irrigation plan requirements.

Commissioner Miller asked whether the bayside pedestrian path through Key Largo is required to have irrigation for the landscaping. Ms. Santamaria will check into that.

Page 52, Landscape installation and maintenance criteria, talks about the minimum plant standards. There is a slight change to the mulching depth in (c). (e) addresses the replacement of dead plants. Commissioner Lustberg asked whether the re-landscaping requirement disappears after two years. Mr. Roberts explained currently there is nothing in the code that would require reinstallation of landscaping if it is lost due to natural disasters. A section was added that states plant material that dies within 24 months of installation shall be replaced. Removal of required landscaping that results in a nonconforming situation would not be permitted. Mr. Williams added that situation would be considered an illegal clearing case and would be dealt with by Code Enforcement. Not replacing required landscaping after the two

years would also be a code violation. Mr. Wenning then stated (f) talks about the native and non-native plant percentages and the resulting irrigation requirements.

Page 53, (g) contains clear sight triangles for shrubs and hedge height. (h) lists the invasive exotic plants that are prohibited. Section 114-103 speaks about the removal and pruning standards of the landscape and bufferyards. **Pages 54-58**, Adds native canopy trees installed at the street or buffer which satisfies requirements. Size and standards of canopy trees are added in Section 114-105. An additional column was included in the chart for status of threatened, endangered and regionally important, as well as updating the botanical and common names. The list is a representative sampling and not a complete inventory of the plants that are allowed to be used. **Page 59**, Contains the non-native planting list. Once again, this is not a complete inventory. **Pages 60-62**, Contain the swale planting list for stormwater management. This is also not a complete list. Section 114-106 provides incentives for pervious paving, butterfly gardens, the replacement of turf grass and rainwater collection systems. Section 114-107 contains the criteria for the stormwater collection systems and 114-108 contains the required screening. Requirements for berms, hedges, walls and fences were added, as well as pedestrian connections through fences and walls. Commissioner Ramsay-Vickrey asked whether a concrete cistern requires screening because it is in fact a masonry wall, which is a screening option. Mr. Roberts explained this screening is with regard to a district boundary buffer, not something interior to the site or a component of development of the site. **Page 63**, (e) is a continuation of 90 percent or more of existing vegetation satisfying buffering and screening requirements if the sufficient height and opacity are met. Section 114-109 is the landscape plan requirements. 114-110 through 114-123 is a placeholder for the nonconforming landscape.

Commissioner Miller asked if FDOT uses any of the County's guidelines. Ms. Santamaria replied they do not. Commissioner Ramsay-Vickrey asked whether applicable water conservation measures should be added as part of the requirement for submitting a landscape plan. Mr. Roberts explained that the more cluttered a landscape plan becomes, the more difficult it is to determine compliance.

Chair Werling asked for public comment.

Burke Cannon, Tavernier resident, stated the FDOT plants are supposed to be all indigenous plants. Mr. Cannon believes there should be some provision for height of trees allowed under wires and utilities. Mr. Roberts clarified there is language that says all plant material shall be planted in a manner that is not intrusive to utilities or pavement. Mr. Cannon replied that the Code Enforcement Department is stretched thin enough as it is that they may not be able to monitor that. Mr. Williams pointed out that those power lines in the utility right-of-way are not privately owned or privately maintained and it is the specific utility's job to keep all the vegetation under it clean.

Bill Hunter commented that the language regarding plants that die within 24 months seems to say it is not required after those 24 months. Chair Werling noted that even if the plants are dead, the space still has to be dedicated to that purpose.

Dottie Moses complimented staff on the landscaping section which serves a purpose in drainage and filtering water and cleaning the air.

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

Commissioner Lustberg suggested the language “Plant material that dies shall be replaced in accordance with the integrity of the approved landscape plan” and removing the time limitation. Commissioner Wiatt agreed with that language.

Ms. Love then addressed Article V, Scenic Corridor and Buffer yards. **Page 65**, Contains editorial changes. **Page 66**, The table was cleaned up and some missing districts were added. The new Preservation category was added. **Page 67**, Contains editorial changes. **Pages 68-69**, Ms. Love noted no buffering is required in the Preservation category. **Pages 70-75**, Contains buffer yard graphics. Staff is discussing whether any of these graphics need to be changed. The numbers will be rounded up. **Pages 76-77**, These alternative buffers are going to be deleted. **Page 78**, Contains editorial changes.

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

Page 79, Contains Article VI, Outdoor Lighting. A shielding requirement for the non-cutoff lighting was added. **Page 80**, Commissioner Miller noted that the illustrated 50 degree angle does not help anybody walking along the street. Ms. Schemper pointed out that those diagrams are the old diagrams for non-cutoff lighting. In the text it is added that even the non-cutoff lights have to be shielded. The diagrams need to be updated. Commissioner Miller would like the 50 degrees be made more restrictive to no light above the horizontal plain. Ms. Schemper stated this section will be reviewed further by staff to make the wording for both the cutoff and non-cutoff lighting clearer. **Page 81**, Contains editorial changes. Mr. Roberts stated staff has encountered an increased frequency for requests for dock lighting, underwater or submerged dock lighting. Staff is currently evaluating adding a section of code for submerged dock lighting requirements and regulations so there will be some guidance in the code relative to that.

Chair Werling asked for public comment.

Burke Cannon is disappointed that the lighting was not addressed in a closer fashion. Mr. Cannon stated dark sky lighting was utilized in Tavernier and is much safer. Ms. Schemper replied that staff can work on putting more detail in this section. Currently there are standards about the number of lumens at the property line for lighting. Ms. Schemper suggested putting a requirement that photometric plans have to be submitted with development plans.

Article VII, Access Standards. **Page 82**, Contains editorial changes. **Page 83**, Some additional criteria for the traffic study was added. **Page 84**, Contains some minor editorial changes. The graphic is unchanged.

Commissioner Lustberg commented the clear sight triangles should take into account bicycles and pedestrians. Ms. Love replied the measurement goes all the way out to the center of the road

and should not be blocked by shrubbery or anything else. An area overgrown in a clear sight triangle is a code enforcement situation.

Chair Werling asked for public comment.

Ms. Dick asked under Section 114-200 that the traffic study be conducted through the County and paid for by the applicant to add a level of neutrality to the study. Ms. Dick then commented the threshold numbers used of trips seem like high numbers and asked if the County would reduce those threshold numbers for when a traffic study would be required. Ms. Schemper explained that the County has traffic study guidelines which specifies these thresholds. That may be on a list of things to update. Ms. Santamaria stated based on the County's data these are the accurate numbers today, but if data comes out and says those numbers should be changed, then staff will consider that. Ms. Dick then asked whether the Planning Commission would consider making the traffic report something that could be done through the County and paid for by the applicant. Commissioner Lustberg explained when somebody submits a traffic study it goes to an expert hired by the County, who then evaluates it to make sure that that study is correct. Commissioner Miller suggested adding a requirement that the traffic study be approved by the County traffic engineer. Mr. Williams replied that requirement cannot be made.

A luncheon recess was held from 12:23 p.m. to 1:19 p.m.

Chapter 118, ENVIRONMENTAL PROTECTION

Ms. Love stated Pages 1 through 4 address the existing conditions report (ECR). **Page 1**, Some changes to the ECR include clarification that wetlands and habitat with threatened and endangered species would also be subject to and require an EDR, addition of an affidavit allowing staff to gain access to the property and addition of criteria for plant surveys. **Pages 2-3**, Contain language protecting native species that reach maturity with a diameter of less than four inches with a list of those native species. **Page 4**, Contains some additional requirements for the animal species list. It is clarified that species within the special focus area have to be in the inventory here. Additional requirements are noted for the site plan that goes along with the ECR. Fencing in the conservation easement area is addressed. **Page 5**, Other areas were added to match the open space requirements that are included in the comp plan for consistency. Commissioner Miller asked what an "authorized deviation" is under Section 118-6. Mr. Roberts explained that would be a deviation recommended by the County biologist. Ms. Santamaria further explained it is an approval that goes through the County biologist, the Planning Director and, if a minor or major conditional use permit, it would go before the Planning Commission.

Page 6, Language was added to match what is in the comp plan. Habitat to be protected is clarified. The hammock list is refined. **Page 8**, Revision was made to capture those native plants that are smaller than four inches in diameter. **Page 9**, Changes were made to clearing allowances to match the comp plan. **Page 10**, The clearing limits of Big Pine and No Name Key based upon the HCP are reflected. **Page 11**, Language is added to give the Planning Director some flexibility on the types of construction barrier fencing material allowed. **Page 12**, Again discusses the construction barrier changes. It is stated under the beach berm section Army Corps and DEP approval is necessary before the County will issue their permit. **Page 13**, Contains an ordinance about canals that is now effective and in will show up as existing text in the next

iteration of the document. **Page 14**, Contains some reordering of text. **Page 15**, There was some deletion of text because the Army Corps and DEP approvals are required before the notice of commencement. The ability for the biologist to update a parcel's KEYWEP score was added for disturbed wetlands. Updates were made to match the scoring numbering to comport with the comp plan. Commissioner Miller asked about the two demonstration pilot canal restoration projects on Page 14. Ms. Santamaria explained they are two canals on Big Pine Key already approved by the BOCC. There are two demonstration canals that can do organic removal without backfilling so that strategy can be tested to see if it is effective in improving water quality. Anything else would have to be backfilled. If this is effective, then the backfilling would not be necessary.

Page 16, Is a continuation of the KEYWEP scoring. **Page 17**, The change to (d) acknowledges disturbed wetlands and being able to recognize the setback requirements a little differently for those type of filled areas. The form of the restoration guarantee was expanded. **Page 18**, Contains editorial changes. **Page 19**, Contains some significant changes to shoreline setbacks and how to measure the setback with a cut-in boat slip. **Page 20**, The 50-foot setback requirement for the open water shorelines is clarified. Commissioner Miller stated the setbacks in (b)(3) on Page 19 should be reviewed by staff because they are restricting over-water views. Commissioner Miller believes no principal structure, except for a balcony or a porch, should be allowed beyond the 20-foot setback. Mr. Roberts replied most homes built on a 4,000-square-foot lot are constrained when applying all of the required setbacks. The code still requires maintenance of the open space requirements in that shoreline setback. Ms. Santamaria will look at the language, but pointed out the code protects over-water views of a community. **Page 20 (cont.)**, Clarification was made that the language addressing altered and unaltered shorelines applies when adjacent to natural non-dredged waterways and open water.

Page 21, It was clarified that these shorelines have to be lawfully altered when they are adjacent to manmade canals. The applicability was clarified when you have open water shorelines not adjacent to manmade canals and that have native vegetation and planted ten foot wide across the shoreline. Commissioner Ramsay-Vickrey asked whether pools and spas fall under "accessory structure" in 2 through 4 on this page. Mr. Roberts replied they do and recommended adding the clarification language "accessory structures, including pools and spas." Ms. Love stated Page 21 provides clarification on how and where setbacks are calculated. **Page 22**, A change was made to the setback requirements for davits. Commissioner Miller pointed out that on Page 22 under (f) it is re-emphasized that there is no enclosed structures, which is the point being made prior regarding interfering with over-water views. **Page 23**, Contains the change discussed prior about requesting the permits from other entities before the County issues their permit. **Page 24**, Changes were made to clarify the measurements for docking facilities.

Page 25, Includes all of the setback requirements for moored vessels and the davits and lifts. A definition of "navigable portion" is included. Commissioner Wiatt commented that Number 3 under setback requirements sounds more like an ordinance than a land development comment. Mr. Roberts explained this applies to boats tied up to a dock. **Page 26**, Begins talking about required conditions for docking facilities. The language was tightened up and restructured. **Page 27**, Contains language that reminds people they cannot interfere with navigation of others. Mr. Douma explained some language was added here of the required conditions for docking a

vessel. Ms. Love stated further down the page includes new language about different criteria for floating docks and boatlifts. Commissioner Miller asked about the County's definition for "manatee zone." Ms. Santamaria explained there are no designated manatee zones in the Keys, but this is a placeholder because things may change and FWC may expand manatee zones in the future.

Page 28, Contains additional criteria for the location of four-post hoists and cradle lifts. Some language on the T-style docks was relocated here and the 10 percent width in (a) was added. **Page 29**, Deals with the side setback issue. Ms. Santamaria explained the prohibition of four-post hoists in a manmade canal except where it has been cut in was a specific request from public comment. **Page 30**, The language regarding water access walkways was made to match up with the comp plan. **Page 31**, Contains editorial changes. **Page 32**, More clarity was added to document the turtle nesting areas. **Page 33**, Contains a new section on protection of the freshwater lenses. This deals with pollution and protections from chemical entering into the water bodies. Commissioner Lustberg asked why "potential" was removed from "nesting areas." Mr. Roberts explained the comp plan does not include the word "potential." Sea turtles by and large come back to the same beach. Commissioner Lustberg then asked what chemicals have a ground water clean-up target level. Mr. Roberts replied they are primarily petroleum-related compounds, but also include benzenes and other industrially-applied chemicals. A lot of the language in this regard are taken from DEP and EPA guidelines typically associated with gas stations and other underground storage tanks. Gas pumps on a seawall in a marina is not considered a threat to a freshwater lens. **Pages 34-36**, Contain language associated with the marina siting criteria. Commissioner Miller asked for clarification on the term "adjacent" in this language. Ms. Santamaria explained the term "adjacent" used here is broader than contiguous. Ms. Santamaria then commented that language will be added here to implement Policy 202.32 of the comp plan, which requires notification to marinas and other docking facilities that have live-aboards to require them to have pump-outs. The County has 18 months to notify them and they have two years to install those facilities.

Chair Werling asked for public comment.

Julie Dick asked how much of a docking facility is allowed to go over seagrass or hard bottom communities. Mr. Roberts explained a terminal platform is limited to maximum coverage to 160 square feet, not counting the walkway or boardwalk that may extend over it. There are guidelines in place for the elevated boardwalks, light penetration, et cetera. A locational requirement is in place so that those facilities go in the least area of impact. The recommended language being added into the code provides more restrictive guidance than the existing code does. Ms. Dick then asked to include some language about clean marinas in the marina siting criteria to encourage those practices. Ms. Santamaria replied that a general statement to encourage that would be appropriate, but the BOCC specifically did not want to make it a requirement. It is a voluntary program. If the County builds any marinas the BOCC will decide whether they want to participate in the program. Ms. Dick then asked the term "should" be changed to "shall" in this section to assertively protect hard bottom communities and seagrass beds. Ms. Santamaria noted that the marina siting criteria matches the comp plan word for word. There are maps in the marina siting plan that generally depict preferred areas based on existing data, but it is very likely those resources are located in the majority of the County's nearshore

waters, which is why “shall” is not used. Mr. Williams explained using the term “shall” takes away a property owner’s right they currently have. Commissioner Ramsay-Vickrey then commented that the marina siting criteria should apply towards private piers in the future. Commissioner Lustberg asked that consideration be given to the potential use of waterfront properties that do not have a house on them, especially a small property. Ms. Schemper pointed out that an empty lot across the street or at a diagonal if it is corner to corner does allow for docking of a boat.

Randy Whitesides, marina contractor from Key Largo, stated he believes the County’s attempt to clarify and meet the needs of some of the concerns in canals has made things worse. The intent is that a boat does not encroach onto a neighbor’s property. The setback requirements have become completely inconsistent. Mr. Roberts agreed that this has been worked on for over two years. A lot of the proposed language is a direct result of the public’s and marine construction business owners’ input at the last Planning Commission meeting. The different types of docking facilities and their setbacks were discussed at length. Mr. Whitesides believes the setbacks are making use of more modern and environmentally friendly docking facilities less likely. Commissioner Miller believes there are two necessary considerations: The approach, as well as the stored position. Commissioner Ramsay-Vickrey suggested the setback requirement for a boatlift be limited to 7.5 feet. Discussion continued about the different docking facility options. Mr. Whitesides emphasized the solution is not a one-size-fits-all. Commissioner Lustberg feels ten feet is reasonable for floating docks and 7.5 feet is reasonable for elevator lifts. Commissioner Miller agreed with deleting “whichever is greater” from the boat lift setback language and leaving it at 7.5 feet. Commissioner Wiatt agreed. Commissioner Miller questions the principal structure setback language. Mr. Whitesides then noted that on Page 118-25(4) the definition of navigable depth as four feet from mean low water would render a lot of canals in the County as non-navigable. Mr. Roberts explained the objective of the code is to maintain 50 percent of the waterway for navigation, but staff is open to suggestion as to how to define the width of the canal for purposes of the 25 percent rule. Mr. Whitesides encouraged that be addressed in a multi-disciplinary fashion. Mr. Whitesides then commented on Page 118-28(13)(3) the prohibition of four-post lifts in any manmade canal regardless of the canal width is really bad policy because a four-post lift is the preferred method of picking up a vessel. Mr. Roberts pointed out that this resulted from the specific request of numerous members of the public. Mr. Whitesides suggested prohibiting four-post lifts in canals of less than a certain width.

Burke Cannon, Tavernier resident, stated that four-post lifts impact the neighbors on both sides no matter the width of a canal. Commissioner Miller replied impacting the neighbors is a function of not the width of the water body, but the width of the property’s waterfront. Mr. Cannon believes the 7.5 foot setbacks for elevator lifts and the proposed setbacks for the davits are appropriate. Mr. Cannon suggested requiring a buffer on the end of the elevator lifts and also suggested requiring a minimal passing width if the 25 percent takes it beyond that number. Mr. Roberts confirmed for Mr. Cannon that gazebos are allowed in the 20-foot shoreline setback as well as pool screens. Mr. Cannon does not want to see balconies allowed within the 20-foot setback.

Dottie Moses of Key Largo encouraged the Commissioners to determine how the width of a canal would be measured. Mr. Roberts interjected that consideration is being given to including language that 25 percent of the navigable portion of the manmade water body is that portion of the canal as measured from mean low water to the opposing mean low water prior to a dock being built. Ms. Moses believes that will be problematic. Mr. Whitesides stated Mr. Roberts' proposed measurement would make things much simpler.

Ms. Dick asked that a minimum clearance is provided for between benthic resources and the draft of the boats going in and out of canals to minimize impacts to those benthic resources.

David DeBrule, owner of Upper Keys Marine Construction, agrees with the 7.5-foot setback requirement for boatlifts, but does not believe the davit setback requirement should be changed from five feet. The lifts for personal watercraft should be grouped with the davit setbacks at the five-foot measurement. Mr. DeBrule discouraged the Commissioners from grouping all types of lifts together. Mr. DeBrule believes most of the concerns regarding boatlifts is a result of boat owners not being able to operate their vessels properly. Mr. DeBrule agrees that four-post lifts should never be installed in a canal under 60 feet wide. Mr. DeBrule also agrees with measuring canals from mean low water to mean low water. Mr. DeBrule then commented that the measurement of the water depth for terminal platforms should be measured from the bottom, not the top of the benthic resources. Mr. Roberts clarified the only suggestion for change in the code being referenced is the location of that phrase and disagrees that the measurement should be made from the bottom. Mr. DeBrule disagrees with changing the floating dock setback requirement. Mr. DeBrule believes the language regarding floating boatlifts in (g) is too generalized. Ms. Santamaria explained staff is trying to address the overall situation and balance all of the impacts and encourage the preservation of the benthic resources. Mr. Roberts explained to Mr. DeBrule (d) on Page 28 regarding a mangrove fringe is existing code and the rearrangement of the code relative to marginal docks, T-style docks and pier-style docks has been at the recommendation of the DEO. The 20-foot restriction of the shoreline applies only to a T-style dock.

Ms. Moses responded that the concern of many homeowners on congested canals is the necessity of the watercraft having to power up to get on the floating docks, not the space they take up once they are stored.

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

Commissioner Wiatt stated he agrees with the 7.5-foot setback for elevator lifts and five-foot setbacks for davits. Commissioner Wiatt is also comfortable with having a 1500-pound capacity personal watercraft elevator lift within a five-foot setback. Personal watercraft perpendicular floating docks should be set back five feet, but outside of that floating docks need to be ten feet from the property line. Four-post lifts should require a 7.5-foot setback and not be allowed to make up more than 30 percent of the total width of the property's shoreline. They need to be more strictly regulated and should be a function of its size versus the lot size. Mr. DeBrule distinguished floating docks from a floating boatlift. Mr. Roberts would like to do some analysis in level or degree of impact as far as the size of the parcel for four-post lifts. Mr. Cannon cautioned that consideration be given to when it is not possible to come in vertically to a four-

post lift. Mr. Roberts then thanked the public and the contractors for all of their input on the docking ordinances.

Ms. Love then addressed Article II, Resource Extraction. This came up during the comp plan process and it was recognized there is no inventory of active resource mining operations. **Page 37**, The first change is no more resource extraction or mining permits will be allowed. Any type of oil or gas exploration is prohibited. Some guidance is provided for resource extraction standards. **Page 38**, More detail is given in how to protect the ground water and surface water. An annual operating permit from the County is required. There is a maximum of three years that a mining activity can remain on hold. Registration with the County is required if actively mining by the end of 2016. What submission to be given to the County is provided. **Page 39**, Discusses the ownership will be tracked, the requirement of an annual report and what submission is required on an annual basis. Failure to submit this annual report can result in a suspension of operations. Restoration standards are included. A reclamation plan is required and the reclamation standards are outlined. **Page 40**, Contains language tying the reclamation plan to the annual operating permit.

Commissioner Lustberg asked to delete the word “permanent” from 9 on Page 38. Mr. Roberts explained a temporary contamination can refer to disturbances that are by definition very temporary in nature. Commissioner Lustberg repeated her request. Commissioner Lustberg asked why in 9(c) on Page 38 the County would be permitting any point source discharges of pollution and would prefer that all point sources of pollution shall be prohibited. If point source discharge of pollutants occurs, that should be collected, treated and processed. Mr. Roberts replied that this deals with stormwater as well as on-site generated surface contaminants. It would be very problematic to allow no discharge whatsoever. All contaminants are required to be treated prior to discharge. Otherwise, 100 percent of the water would have to be contained on site at all times. The contaminants would be fuels associated with running the equipment which have other containment requirements associated with them already. Commissioner Wiatt noted that by allowing no discharge takes the regulatory scheme away from anyone looking to do this activity in Monroe County. Businesses in the United States have the right to discharge, but under intense standards. Taking away their right to do this activity would be very discriminatory. Commissioner Lustberg feels Monroe County’s nearshore waters are much more environmentally sensitive than what the EPA’s rules are written for. Commissioner Wiatt disagreed. Mr. Wolfe agreed that the standards are incredibly intense. Ms. Love pointed out that point sources of pollution cover everything from light pollution to contaminants.

A recess was held from 3:53 p.m. to 4:03 p.m.

Chapter 122, FLOODPLAIN MANAGEMENT

Erin Deady addressed Chapter 122. Ms. Deady stated the changes in this chapter are minimal and most are reorganizational. **Page 2**, Paragraph (b)(3) further clarifies the date of the species assessment guide. **Page 7**, Contains renumbering of numbers versus letters and subdivisions within this section. There are small changes in capitalization and some titles of this section. **Page 23**, Contains some renumbering. **Page 24**, Contains new clarifying language in Paragraph (b) of what the County may actually do in relation to the species assessment guides in the proposed development and the permitting. **Page 25**, Contains a small modification to the title in

Paragraph 4 and some renumbering. **Page 26**, Contains a new title and some additional language in Paragraph 5 giving the Planning Director authority if the applicant submits a written request prior to the expiration of an allocation award.

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

Chapter 134, MISCELLANEOUS RESTRICTIONS

Ms. Deady stated the new language is reorganized from other sections and being put into this section. The vacation rental section is preempted by direction from the BOCC and there is no new language related to that. **Page 7**, Contains language from another section in relation to the home occupational special use permits. There are some BOCC changes pending related to this and may need to be revisited. **Page 8**, Commissioner Lustberg asked that the language be changed on Page 8 to allow for more than one employee of the business, but not allowing more than one person working on the property. Ms. Santamaria stated staff will work on this language. **Page 10**, Contains language that has been lifted from another section of the code related to patrons' dogs in public foot service establishments. Commissioner Lustberg asked that it not be limited to dogs of patrons only, but include employees' dogs as well. **Page 14**, Contains alcoholic beverage regulation language that has been pulled from other sections.

Chair Werling asked for public comment.

Ms. Dick suggested adding "local" or "Monroe County" before "newspaper" on Page 134-15 and -16. Ms. Santamaria recommended leaving this in Part 1 of the code so as not to have the same code in two places and one getting amended and not the other.

Pages 18-21, Contain no changes. Commissioner Lustberg asked if regulating competition as noted on Page 19 was allowed. Mr. Williams explained there is only one currently existing sexually-oriented business in the County. Mr. Williams feels changing this might invite more interest to this than leaving the old policy as is. Ms. Deady stated the balance of this section is existing language that is simply being moved to another section of the code in Chapter 135. Mr. Williams emphasized to the Commissioners changing anything in the vacation rental section would cause the County to lose their entire vacation rental ordinance.

Chair Werling asked for public comment.

Mr. Hunter asked why the definition of "boat barn" is being removed. Ms. Santamaria explained there is no use of that term in the code. It used to be in NROGO, but it is being removed because there was an exemption previously for boat barns. Mr. Hunter then strongly encouraged that a definition for the noun "mooring" be included. Mr. Roberts explained a mooring is not regulated in the Land Development Code.

Ms. Dick asked if a mooring field could be required to provide pump-out service in its definition. Ms. Santamaria replied that mooring fields are only regulated in Book 1. Ms. Dick then asked that pump-out facilities, waste and recycling facilities be listed in the definition of "marina." Ms. Dick also asked that the definition also include "docks accessory to a land-based dwelling unit

limited to the non-transient use of owners or occupants of the dwelling unit.” Ms. Santamaria clarified this is to define the use of a marina, not the requirements of the marina.

ADJOURNMENT

The Monroe County Planning Commission special meeting was adjourned at 4:25 p.m.