PLANNING COMMISSION
October 26, 2016
Meeting Minutes

The Planning Commission of Monroe County conducted a meeting on **Wednesday, October 26, 2016,** 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 Ilze Aguila

PLANNING COMMISSION MEMBERS

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

STAFF

Mayte Santamaria, Sr. Director of Planning and Environmental Resources	Present
John Wolfe, Planning Commission Counsel	Present
Steve Williams, Assistant County Attorney	Present
Mike Roberts, Senior Administrator, Environmental Resources	Present
Emily Schemper, Comprehensive Planning Manager	Present
Kevin Bond, Planning & Development Review Manager	Present
Devin Rains, Sr. Planner	Present
Barbara Bauman, Sr. Planner	Present
Janene Sclafani, Planner	Present
Gail Creech, Sr. Planning Commission Coordinator	Present
Ilze Aguila, Sr. Planning Commission Coordinator	Present

COUNTY RESOLUTION 131-92 APPELLANT TO PROVIDE RECORD FOR APPEAL
County Resolution 131-92 was read into the record by Mr. Wolfe.

SWEARING OF COUNTY STAFF
County staff members and all members of the public intending on speaking today were sworn in by Mr. Wolfe.

CHANGES TO THE AGENDA
Ms. Aguila stated that the applicants for Items 1, 2 and 3, had requested a continuance to the November 16, 2016 meeting. Mr. Wolfe informed the Commission they could make one motion to continue all three items.

Motion: Commissioner Wiatt made a motion to continue Items 1, 2 and 3 until the November 16, 2016 meeting. Commissioner Lustberg seconded the motion. There was no opposition. The motion passed unanimously.

APPROVAL OF MINUTES

Change to Minutes: Commissioner Miller noted that on page 10 of the meeting minutes, it was he who had made the motion to approve the variance for Item 1, not Commissioner Wiatt.

Motion: Commissioner Wiatt made a motion to approve the September 28, 2016, meeting minutes, with the change requested by Mr. Miller. Commissioner Ramsay-Vickrey seconded the motion. There was no opposition. The motion passed unanimously.

MEETING

New Items:

Mr. Wolfe announced that staff had requested Items 4 and 5 be heard together, so he would read them both into the record now, but they would be voted on separately at the end.

4. **AN ORDINANCE BY THE MONROE COUNTY BOARD OF COUNTY COMMISSIONERS** AMENDING MONROE COUNTY YEAR 2030 COMPREHENSIVE PLAN POLICY 101.5.29, TO ALLOW LAWFULLY ESTABLISHED TRANSIENT UNITS TO BE ENTITLED TO A DENSITY OF ONE TRANSIENT UNIT PER LAWFULLY ESTABLISHED TRANSIENT UNIT AND NOT BE CONSIDERED NONCONFORMING AS TO DENSITY, AND TO ALLOW THE DENSITY OF LAWFULLY ESTABLISHED TRANSIENT UNITS TO BE REPLACED WITH THE SAME DENSITY OF PERMANENT AFFORDABLE HOUSING DWELLING UNITS NOTWITHSTANDING DENSITY LIMITATIONS OF THE FUTURE LAND USE MAP CATEGORIES AND SUBJECT TO THE AWARD OF AFFORDABLE ROGO ALLOCATIONS; 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 INCLUSION IN THE MONROE COUNTY COMPREHENSIVE PLAN; PROVIDING FOR AN EFFECTIVE DATE.
(File #2016-046)

5. **AN ORDINANCE BY THE MONROE COUNTY BOARD OF COUNTY COMMISSIONERS** AMENDING MONROE COUNTY LAND DEVELOPMENT CODE SECTION 130-163, EXISTING RESIDENTIAL DWELLINGS, TO ALLOW LAWFULLY ESTABLISHED TRANSIENT UNITS TO BE ENTITLED TO A DENSITY OF ONE TRANSIENT UNIT PER LAWFULLY ESTABLISHED TRANSIENT UNIT AND NOT BE CONSIDERED NONCONFORMING AS TO DENSITY, AND TO ALLOW THE DENSITY OF LAWFULLY ESTABLISHED TRANSIENT UNITS TO BE REPLACED WITH THE SAME DENSITY OF PERMANENT AFFORDABLE HOUSING DWELLING UNITS NOTWITHSTANDING DENSITY LIMITATIONS OF THE LAND USE (ZONING) DISTRICTS AND SUBJECT TO THE AWARD OF AFFORDABLE ROGO ALLOCATIONS;

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 INCLUSION IN THE MONROE COUNTY LAND DEVELOPMENT CODE; PROVIDING FOR AN EFFECTIVE DATE.
(File #2016-047)

(10:06 a.m.) Ms. Schemper presented the staff report. These two items were previously heard by the Development Review Committee on June 28, 2016, after which the applicant had submitted some revised language based on staff's request and public input. They were then heard by the Planning Commission on September 28, 2016 where, based on discussion and public input, further revisions were requested and these items were continued to today.

Ms. Schemper pointed out on page 6 of 8 of the comprehensive plan staff report for File No. 2016-046, a bulleted list of what had been discussed at the prior meeting. One item was inadvertently omitted from the list relating to allowing affordable housing in a V-Zone, and the possible requirement that the units be elevated above base flood if reusing an existing building. Inquiry was made with one of the flood plain coordinators as to whether a hotel room converted into an affordable housing unit would be required to be in compliance by being elevated above base flood. The response was that everything is site specific. If it were just a change of use, something that was previously used as a bedroom such as a hotel room, could then be reused as another type of habitable space such as a living area for an affordable unit without being elevated. The threshold would be the 50% substantial improvement rule in terms of the structure. If it's an existing structure below base flood with no substantial physical improvements, it would not necessarily be required to be elevated above base flood.

Ms. Schemper continued that based on the meeting in September, the Commission had directed staff to include the following amendments to the text: 1) Require a major conditional use permit. 2) Add the words "up to the same density" so the property would not automatically receive all of their non-conforming hotel density and it would be decided as part of the approval process. 3) Add the words "any affordable unit provided pursuant to this policy located within a velocity zone shall meet current building code and flood plain requirements." 4) Add that a major conditional use permit shall determine the proportion of affordable units to be built in each affordable income category as defined in the land development code.

Ms. Schemper then referred language at page 7 of that same staff report, noting that the land development code language is almost identical, and that what is in red is what was added based on instruction from the last meeting and had been incorporated into the text. At page 8, staff added information on potential outcomes and impacts of this amendment, attempting to identify hotel and motel properties that are designated Tier 3 which may be able to use this amendment, with maps attached. The summaries are based on property appraiser data and some DBPR data, so it is not complete nor a lawful determination of how many units or rooms these sites had lawfully established, but rather are estimates as follows: Lower Keys, 5 hotels with 143 rooms. Middle Keys: 5 hotels with 221 rooms. Upper Keys: 28 hotels, 1,188 rooms, which does not include Playa Largo with an additional hotel and 177 rooms. Total unincorporated Monroe County: 38 hotels, a little over 1,500 rooms. An important note on the first page of the maps is a

vacant property used as the applicant's example property, the former Caribbean Village Resort. Staff does not know how many other properties are out there that are now vacant but previously had hotels and may want to claim that they had density that they could reuse for affordable. Also unknown are sites already developed with a new use that formerly had hotel rooms.

Chair Werling asked, since the example property, Caribbean Village Resort, is now zoned vacant commercial, has anyone checked about the units that were there, are they still connected to that property or have they been traded off somewhere. Ms. Schemper responded that staff has had extensive conversations with the Caribbean Village property owner about what their possibilities were prior to this amendment being contemplated. Ms. Santamaria indicated the units had not been transferred off of the property, and it has not changed its zoning. Ms. Schemper stated that this concluded her report and she was available for questions.

Chair Werling asked for public comment. Mr. Wolfe indicated this was legislative and no one needed to be sworn in, but asked for speakers to identify themselves when coming to the podium.

Deb Curlee, Vice President of Last Stand, spoke on behalf of Last Stand. Last Stand has participated in the process of creating, reviewing, and amending the Monroe County comp plan and has been very involved in the three-year process to update both the comp plan and land development codes. The right exists for any individual to request a change to the comp plan, but when the proposed change is driven by a specific development goal and has sweeping implications through language and/or precedent for all unincorporated Monroe County, careful deliberation is required. This proposal references the EAR recommendation of the comp plan concerning life expectancies of privately-owned, aging, small motel and hotels in unincorporated Monroe County, and includes recommended strategies for addressing this infrastructure as follows: Incentives for redevelopment of existing hotel tourist facilities should be instituted. Such incentives may include the ability to expand the building footprint, and recommend some relaxation of current zoning regulations to reduce cost of upgrade compliance for green building/lodging certification. These recommendations offer incentives to the owners of the mom-and-pop hotel and motel. This proposal seeks to incentivize developers in the form of increased density for affordable housing not only for the property in question but for all of unincorporated Monroe County. The Affordable Housing Committee held meetings for close to a year and recently submitted their final recommendations to the BOCC for review. They submitted a definition for workforce housing to mean median and below with eligible renters living and working in Monroe County and deriving at least 70 percent of their income as members of the workforce of Monroe County. More appropriate to this property is the Affordable Housing Committee's suggested amendments for a workforce housing overlay which can be applied to properties with a map amendment for a density bonus that would be site specific. Last Stand is asking that this proposal in its present form be denied or at the very least postponed until after the BOCC formulates their policies based on the recommendations of the Affordable Housing Committee.

Bill Hunter of Sugarloaf, speaking as an individual, stated that this is a complicated comp plan amendment. After applauding Mr. Walsh, Mr. Trepanier and his team for wanting to build affordable housing, he stated he believes there is no need for more affordable housing. The need in Monroe County is workforce housing near employment centers, in the median low and very

low income levels. This finding is based on questions the BOCC had asked the Affordable Housing Committee to address. Almost all of the questions and recommendations deal with workforce, and those on that committee know what they're talking about and have been dealing with this for a long time. Mayor Carruthers and Planning Commissioner Wiatt also put a lot of time into this. The key to the recommendation is that 70 percent of the income of the people in that housing be derived from working in Monroe County. The definition hasn't been approved yet, but this is what needs to be done. Workforce housing doesn't yet exist, but employee housing does and is almost a mirror image of workforce housing. Mr. Hunter implores the Commission that if this is to move forward, one of the requirements should be that it is employee housing. He would prefer it to be workforce, but doesn't know how to make that happen. It makes sense for Mr. Walsh to want to build as much as possible on the property, but this comp plan change may not be the right way to do it, and that's where the objections are coming from. Transient rights can be moved off today. Affordable housing can be built today. But that's not what this is about; this is about density, and all about density on a given site. If you can build smaller workforce housing units, you could put more on one particular property, and theoretically then rent smaller units for less, and that's what is needed. The following recommendation from the Affordable Housing Committee does exactly what the applicants want to do: Creates a workforce housing overlay that will provide additional density bonus for workforce housing. It is not economically viable to rehab 50 year-old buildings into transient. Transients will be moved off and that financial incentive is already there. The comp plan indicates there is a financial incentive to rehab hotel rooms and that likely won't happen. If this passes, they'll be turned into affordable housing. They have to be elevated above flood to meet code, but you still have a 40-50 year-old building required to be kept up to livable standards, which is expensive. There aren't a lot of affordable ROGOs left and there are projects asking for big chunks. Toppino wants 213 and Joe Walsh wants almost 150 at the shrimp farm. It's important that we get the best housing we can and the type we need.

Commissioner Miller asked Mr. Hunter if the recommendation in red concerning additional density bonuses was above the density bonuses currently in existence for affordable housing. Mr. Hunter responded that was correct, that every zoning district has both allocated max net for market rate, and many of them have bonuses for affordable and/or employee. This project is suburban commercial and has a max net of six for market rate. One chart shows 15 for affordable, but there is another place in the code where it allows 18 per acre for affordable or employee. Commissioner Miller asked if Mr. Hunter wanted to go beyond that. Mr. Hunter responded he didn't want to, but if you can build small units and meet all the rest of the requirements, stay within the setbacks, provide the parking, do the landscaping and all the other things and you can get 20 in there, why not do it. But he didn't know if 31 was the right number and that is his concern. Density created 40 or 50 years ago before any of this density came into play were small rooms with one parking place. That's what tourism was 40 or 50 years ago. We now have density requirements and are saying, yes, the property owner has the right to build 31, they had 31, and that right shouldn't be taken away from them, but the code doesn't let you change uses. This would be the first time the use would be changed if this is approved and this isn't what we want to be doing. Mr. Hunter stated he doesn't want to ask the applicants to wait as they've been waiting a long time, but maybe a modification using this template would be the way to go. There is not enough data and analysis to know that we should change the comp plan to allow this all over the whole County. He hasn't heard enough to be comfortable with that.

Mr. Hunter emphasized that if this moves forward, to please make it employee housing, not affordable housing, and limit the entitlement with an overlay. The Commission struggles with entitlements and are stuck if it's a major conditional use, but with an overlay, it is site-specific and the developer has to come in and prove that it's a good thing to do. Lastly, the units need to be above flood as these would be the folks who can least afford to recover from a storm surge.

Dottie Moses of Key Largo stated she is not familiar with this property, but is very concerned about the impacts for Key Largo. Key Largo has a lot of these old motels, some in the median of the highway without proper parking and setbacks and a lot of them are non-conforming. Recently, a small 13-unit hotel could only be converted into six affordable housing units due to parking issues and even with that, they will still have parking issues and it does not meet current code. Her concern is this will this become the norm, the waiving of parking and traffic impact requirements and related FEMA issues that everyone is dealing with, both County-wide and in her community. She is not keen on increasing density and agrees with Mr. Hunter that we don't need any more moderate, that it is the same as market rate for all practical purposes. So to increase the density and end up with market rate units accomplishes nothing except more density and more problems. Possibly an overly is the way to go, but not an across-the-board comp plan change.

Owen Trepanier spoke on behalf of the applicant, Joe Walsh. First, Mr. Trepanier stated he really enjoys working with Mr. Hunter as they can have significant disagreements but find they agree with much more than they disagree, and they agree on employee housing. The Caribbean property is SC so the only housing that can be built there is employee housing. There is no objection to using this for what is now employee housing and if a different phrase or definition such as workforce is adopted in the future, they have no objection to that as they are not asking for increased density. Mr. Trepanier explained: We got here because when we were looking at Caribbean and how to put affordable housing on there, we could build 37 affordable units on Caribbean because there was existing density. Under the TRE provisions you transfer ROGO, not density, so the density is left behind. Hurricane evacuation is based on ROGO, not on density, so there is no prohibition in the code against putting affordable housing on that property today, though the Planning Director disagrees and has the authority to make that determination. So, in talking through the process, this pathway was developed. We agreed this was worthwhile pursuing, and Mr. Walsh was willing to foot the bill to do that. As to elevation, Mr. Trepanier assumes that when there is a change of occupancy, all codes must be complied with, so a change of occupancy is the same as building a new building. The proposal is not to encourage or allow, even as an unintended consequence, the conversion of substandard hotel rooms into affordable housing below flood. In the comp plan policy, page 7 of 8, under item (D) in red it says, "Any affordable unit provided pursuant to this policy located within a velocity zone shall meet current building code and flood plain requirements." And we may consider between "and" and "flood plain" adding the word "be elevated" or "be elevated to" so it's clear if someone is using this policy to create affordable in place of transient that the new units must be elevated. That does not mean to redevelop under the 50% rule.

Mr. Trepanire noted there are three or four major issues with affordable housing such as the high cost of land and the high cost of construction. As to the shrimp farm there were some ugly

comments that came out. Someone said, "Why would you bring a criminal element to our neighborhood?" We're talking about affordable housing where the code counts the highest breadwinner's first 40 hours, not their total hours. The second highest breadwinner, we count the first 20 hours, not all the money they earn. So together we're counting 60 hours of pay. At the lowest income, that amount is $47,000 income for a household of two. At the highest it's $100,000. So we're bringing working people into your neighborhood, many of whom may be in your neighborhood now but are paying higher rates than they can afford. Another statement was, "We don't want Somalian refugees on Summerland." The last one was, "Don't you know this is an all-white neighborhood." We have real issues with traffic and density and hurricanes and flood, not discriminatory stuff, though we do have institutionalized discrimination in Monroe County for affordable housing. This site at Caribbean can be rebuilt today as a resort. If we want to build affordable housing, we have to spend a year and-a-half to get through this process to get here today and get a development agreement. That locks everybody up, gives the developer the expectations and security of the project, along with the County and the community, but it's expensive. Then we have conditional use to go through, the process now, to get this amendment hammered out, get a development agreement through staff, Planning Commission and BOCC. Then come back with a site plan to get through staff and Planning Commission. It's a much bigger process for affordable housing than doing market rate, and we discriminate in the V-Zone. You can build market rate, second homes, transient, but not affordable.

Mr. Williams reminded Mr. Trepanier that he isn't charged big, expensive fees for affordable, that they are waived, so he's not sure where discrimination is coming into this discussion. Mr. Trepanier responded that he is not free, nor are the plans, the lawyers, the carrying costs and the time. It's all expensive. He appreciates that the County waives the affordability fees and when the build, they can request waivers of building permit fees and it all helps. When people build individual homes, you can build by right in almost every district that homes are permitted in. When you build attached, they have to go through conditional use approval. Affordable are more commonly attached. By the nature of their design, there is a higher scrutiny of approval process. The point is there are challenges and hurdles from a development perspective to build affordable housing. To do an overlay rather than allowing the hotels to convert and go through development agreement and conditional use, we need to change the comp plan again to create the overlay, then go through a zoning map change to apply the overlay to a piece of land, then a development agreement, and then a conditional use to finally get to build affordable housing. There is no objection to the changes discussed this last time and we support them and the idea of elevated units to prevent an unintended loophole.

Mr. Trepanier indicated the most important thing in the LDR amendment as it's drafted now is wording in terms of compliance with the V-Zone. The language he proposed has been scratched out completely, and so has the language proposed as a result of the last meeting, letter (O) on page 8 of 9, "Any affordable unit provided pursuant to this policy located within a velocity zone shall meet current building code and flood plain requirements." If adding, "and be elevated to flood plain requirements," does not allow an affordable ROGO unit to be allocated to a property that has existing transient units in the V-Zone to be replaced by affordable, then he does not agree with that condition. We think the intent of what was talked about was that the affordable units could replace transient units in the velocity flood zone.

Commissioner Lustberg asked if Mr. Trepanier could repeat the one he was talking about, which paragraph he was referring to, so she could find it. Mr. Trepanier stated it was on the LDR amendment on page 8 of 9. So in our language, we proposed the first few words that said notwithstanding Section 138-24(E)(3), which is the one that says, you cannot allocate affordable ROGOs into the V-Zone. If the intent is to allow this to happen, he would ask to include the notwithstanding language or some other language that the County is amenable to that would allow a ROGO unit to be allocated to a location in the V-Zone.

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

Commissioner Lustberg stated she believes she understands the difference between what is proposed and what the process and implications would be for an overlay, but asked staff to explain the two so she can be sure, specifically as to the difference in the process, the difference in the potential outcome, and the difference in the control of the amount of density.

Ms. Santamaria responded that the conditional use is usually established within a zoning district. So the zoning district will have the as-of-right, minor conditional use and major conditional uses. All land zoned within whatever category has the ability to request that conditional use. It requires review by the DRC as well as the Planning Commission who is the deciding factor. It requires public meetings and public input at DRC and at Planning Commission. You can add in conditions within the approval to maintain community character or address traffic or noise issues and so forth. You could address density, site specific, with a condition within a conditional use, provided it's not inconsistent with something else. On the overlay, it is a map category that is established, and then it is applied to a specific piece of land. To apply it to that piece of land or even to create it, you would need DRC, PC, BOCC and the State's approval, because the State would have to approve any text amendments to the comp plan and code. It provides for public input at all three stages. In the overlay itself, you can establish a density standard or range. Instead of looking at it and saying, in this one instance, this place can have 21 and that place can have 22, in the category itself you can say, in this category you could have up to 22. You could also create it where it has as-of-right minor and major, so it might still trigger a conditional use within it if that's how it is established. So you still may have the second step of the conditional use where you can provide additional conditions.

Commissioner Ramsay-Vickrey asked regarding the County being unclear as to how many properties could fall under this scenario and what Ms. Santamaria would propose in a major conditional use versus an overlay to something that would be maybe a little more site-specific and would narrow the triggering of unintended consequences on more development of units we hadn't considered. Ms. Santamaria responded this was a tough question and she was not sure how to address it, but possibly a time frame saying this could only be applied with units that are recognized by a date certain, or if they've already transferred off the units then it would no longer apply or they couldn't use this text amendment. Commissioner Ramsay-Vickrey inquired further on part (B), the time frame or mechanism to control any unintended circumstances. Ms. Santamaria responded that, off the top of her head, if they've already transferred off the units, it wouldn't apply because it would be hard to go back and research that information.

Ms. Schemper asked Ms. Santamaria what type of transfer she was referring to. Ms. Santamaria indicated the transient out-ROGOs, the exemptions. Commissioner Ramsay-Vickrey then asked if that could come back and bite them. Mr. Williams interjected that was asking to predict basically an unknown future, but if we could foresee it, we would tell you about it.

Commissioner Ramsay-Vickrey inquired if there is a way to address this more site-specific as opposed to County-wide. And then, as to workforce versus affordable, when is the BOCC supposed to look at that issue. Also, does the comp plan allow for sale of these properties, relating to the V-Zone and if some of these properties are sold the insurance rates alone would take those properties out of an affordable range. Based on what was heard today and her thoughts are, this is more than an affordable issue, this really is a density issue. Most of the units on page 9 of 9 could go to the Upper Keys, and that is an area of lesser need. Looking at the Monroe County Workforce Housing Stakeholder Assessment Report of April 2015, the Upper Keys already have 346 units and we could potentially send another 1,188 up there. In the Lower Keys, where our biggest need is, we're only adding a potential of 143. That's another concern that by allowing this on such a broad level, mass density goes to an area with the least need.

Ms. Santamaria responded that the amendment does not specify for sale or for rental. That could be a recommendation and could be limited to rental units. It is a density question and that is the policy decision today. The biggest need from the assessment report and from the AHAC Committee was in the Lower Keys. Through the requirement of a development agreement and a conditional use, there is some site-specific control. A condition could be added that need has to be demonstrated as one of the factors, and that's one of the decision factors for how much density is allowed to be retained on site for either the employee or affordable housing project.

Commissioner Miller stated that as much as he hates to be seen as working with the Affordable Housing Committee, the best course of action here would be to recommend to the BOCC that this go to the Affordable Housing Committee and they set the policy in a more comprehensive manner rather than having individual developers come in and attempt to set the policy that we're going to initiate for affordable housing. His recommendation is "no" on this ordinance, and send it to the Affordable Housing Committee.

Commissioner Lustberg inquired as to something raised by Ms. Moses. When somebody wants to change a property where the property was filled 500 years ago and doesn't conform with setbacks, assumes nobody owns a car, then when the property is redeveloped an effort is made to bring it into compliance, but often it isn't actually in compliance. In such an instance, based on how things were before as compared to right now, would a property being developed from the transient use to the affordable use have to comply with what the current regulations are or would they be able to transfer over their non-conformities. Ms. Santamaria responded, if you do a change of use or a substantial improvement, you need to come into compliance. Commissioner Lustberg asked if this would be considered a change of use regardless of any amount of changing of buildings. Ms. Santamaria indicated that is correct, it's going from transient to affordable housing. Under Ms. Moses' example, the Tavernier Inn, that was a unique situation. It's designated a historic building by the County which has some leeway and waivers. That's why that parking issue was allowed to continue.

Commissioner Lustberg stated that she's open to more discussion, but if there is nothing further, she has proposals in changing language, though further discussion may make it irrelevant.

Commissioner Wiatt asked staff if there were foreseen issues with changing the "affordable" wording to "employee," if everywhere it says "affordable housing," we could go to "employee housing," because we do have that definition. Ms. Santamaria indicated she did not anticipate an issue. Commissioner Wiatt stated, as Bill Hunter mentioned, that's more in line with what the Affordable Housing Committee suggested to the BOCC. And if this does move forward, we would be more in line with what the BOCC hopefully will do in approving the workforce housing definition. Commissioner Lustberg agreed. Commissioner Wiatt also commented that having rentals only was interesting would be a good idea. Chair Werling agreed. Commissioner Wiatt stated that at the last meeting, he hung his hat on the idea of major conditional use being the site-specific opportunity to address this properly, and he doesn't see anything today that would dissuade him from that and still believes this is the best way of managing this. However, he is concerned that adding the overlay would make this incredibly onerous. Also, as to Commissioner Miller's comment about having this go back to the Affordable Housing Committee, he doesn't think they would give you what you wanted. Commissioner Miller stated that the people on the committee have been talking about this for their entire lives and that would be the appropriate venue as opposed to individual developers coming in and creating policies for affordable housing in this County. Commissioner Wiatt understood, having been a member of the committee and having gone through so many meetings, and is confident they committee is very pro increased density to make more workforce housing available. Commissioner Miller told Commissioner Wiatt he would just have to fight for us.

Ms. Santamaria interjected that the BOCC did approve a special meeting for December 6, 2016, to go over the Affordable Housing Committees 33 recommendations. Bill Hunter had one on the screen which was the overlay opportunity to increase density in a site-specific manner. Also, the committee had discussed providing an additional density bonus in the mixed use zoning district. Their focus was also on the workforce housing and rental, as well as the three lowest income categories. All of their ideas revolve around density bonuses, but only for those caveats.

Commissioner Miller stated we've gotten into the weeds with some of this stuff because we've got major policy changes here and this needs to go to a committee such as the Affordable Housing Committee. Whatever comes out of that, then we can chew it up and digest it, but he does not want to see this done this way and thinks it is not appropriate. Commissioner Wiatt agreed specifically as to having developers creating policy.

Commissioner Lustberg stated it's important to think long and hard about a policy that's brought before the Commission that will affect the whole County when somebody is bringing it forward because they wish to use a specific piece of property in a specific way. But it's also good to get proposals straight from the public because the people who live, work and are trying to develop here may well have a very different perspective on what it takes to get things done than the County itself. It goes before the DRC, us, the BOCC, and the State, and there's a lot of review that happens. The developer doesn't just come in and say, "Let's change the comp plan." It is important that we can consider proposals like this.

Commissioner Ramsay-Vickrey wondered if this was premature and whether they should wait until after the December BOCC meeting to see what they come back with. That would also give staff time to reconsider issues being discussed and what the Commission would like to see added to this. Her biggest concern is for rental only, demonstrated need as far as over-building in the Upper Keys, time frame and triggering past ghosts, elevation in the V-Zone, and the employee housing or workforce housing definition. By waiting until after the BOCC December meeting some of these things would be more defined. Chair Werling stated that the Commission's collective ideas and suggestions should be sent to the BOCC for that meeting, regardless of what is done today.

Commissioner Lustberg likes the idea of owned affordable as opposed to just rental affordable as ownership changes the nature of somebody's relationship to their property, though some properties are more conducive to rental if they are very, very close. In an overlay or in a development agreement, she would be hesitant with a County-wide rule to specifically designate it only for rental. Commissioner Lustberg asked, if they were to do something today, could this go on the BOCC's agenda after December 6 so the BOCC would already have had that special meeting before making a decision. Ms. Santamaria stated it would likely have to be after that date as the November deadline is only days away. Commissioner Ramsay-Vickrey wanted to add that the concern with the rentals is properties sold in a V-Zone or in another flood category zone is going to substantially increase the insurance burden, so she would at least like to limit it to only rentals in a V-Zone. That way the landlord absorbs the insurance costs and it's not passed on to somebody who doesn't know what they're taking on and then find they can't afford to live there anymore when they get their insurance bill.

Commissioner Lustberg also thinks if properties were to be sold for affordable that those should be rebuilt up to code, elevated, all done prior to the sale as opposed to selling a property that's affordable but then requires unbelievable amounts of work to make it functional. As to the language changes to the comp plan, on the staff report, page 7 of 8. The first change is in the second paragraph, and the second and third paragraphs are in conflict with each other. "Lawfully established transient units recognized by the County may be entitled to a density of one transient." that's the first line. I would like to change that to, "Lawfully established transient units recognized by the County may receive a density of up to one transient," and then continue on the next line, "dwelling unit per each recognized lawfully established transient unit."

Commissioner Lustberg continued, down on (H) it says, "Prior to approval of a development agreement, all structures and units to be maintained on site shall pass a life safety inspection conducted in a manner prescribed by the Monroe County Building Department." A development agreement seems premature. Maybe, before receiving permits, before being able to proceed, because I could see somebody with some ancient hotel saying, hey, I want to get a redevelopment agreement to redevelop it before I rebuild it to the point that it meets all of those requirements.

Ms. Schemper stated the reason they had put that in that way was to not go through the entire development agreement process saying they could reuse an existing building and then, come to find out, there's no way to make that work because it doesn't meet the standards.

Commissioner Lustberg responded, there has to be a way that people can decide that they're going to develop the property before the property is done. Because based on this, the applicant today would have to build the units and have them inspected prior to being able to do this development agreement. Ms. Schemper indicated she understood.

Mr. Wolfe asked if that was only for units to be maintained. Ms. Schemper replied, yes, but she understands. Mr. Wolfe stated this contemplates just ones that are staying. In other words, they're there now, the developer plans to keep them there. They're not building new ones, so that is what has to pass, as opposed to new construction. Commissioner Lustberg responded that maybe two pieces of language were needed; one addressing buildings that are planning to stay, and the other addressing new or redevelopment of existing buildings. Ms. Schemper explained she thought Commissioner Lustberg was trying to say that if it's a building that they're planning to keep, but they may be doing improvements that will bring it up to code, because maybe at the time of the development agreement, the current state of the building is not habitable but they can bring it into repair. Commissioner Lustberg stated she understands the intent, but thinks the order is a little out of whack.

Mr. Trepanier suggesting replacing the word "pass" with "undergo" or a more precise legal term. Mr. Williams stated, no, that failure is not an option. Undergo, then why have it? Mr. Trepanier stated that from a development perspective, what he hears Commissioner Lustberg saying is we need to understand what the issues are with a unit before we enter into a development agreement to understand what changes need to occur if it's retained. Mr. Williams stated they were putting the Building Department into an advisory opinion situation and that's not what they are there for. Chair Werling agreed. Ms. Santamaria suggested adding something like the development agreement shall include a condition that they will undergo a life safety and, prior to CO, they must pass the life safety inspection. Commissioner Lustberg added, and to also comply with any other conditions of what we decide needs to be done with the units.

Commissioner Lustberg continued, the next one (I) where it says, "Each affordable unit provided pursuant to this policy shall comply with hurricane standards established by the Florida Building Code and habitability standards under the Florida Landlord and Tenant Act. Compliance shall be accomplished in a manner and within a time frame set forth in the development agreement." The suggested change is, "Compliance shall be accomplished prior to occupancy." What I don't want, and I think this last sentence allows now, is somebody could start renting a piece of property with the development agreement stating that within the next five years, it needs to be brought up to whatever. And anything that we have that comes through this should meet these standards prior to occupancy or a certificate of occupancy or anyone moving into the property.

Commissioner Lustberg continued, the last change would be to change all "affordable" to "employee" with the understanding that it would be good to bring it back before us after definitions are changed at the County level so that we could make two separate definition changes. Chair Werling interjected, not "employee," rather "workforce." Commissioner Lustberg noted that workforce doesn't exist now. Change everything to "employee" now and theoretically to "workforce" in the future.

Chair Werling asked whether, at the prior meeting, the time frame in which the affordable construction had to be started or completed before the transfer of the transient units had come into play. Commissioner Lustberg indicated affirmatively. Chair Werling asked what had been decided. And Commissioner Lustberg indicated nothing had been decided, just discussed.

Commissioner Ramsay-Vickrey stated that somewhere in (D) the V-Zone needs to be limited to rental only, and add the elevation so that any affordable unit provided pursuant to this policy located within a V-Zone shall be elevated and meet current building codes and flood plain requirements, somehow limiting V-Zone properties to rental properties, no sales in that zoning, going back to the insurance issue. Also, address the time frame and the demonstrated need.

Commissioner Lustberg wanted to somehow add that somebody should not be able to take a substandard property that's no longer good for being a hotel, do minimal improvements that don't really fix the problem but can get it past the life safety inspection for the first two years, and then be able to rent it as affordable. Properties should be substantially redeveloped, if necessary. Chair Werling agreed that some of the smaller properties could sort of "rest on the laurels" of what was gained by trading off transient units, putting a Band-Aid on something to get them through, that we're giving more than everybody wants to think we're getting. Commissioner Lustberg stated she envisioned, gone is the old hotel, up is the new affordable housing. She did not envision knocking down a wall between two rooms, put up an efficiency kitchen and call it done. Chair Werling agreed, while they gain trading off the transients which is huge. Commissioner Lustberg noted that transients can be traded off now. Chair Werling agreed, but that they still couldn't keep what they're being given. Commissioner Wiatt stated these are again site-specific issues better addressed during major conditional use discussions. Commissioner Lustberg agreed, mostly, and understands the problem, but when looking at conditional use and the rule says you can do this, it's very difficult to then put in conditions that say you can do less than this. Commissioner Wiatt indicated he understood. Commissioner Lustberg added that they need to make sure the rules don't hamstring them from protecting the future potential occupants of a property. Commissioner Wiatt agreed, noting there are some criteria on the major conditional use that are pretty wide open.

Chair Werling asked Ms. Santamaria a crystal-ball question, if there were any circumstances where they would not have to come with a major conditional use. Ms. Santamaria indicated not if it was added into this text. If added into this text, it will be required.

Chair Werling asked if Commissioner Miller had anything further as he had been so quiet. Commissioner Miller stated he had said what he wanted to say and then kind of shut down, indicating that since he's voting "no," rearranging chairs on a ship that he believes is going down is a waste of time. Chair Werling observed that he was not the violinist. Commissioner Wiatt asked, based on Commissioner Miller's comment, if there was a need to do some a straw vote on the item, rather than putting staff through a lot of work revising this if it's going to be shot down.

Commissioner Lustberg stated she would support something like this, provided we can ensure that the buildings will be appropriate to their new use and that the density allowed on a specific property is appropriate as opposed to being the absolute maximum when it doesn't suit. Commissioner Wiatt asked, so if we get the language right, you would support this. And

Commissioner Lustberg responded, if we get the language right and if it's possible for the language to protect that which we seek, still wanting to wait for the Affordable Housing Committee changes in the comp plan or LDRs, when it will come back before us anyway. Anything decided here goes before the BOCC, so it seems not right to not do anything waiting for somebody else to look at everything. Then as they think about it, they can give us little pieces to address the problem.

Commissioner Miller stated that the point is to do it in a comprehensive manner, and that's what the Affordable Housing Committee. His recommendation to the BOCC is that this goes in front of the Affordable Housing Committee to come up with something comprehensive. Not deal with each developer who wants to come down and change the comp plan every time they buy a piece of property. Chair Werling commented that what they've worked on already can be sent to the BOCC for their meeting because we're just concentrating on this. There may be things that we feel aren't included in this because we are working on a developer's request.

Commissioner Wiatt suggested to flush out some things we're fairly comfortable with and then send it to the Affordable Housing Committee so we're not asking them to start from scratch. Mr. Williams asked when Commissioner Wiatt's next Affordable Housing Committee meeting would be. Commissioner Wiatt stated that was a good point, he had no idea. Commissioner Lustberg stated that some things can be looked at in big picture form, because we see this slice of the pie and then we send it on to BOCC. BOCC looks at the whole thing. That's part of why we are an advisory entity, because then it goes to the BOCC and they are the elected officials looking at everything going on in the ounty whereas we look at a part, but all of the comp plan is our part. Chair Werling stated it shouldn't be sent too untidy. Commissioner Wiatt stated that Mr. Williams was right, the logistic issues associated with pulling all that off and the amount of time it would take, not to mention that based on personal experience, it would get wrapped around an axle in a hurry in that committee. Ms. Santamaria stated that for right now, the Affordable Housing Committee doesn't look at specific development proposals. They were given a specific task by the BOCC, who will be discussing it shortly.

Commissioner Miller stated their task is to look at affordable housing in a comprehensive manner. Chair Werling indicated that's part of the problem with this, that this is specific. Commissioner Wiatt commented that this is our job more than the Affordable Housing Committee. Commissioner Lustberg repeated, then let's talk about language. Commissioner Wiatt mentioned he'd already mentioned the change to "employee" from "affordable." Down in (D) meeting current building code, elevating buildings, adding language that buildings not conforming to current flood plain requirements must be elevated to meet those requirements, to make it very clear. Even though there may be some flaws with major conditional use, that's going to be the best tool, recognizing there are some limitations. The real need is in rentals, though ownership in some cases might be the better option. Chair Werling believes there are other opportunities in the affordable realm for ownership. Commissioner Ramsay-Vickrey agreed.

Chair Werling asked about a tracking mechanism for the affordable. Ms. Santamaria responded they are tracked with the ROGO allocations and monitoring and qualifying of the applicants. Rentals are annually re-qualified. Commissioner Ramsay-Vickrey stated she could support the

rental-only use. Chair Werling indicated she leans toward rentals because of the transient element of it to start with. These specific types of transfers should kind of be kept, and that doesn't preclude other affordable units from being purchased. This is special unto itself.

Commissioner Lustberg stated she did not understand. Chair Werling explained, because this is such a specific thing, these are taking transient facilities, letting them trade the transient units off, in essence, doubling up. We could request that this type of mechanism that we're allowing be kept rentals because there are other affordable projects that could have home ownership. Especially going from a density aspect, you're going to want to jam more on. That unto itself, I think we need to hold something. Commissioner Lustberg indicated she understood.

Ms. Santamaria asked about adding, "This policy shall be available to properties where the transient ROGO exemptions have not been transferred off the property prior to the effective date of this policy." And potentially for the need, "Each proposed project shall demonstrate that the proposed density is consistent with the community character and addresses the demonstrated need." She is still considering the compliance issue. Commissioner Lustberg asked for a repeat and Ms. Santamaria repeated and further explained that if they've already transferred off and gone through existing policies and code, then this wouldn't be available to them. But if they haven't, as in the example property, then they could use the mechanism to retain the non-conforming density for affordable or employee housing. Chair Werling added that was why she had asked if that had been transferred off already. Commissioner Lustberg asked if it would be better to say that the density could not be transferred off prior to doing the development agreement. Ms. Santamaria stated the for exemptions, we could have it that way as well. Commissioner Lustberg clarified, so somebody couldn't transfer off the stuff and do what it was they wanted to do and then come back and apply for the density. Chair Werling indicated that's what she was saying, and liked that. Ms. Santamaria stated, so transient ROGO exemptions shall not be transferred off the property prior to the approval of the development agreement.

Commissioner Vickrey-Ramsay asked if anyone had anything to tighten up demonstrated need. Commissioner Lustber stated she thought nobody would have any issue ever showing demonstrated need for affordable housing in the Keys. Unless things seriously change, that wouldn't be a hindrance to anybody accomplishing anything. Ms. Santamaria asked as to a demonstrated need near a certain distance from employment centers. Ms. Ramsay-Vickrey asked if there was anything to be done to tighten it up as far as the Upper Keys area goes. Ms. Santamaria stated that ROGO exemptions can only transfer within their same ROGO subarea. So maybe use demonstrated need within their ROGO subarea. That's what I have off the top of my head until I can think of something further.

Ms. Schemper stated, if it makes the Commission feel a little better about the imbalance between the Upper and Lower Keys, the Upper Keys includes a number of larger well-established up-to-date hotels. So even though that number is much higher, it has things like the Hilton, 200 rooms, and they're probably not going to do this to the Hilton. Chair Werling asked, since those examples had been brought up, could people do a partial such as if you have a older portion of a larger resort, take the older portion, trade that off, and build maybe employee housing for your own employees. Ms. Schemper stated that currently under letter (F) it says affordable housing as permitted by the property's FLUM and zoning designations and accessory uses thereto shall be

the only uses permitted on property redeveloped under this policy. The current proposed language would limit the site to that, unless there was some way they could split up their property. Commissioner Lustberg inquired, but somebody with a hotel could put employee housing on their property as the rules are. And Ms. Santamaria replied that, yes, if they had remaining density left on their property.

Commissioner Lustberg asked staff if what she was reading is exactly as it is. An existing piece of property that has transient units and density on it can transfer the transient elsewhere, and on that existing piece of property keep that density for affordable, but there's nothing that would allow them to transfer that density for affordable to any other pieces of property. Ms. Santamaria replied that if that property already has density, they can do that today. But under this, if they wanted to build the affordable housing, they can't transfer off the density. They need it to build the affordable housing. Commissioner Lustberg asked about the affordable units in the V-Zone being elevated and up to snuff before anything happens, if there was any proposed language for making sure all units are okay prior to being used. Chair Werling stated she thought that was answered in another line. Everything had to be up to code. Commissioner Lustberg stated everything needs to meet life safety standards, but everything does not need to be up to code unless it's rebuilt. The question is, do we want to make sure that everything is up to code or just up to life safety standards. Commissioner Ramsay-Vickrey asked if that wasn't already in (I). Ms. Santamaria asked if the Commission wanted a new (D) that any employee unit or affordable unit provided pursuant to this policy shall be elevated and meet flood plain requirements, and just shift all the letters down and keep the current (D) as it is. Commissioner Lustberg stated she didn't know if this was necessary or something that everyone would agree with, but any property redeveloped should meet all existing building codes. Chair Werling stated, I think what we were talking about earlier is some of the older ones that they're not going to do as much renovation, they won't be required. There's a tipping point on how much, and then they wouldn't have to bring it into compliance.

Ms. Schemper clarified what you have in the language now for (D) would then specify that in the V-Zone, even if they don't reach that tipping point, you want it all brought into compliance. So I think, Commissioner Lustberg, you might be asking why are we limiting that to the V-Zone, let's just do that for all the units. Commissioner Lustberg stated that was right, that if you're going to bring this up to this increased density standard, you should start out up to code on everything as opposed to only having to be up to code in the V-Zone. Ms. Schemper indicated (D) could just be changed to no longer specify the V-Zone, and it could be all of the units. Commissioner Lustberg added, but what this does is it makes rehabbing an old hotel not such an economically viable option for affordable housing. Chair Werling stated then they might just keep it as the existing hotel and do their own improvements. Commissioner Lustberg commented if they had to renovate anything, they may just reconvert the hotel.

Commissioner Wiatt stated he would agree if we were looking at these as non-rentals, but looking mainly now at rentals he's not sure that that's really necessary to bring all those up all the way to code and thinks it will eliminate everybody. For ownership, they should be brought up to code. Commissioner Lustberg asked how often the life safety inspections were done. Ms. Santamaria stated the life safety comes from the mobile home incentive ordinance. When transferring off the market rate rights from a mobile home park and converting that to affordable

housing, that's where the inspection triggers. It's consistent with the mechanism of transferring off the transients and converting it to affordable housing, but it is not an annual inspection. Commissioner Lustberg asked with an old building, if it passed the life safety standards now, there's nothing making them keep it that way unless the tenants call. Ms. Santamaria stated that was correct, but it could be added that it's subject to a life safety inspection every five years. Chair Werling stated she didn't want to see the little old hotels get a Band-Aid slapped on it, get the benefit of trading off units, and just keep slapping the Band-Aid on it. Commissioner Ramsay-Vickrey asked about the cost and if this would kill a project. Ms. Santamaria indicated she did not know. Chair Werling stated it may not be that appealing. Commissioner Wiatt stated it gets back to whether you want to do it or not. Do we just want to say "no" or there's a need and with controls in place, we're willing to do some of these things. That's the real question. Chair Werling indicated they would have to meet certain things just on a permit alone.

Commissioner Lustberg asked if Ms. Santamaria could read back some of what had been stated so someone could make a motion to move forward. Ms. Sanatamaria summarized as follows: On the comp plan, page 7 of 8, in the second paragraph, first line, "shall be entitled to" changed to "may receive." Throughout the entire item, change "affordable housing" to "employee housing." On Item (D) Any employee unit provided pursuant to this policy located within a velocity zone shall be rental units that meet current building codes and shall be elevated above BFE to meet flood plain requirements. (H) Prior to approval of a CO, instead of development agreement. (I) Compliance shall be accomplished prior to occupancy. (New item) Transient ROGO exemptions shall not be transferred off the property prior to the approval of the development agreement. (New Item) The proposed project shall demonstrate that the proposed density is consistent with the community character and address the demonstrated need within the ROGO subarea. The recommendation to add in some language that if they are maintaining existing structures that it must be brought into compliance and not keep them substandard and not trigger the substantial improvement. I'm not actually sure how to word that item. And then, I was not clear at the end of this conversation if you meant all units will be elevated or all units will be rental. Commissioner Ramsay-Vickrey stated, all units will be rental. Ms. Santamaria stated that's adding a new item that all units developed under this policy would be rental. Commissioner Ramsay-Vickrey stated the only other addition is somewhere in (D), something about only rental units are permitted to be located within the V-Zone, preferring the word "only" and locking that down. Ms. Santamaria stated she believed she missed one on the second paragraph, first line, very end of the page, the density of up to one unit. And just to put a kink in there, Mr. Trepanier had asked previously because as the policies are in the code we don't allow ROGO allocations to be allocated in the V-Zone. So you'd have to put in some language, like he said, notwithstanding that policy or code, we could still do it, and then limit it to the rental and that they would meet the standards.

Commissioner Wiatt reiterated from the last meeting, if you're up to our 180 mph building code and elevated and above flood plain, I don't have a problem with affordable housing in V-Zone. Chair Werling stated this appeared to be the best compromise across the board. You get some, but not everything. Commissioner Ramsay-Vickrey agreed, and limiting to the rental the insurance was not being passed on to the occupant. Ms. Santamaria indicated she would add that in as well, and asked if they wanted to add the 30% reduction previously proposed. In the Land Development Code Section, page 8 of 9, item (O) purple and struck through. The language

previously was, “Notwithstanding Section 138-24 (C)(3), in instances where transient units and structures in which they were located are lawfully established within a velocity zone, they may be replaced in accordance with this section subject to a 30% reduction in gross number of units within that velocity zone.” Commissioner Lustberg stated she didn’t think that was necessary because the V-Zone was being addressed through requiring the structures to be up to date. Commissioner Ramsay-Vickrey agreed. Ms. Santamaria wanted to confirm that all other items discussed in the comp plan should be put in the comp plan as well, and Chair Werling confirmed.

Commissioner Miller stated we have an ordinance coming up where the height exemption is not going to be given to properties that are in AE and VE10 and above, but yet we’re sitting here talking about allowing stuff in the V-Zone. I would like to see, if we’re going to pass this on, is to list all of the policies that this ordinance is in conflict with, starting with Policy 101.5.26, “In order to continue to implement the Florida Keys Carrying Capacity Study, Monroe County shall promote the reduction in overall County residential density.” And then, just begin listing the policies and the LDCs that are in conflict with this ordinance, if you could, when we pass this on.

Mr. Williams asked if that was the will of the entire Commission or one Commissioner. Commissioner Lustberg stated, no, that sending this on to the BOCC with full information and concern of everybody who’s been looking at this is just fine. Commissioner Wiatt stated he had no problem with that transparency. Commissioner Ramsay-Vickrey stated they would get a full report from Ms. Santamaria on the policies it supports and the policies it opposes. Commissioner Wiatt stated it may very well initiate some discussion about the bigger policies, too. The flood plains are going to be changing and V-Zones are going to be changing and do we really want to have in our comp plan a cut-and-dry prohibition of affordable housing, even though it’s a rental, even though it’s up to current 180 mph building code, and even though it’s built above flood plain. It seems to me we allow everything else, why aren’t we allowing affordable on that. Chair Werling stated this would give an option and they can take the information and add to or subtract from and say yea or nay. It’s the best some of us can do with what we have to work with, and if they don’t agree, they don’t agree. Commissioner Miller stated he just thought this should be more comprehensively approached in the Affordable Housing Committee instead of individual developers coming in. Next week, someone else comes in and wants to change the comp plan again, has a different idea, now what are you going to do? If the thrust of this is for affordable housing or employee housing, then it needs to go to the Affordable Housing Committee, that’s the point. Commissioner Ramsay-Vickrey stated the BOCC is meeting in December to discuss this and I’d like to get some of the ideas that we’ve vetted out here last month and this month, to them, for their consideration. The more information they have the better choices and decisions they can make. They can throw the whole thing away, that’s their choice. But we’ve put a lot of time and effort into addressing our concerns and the pitfalls in trying to come up with a reasonable path forward. Chair Werling agreed to not being a proponent of the V-Zone, but there are some older properties in the V-Zone now. If you want to at least make them better and safer, the way it is now, it kind of hamstrings them from doing anything. You’re just keeping them questionable and risky. We have them in existence. We’re not creating a bunch. Commissioner Wiatt stated that would be one of the unintended consequences of doing that, you don’t get any redevelopment in a V-Zone.

Ms. Santamaria stated you can redevelop in a V-Zone, but ROGO allocations are not issued in the V-Zone today. If you have an existing unit, you can rebuild it. Commissioner Wiatt said then a more accurate statement would be that it takes some options away for redevelopment. Commissioner Lustberg stated she had two concerns with what was about to be sent forward. Can the conditional use process prevent us from developing density that is beyond what should be on a property, and can the conditional use process under the existing rules prevent us from having motel slum affordable housing. I think what I've heard is mostly yes to those questions with imperfections. Ms. Santamaria indicated that was why it was being added into the policy, so not only do they have to meet the standards of the conditional use, but they have to meet the standards established within the policy. Commissioner Lustberg asked if the measures put in protect enough for density and habitability for housing that was not in the V-Zone. Ms. Santamaria indicated possibly.

Mr. Wolfe asked if they were ready for a motion. Commissioner Miller said he thought so. Commissioner Ramsay-Vickrey made a motion to approve as read by the Planning Director, as directed by the Planning Commission. Mr. Wolfe stated this relates to the Comprehensive Plan, because the voting was separate.

Motion: Commissioner Ramsay-Vickrey made a motion to approve Item 4 as read by the Planning Director, as directed by the Planning Commission. Commissioner Wiatt seconded the motion. The roll was called with the following results: Commissioner Ramsay-Vickrey, Yes; Commissioner Wiatt, Yes; Commissioner Lustberg, Yes; Commissioner Miller, No; Chair Werling, Yes. The motion passed.

Motion: Commissioner Ramsay-Vickrey made a motion to approve Item 5 as read by the Planning Director, as directed by the Planning Commission. Commissioner Wiatt seconded the motion. The roll was called with the following results: Commissioner Ramsay-Vickrey, Yes; Commissioner Wiatt, Yes; Commissioner Lustberg, Yes; Commissioner Miller, No; Chair Werling, Yes. The motion passed.

6. <u>Key Largo Chocolates, 100470 Overseas Highway, Key Largo, Mile Marker 100.5</u>: A public hearing concerning a request for a 2COP Alcoholic Beverage Special Use Permit, which would allow beer and wine for sale by the drink (consumption on premises) or in sealed containers for package sales. The subject property is legally described as Lots 10, 11, 18 and 19, Block 7, Amended Plat of Key Largo Park (Plat Book 3, Page 62), and Part of Adjacent Former Right-of-Way of State Road No. 5, Key Largo, Monroe County, Florida, having real estate number 00524440-000000.
(File 2016-139)

(12:10 p.m.) Ms Bauman presented the staff report. The request is for Key Largo Chocolate retail store for approval for a 2COP Alcoholic Special Use Permit. Key Largo Chocolates is located and 100 bayside. They are located in a suburban commercial zoning district where retail sales are permitted. Their two-story commercial building consists of a lower level of commercial retail and the upper level of a two-bedroom apartment. Currently, the use of the retail store is to sell chocolates, ice cream and gift items, and now they would like to include

wine and beer by the glass or package sales. They are requesting a 2COP Special Use Permit to sell beer and wine by the glass and package to compliment their chocolates and gift items. Staff has found the retail store has met all the requirements required for an Alcoholic Beverage Special Use Permit and therefore staff recommends approval with the three standard requirements as stated in the staff report. That completes my report. I made it short and sweet.

Chair Werling asked if there were questions. There were none. Chair Werling asked if the applicant wished to speak. No speakers. Chair Werling asked for public comment. Mr. Wolfe swore in the next speaker, Tiffany Moe.

Tiffany Moe indicated she takes care of the property that is at the same location, hers being 100460 Overseas Highway. The properties touch. The buildings touch. Ms. Moe offered photographs.

Commissioner Lustberg asked if she was the blue building. Ms. Moe indicated she has the green, the purple and the pink. In one of the pictures, a red Bronco is parked which belongs to the owner of the Chocolate Factory. We have a lot or problems with parking because all of their customers park in our parking lot, therefore we get all the trash and they are keeping our customers from getting to Dr. Lawyer's office. There are problems with the trash and it's going to hurt the property value because it is commercial. There are problems renting it as it is because of the parking. She asks that this not be approved due to the parking, the trash and all of the extra traffic that it's going to create. The Chocolate Factory has no parking in the front of the parking lot. They have two big wooden garden-type things which takes up 90 percent of their parking area. They have parking on the side and in the back, but it is all graveled. 90 percent of the customers that they have won't park in the back. She doesn't want drunk transients hanging out there and doesn't think the alcohol is helpful. Please don't approve this. Thank you.

Chair Werling asked if Ms. Moe owned the whole strip mall or just the one section. Ms. Moe indicated she had just the section stated. Dr. Lawyer is in the green part, right next door to the Chocolate Factory, and then the purple one, the pink one, and the apartment on top. She had suggested putting up a fence so the people wouldn't park there, but Bob, the owner came out and cussed her and told her how unfriendly she was being and how that's not neighborly. But it's not neighborly whenever the doctor's patients can't get to his office when they're handicapped and she's chasing their customers out of the handicap spot. It will hurt Dr. Lawyer and her business in general.

Commissioner Miller read on page 4 of 5 of the report that the site is developed to the County code requirements for off-street parking with a total of 14 parking spaces, including one ADA parking space. The number of spaces exceeds County code requirement by one parking space. Ms. Bauman indicated that was correct. Commissioner Miller asked Ms. Moe if she was refuting the fact that there are 14 parking spaces. Commissioner Lustberg said Ms. Moe had indicated they were in the back on gravel. Chair Werling indicated on the side and front. Ms. Santamaria pointed out that on Sheet C-1, there was the ADA space in the front and the remaining 13 along the side and rear of the property.

Commissioner Miller asked if the gravel was consistent with what's required. Ms. Santamaria indicated the County does not require paving. Commissioner Lustberg asked if there was a sign at the entrance saying Parking In Rear. And Ms. Bauman indicated, not that she was aware of. Chair Werling asked if there was a rear entry to the building for the public. Ms. Bauman indicated the public access was off of US-1. The entry is on the front, but the parking is to the rear and side. Chair Werling stated that unfortunately, people will park where it's most convenient if it's not indicated.

Ms. Moe came back up to the podium and stated, I don't think I would have near the problem with it if they would put up a fence, a wall, something to protect my property from all the transients, people hanging out, loitering, the trash and all that. I had to increase my yard maintenance man to go in an extra two times a month in order to keep the trash up. That's my issue, the trash and the fact that I've never seen anybody go around the side of the building and park. Everyone is going to park where it's more convenient which is out front in my parking lot.

Commissioner Miller stated what you'd like to do is basically make it so if they parked at your place, they wouldn't be able to easily walk. Ms. Moe responded, correct, but that she didn't feel that she should bear the cost of that due to the fact she's not asking for the liquor license to increase traffic. Commissioner Miller stated, so you want them to build the wall and they'll pay for it. Mr. Williams commented that this was not a presidential debate, please. Ms. Moe stated she had offered when they first started to put up a fence. And Bob came out saying how we weren't being good neighbors. Chair Werling stated that fences make good neighbors.

Christie Thomas took the podium and stated she actually own the building. Mr. Wolfe interrupted to swear her in. Then she addressed the comment about drunks, et cetera. The owner of the building is Jack Smith, Tiffany doesn't own the building. As far as garbage, I have never seen garbage. We have a staff that clears the parking lot at night. The garbage that we have currently, we have two receptacles outside that we clean out twice a day. I believe it's a falsehood about the cleanup. I'm there 24-7 and I'd be the first one sending staff out there if I saw that. Regarding fencing, the fire department uses our first two driveways which are on our property to collect and help the EMT service at the doctor's office that is in the building next to us. Many times the fence line that Tiffany was proposing would have inhibited the EMT service. They would have had to have gone down and made a circle. If you look at the property, you'll see three driveways. The first two enter into our property and the third enters into the property next door to us. We're not touching. We actually are joined by a two-by-four to make the two buildings look like one continuous. The building owned by Jack is currently occupied in the back by a carpenter. The front is by Dr. Lawyer. The rest of the building is empty. As far as parking, we have people using our ADA space all the time going to the doctor's office. I don't run out there and kick them out. I mean, that doesn't matter. It's such an open space, people run into the doctor's office and our shop. Do they need to move their car each time? It's a flow.

Ms. Thomas continued, as far as the request for what we want to do with our chocolate and wine is more for our gift baskets. We're not having a bar or a carryout service. We're not putting in a big wine store. That's something that we're not interested in doing. We infuse craft beer during the brew fest and would like to be able to sell the coordinating craft beer when we infuse them into our chocolates, which we've done for the brew fest. We infuse wine as well as we do a lot

of gift baskets. That's mainly the whole purpose of it. The last thing we want are a lot of drunks hanging around. We're keeping to our venue, ice cream and chocolate, and we have a factory there. We have people come all the time and park on the side. There were people in our back sitting having a picnic the other day.

Chair Werling asked what hours the store was open. Ms. Thomas indicated they were open seven days a week, from 10:00 to 8:00 during the week, and 10:00 to 10:00 on Friday and Saturday night. Commissioner Ramsay-Vickrey indicated she had been in the shop about a year ago, that it's chocolate and ice cream. It's not the kind of place a bunch of drunks are going to go hammer one on, and I understand about wanting the license for gift baskets. I don't really have any issue with it, but it seems like there's more of a neighborhood dispute that is really not at our level. I might suggest, to be a good neighbor, maybe you want to put up a sign about parking in the rear and that could help alleviate some of the tensions with your neighbor. That's all I've got. Chair Werling added, and park any employee or personal vehicles out of the main front parking, since it sounds limited.

Chair Werling asked if any other member of the public wished to speak.

Ms. Moe came back up and asked if this would be limited, if approved, and what kind of limitations it would have since it says package sales, whether it could be turned into convenience store after they get the license.

Commissioner Lustberg stated she didn't believe there were limitations. Once the capacity to do something is granted, they can do that. Ms. Santamaria indicated they would have to comply with whatever approval, in this case under 2COP, and if they want to do anything additional they would have to apply for a different license. If they were changing uses on the property, they would have to go through whatever approval process for that as well.

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

Commissioner Miller commented, we're giving a beer and wine license to a candy store. What's next, daycare centers? Just a joke.

Motion: Commissioner Ramsay-Vickrey made a motion to approve. Commissioner Wiatt seconded the motion. There was no opposition. The motion passed unanimously.

7. <u>Key Marina Development LLC, 97617 Overseas Highway / 30, 42 & 80 East Second Street, Key Largo, Mile Marker 97.5 Oceanside</u>: A public hearing concerning a request for a Major Conditional Use Permit. The requested approval is required for the proposed development of 22 permanent, market-rate dwelling units and three (3) transient hotel rooms. The subject property is legally described as Lots 1-8 & 30-33, Block 2, Part of Block 3; Lots 1 & 2, Block 4; parts of East First Street and East Second Street abandoned by BOCC Resolution Nos. 603-2006 and 493-2007 and adjacent bay bottom, Mandalay Subdivision (Plat Book 1, Page 194), Key Largo, Monroe County, Florida, having real estate numbers 00554420-000000, 00554700-000000, 00554730-000000 and 0054740-000000.

(File 2016-076)

(12:45 p.m.) Mr. Bond presented the staff report. There is a bit of history with this project and it's a relatively larger development. David DeHaas is the agent for this item and he's here with the applicant. This project is located in Key Largo near mile marker 97.5 ocean side and runs from northbound US-1 to the ocean and involves three different zoning districts, mixed use, urban residential and suburban commercial. The zoning map shows some streets that have been abandoned. Prior County actions related to these properties go back to 2006 when the County did a lawfully established determination finding 11 transient units, 22 permanent market rate units and 5,138 square feet of non-residential floor area, and 12 boat slips in the marina. The BOCC approved abandoning East First Street and a portion of East Second Street, along with a reverter agreement, a public access easement for the portion of East Second Street, and maintenance agreements for improvements required on Second Avenue, which the developer is required to maintain. In 2007, BOCC approved a 10-year development agreement for this property to begin on March 6, 2008, requiring the developer to construct improvements for public use along Second Avenue to include paving, 12 parking spaces for public, 9 parking spaces for the restaurant, landscaping, signage and lighting. In 2008, the Planning Commission approved a major conditional use permit for the redevelopment, the same type as you're looking at today. Today's item is an amendment to that conditional use permit. In 2011, the County approved a lease amendment for encroachments into Second Avenue dealing with the restaurant building which encroaches into the right-of-way. In 2012, the County approved a minor deviation to the major conditional use permit to allow an interim phase for temporary off-street parking.

Mr. Bond continued going through the site plan for today's item. Second Street has the ingress easement with roundabout and access road. Nothing changes with the restaurant. Redevelopment includes a reception building at the corner, two main buildings with market-rate units; building one with all attached units intended for vacation rentals; building two houses hotel rooms on the left and remaining attached units on the right. There is a two-level walkway proposed to have some seating for hotel guests. Parking is underneath the two buildings and surface parking surrounding the project. A pool is near the marina across from Second Street. Regarding compliance with the County land development code, there is no need for any NROGO square footage as there is no change with the project. There is no change to the restaurant, though staff recommends the applicant clarify the amount of restaurant floor area on the plans due to a change in the County code for the definition of floor area. For ROGO purposes these are replacement of existing lawfully-recognized units so ROGO doesn't apply. For permitted and conditional uses, there are three zoning districts involved. The project is for 22 attached vacation rental units and three hotel rooms. The hotel rooms are in the MU side of building two, and the attached vacation rental units are in the UR district side of building two. The restaurant is in SC. The MU district is the only district that allows the hotel rooms.

Regarding density, the density table is on page 12 of the staff report and is broken down into land use districts. All 22 market-rate units plus the 3 hotel rooms for a total of 25 units divided across the size of the site of 3.12 acres works out to an overall density of 7.86 units per acre. The property exceeds the maximum allocated density for the UR district. The non-conforming density is protected by the 2013 comp plan and adopted land development code. Open space,

setbacks, building height and off-street parking are all in compliance, with an additional parking space, two bicycle racks and four boat trailer parking spaces near the highway and 21 on-street spaces. Loading spaces are in compliance, with one required and two proposed, one near restaurant and one closer to the hotel. Commissioner Miller asked how many parking spaces are required for the restaurant. Mr. Bond responded 50, based on 150 seats.

Mr. Bond continued, compliance with access issues is still to be determined, but there are three driveways proposed, two two-way and one one-way. Staff recommends the County engineer review on-site parking to ensure there are no visibility issues, but the code is silent about parking being within visibility triangles. Solid waste and recycling is in compliance, with 322 square feet required for collection, and two 250 square feet being provided. Inclusionary housing requirements are in compliance, as the BOCC granted the developers relief from this requirement in 2007 and agreed to accepted eight unused transient ROGO units and two market-rate ROGO-exempt units to be dedicated to the County for affordable housing in addition to some land dedication.

Commissioner Miller asked if the land designation had been done, and Mr. Bond responded it had. Staff recommends a condition of approval on the maintenance agreement going to the road abandonments and that the County engineer and fire marshal review the proposed plans to ensure the standards are met. Staff recommended a few conditions to the development agreement relating to the Second Avenue improvements. Staff found the major conditional use request meets the standards and has recommended approval with the conditions, with a couple of conditions to be satisfied prior to the Planning Commission Resolution approval. Those are that the floor area for the restaurant be clarified and that the improvements within Second Avenue be approved by the County engineer and the fire marshal. Conditions the staff felt should be reiterated in this amended conditional use permit are listed under number 3, and the remaining conditions are typical boilerplate conditions. Although the applicant is not required to, they did hold a community meeting inviting surrounding property owners to check out the development plans.

Commissioner Miller asked about the required buffers, and Mr. Roberts responded indicating there are two different boundary buffers, MU and UR, which are Class C buffers. The plans originally indicated the buffers had been waived, but the prior Planning Commission Resolution allowed them to be relocated and not removed. So the landscape plans did show the areas to be planted and were revised to remove the notation that the buffer wasn't required. Commissioner Miller asked, between the MU and the URM or UR, if it was the same as MU and SC for the required buffer. Mr. Roberts indicated that all of the buffers required are Class C. They vary from as narrow as 10 feet up to 25. Commissioner Miller asked if that was depending on density of plantings, and Mr. Roberts indicated that was correct. Mr. Roberts wanted to point out while wild cotton is a native plant it is no longer a potential plant for inclusion in landscaping.

Mr. David DeHaas spoke for the applicant, after being sworn in by Mr. Wolfe, and began by thanking the staff, emphasizing that Mr. Bond met with him many times and it is appreciated. The developer had a nice reception from the community, with 50 people attending to attempt to answer everyone's questions and have received no negative feedback. The development is in compliance with everything they can be, with a couple of items of compliance being pursued

which are awaiting approval. The fire marshal has approved at this time. He is present to answer questions and has one small request he will make at the end.

Commissioner Miller asked about the UR classification, stating that the UR is under the residential high FLUM, and wanted to know how vacation rental pertained under those designations. Ms. Santamaria indicated that in UR it's established that vacation rentals are an allowed use, with a restaurant business on site.

Chair Werling asked for public comment.

Dottie Moses of Key Largo spoke, after being sworn in by Mr. Wolfe, asking if there was a boat ramp, since they had boat trailer parking and boat slips. Upon a negative response, she asked if they had access to a boat ramp and was told there was one. Ms. Moses asked if it was the one at the end of the street where the parking for the restaurant is. Chair Werling stated the Commission would take note of her questions and have them answered.

Commissioner Miller asked for some clarification on the boat trailer parking. Ms. Moses stated that this road is now being called an easement, but wanted to know if the easement was still going to be used as a road or if it would be blocked off for cars after development, because right now it's being used as a road. Ms. Santamaria asked which item she was talking about. Ms. Moses explained it was the one that separated the pool from the reception, which is now being called an easement. Mr. Wolfe clarified it was an ingress-egress easement and asked Mr. Bond to respond. Mr. DeHaas interjected that this was a street owned by the County and will have a proper turnaround at the end, and pointed out where the easement was, that it would not be blocked with limited access for the neighborhood. He stated that Judy Clark, engineer for Monroe County, is making them comply with all Monroe County road standards.

Ms. Moses thought this was strange because normally a development would not be on either side of a road, that she had never seen this before. She continued, asking if the beach area and tiki hut was part of the development, which Mr. DeHaas confirmed it was. Ms. Moses indicated there were presently RVs parked there, and Mr. DeHaas indicated they were across the line, but that they would not have any RVs in their development. Ms. Moses also asked about the height as there was a question as to the 35 or 38-foot height limit. Commissioner Miller indicated that was one of his questions as well. Ms. Moses indicated she felt the road was an odd feature, and the boat ramp was of concern, because if they have boat trailer parking, they'll have semi-permission to use the end of the street as a boat ramp, and wasn't sure how that would work.

Chair Werling questioned whether there was an entry gate or entry sentry person as you approach the property and come in to the reception building, since the street is also used by the neighborhood. Mr. DeHaas indicated at this time, there is no proposed gate. In the future, there might be, but the fire marshal and emergency vehicles must be able to move through there at all times so it can't be closed. Chair Werling understands that, but is concerned about claiming that this is going to be neighborhood road access and then requiring residents to have to stop and talk to someone. Mr. DeHaas stated that this is the way it is in the development agreement and they are not touching it or doing anything other than what has been agreed upon and that they are

using what they were given. Chair Werling indicated it was a little hard to keep up with after all of the creative changes, and surmised there will be some type of entry.

Commissioner Miller indicated he is still not clear on the height of the buildings. At one point it says the crown of the road is 3.2 feet, and then on page 14 of 23, the elevator would have a proposed height of 34.1 feet as measured from crown of road, plus 6.6 feet. Mr. Bond replied that the height is measured from existing grade and that can either be from crown of road or on-site grade, whichever is higher, and the developer opted to use the crown of road of US-1, which is at plus 6.6 feet in GVD. So the height measurements are based off that as the starting point. Commissioner Miller asked for confirmation, that they were all based off of 6.6 feet, even though the nearest road is basically Second Avenue. Mr. Bond stated that they are adjacent to US-1 so they can use that. Mr. Williams stated that if the property touches US-1, they could use US-1. Commissioner Miller pointed out that there are two properties here. Mr. DeHaas indicated he took advantage of the code to the best of his ability, but kept to where he believed the property faces, which is Second Avenue. Second Avenue is 6.6 feet above. Commissioner Miller asked to see the elevation certificate, because it's not just the numbers game, it's the neighborhood behind which is built at a certain level looking at a building that's 40.7 feet overall, which is his point. Mr. DeHaas passed out plans and indicated the County engineer had required elevations of every mark and every piece of the whole road and the plans contain more than 100 elevations. The highest point that could be reasonably used was 6.6 feet. The point at which they are building from on the buildings is 3-point-something feet above mean sea level. They get three more feet in the building because of the crown of the road. The total height is only 35 feet above mean sea level, but they gain the extra footage doing that.

Commissioner Miller indicated he had been questioning the road grade which is plus 6.6 feet and wanted to know where it's indicated. Mr. DeHaas stated he could not point it out because he didn't have his glasses. Mr. Bond replied that it was on the first page of the survey near the intersection of US-1 and Second Avenue. Commissioner Miller reiterated, once again, you're using US-1. So you're using the grade where the street goes up and getting the highest grade instead of the closest grade. The homes are built at the grade of their streets, and the development is using the grade at US-1, which is not the closest, which will cause an obvious height disparity. Mr. DeHaas disagreed stating these buildings would look very similar to their neighbors, Mariners Club. Commissioner Miller indicated he was not speaking of Mariners Club, rather the neighborhood with homes almost against the buffer which are not anywhere close to 40-some feet. The closest Mariners Club building is probably 400 feet, compared to building one, which is 30 to 40 feet from the neighborhood. Mr. DeHaas indicated he understands the concern is about visual impact, but that he had done everything he possibly could to alleviate visual impact. He pushed the buildings all the way into a corner believing the mobile homes on the other side will be developed as well. But there will be nothing in the way to see the water, you will see all the way through. He has increased the parking more and more as the project progressed, but believes he's in keeping with the major development on the other side so he should at least get a 50 percent. Mr. DeHaas addressed the trailer parking, indicating it was his idea, there was nothing in the code about it, but the area at the end of the street is traditionally an area to launch boats. It may or may not be declared a ramp but it is public property. The boat slips are only for people who visit the restaurant or the resort, so generally boats will be launched somewhere else. The trailer parking was provided for those who do come

with a trailer, for after they launch the boat. As to the restaurant's 150 seats, that is the mark for an SRX license. The code required 50 parking spots and they have it without using the other required parking by the development agreement. They are way over what anyone has asked them to do to alleviate any congestion.

Commissioner Miller asked staff, in looking at the URS report, if all of the questions had been answered. Staff indicated, yes, except one. Commissioner Miller says the report says these conditions have not been met, and wanted to confirm they had. Mr. Bond indicated that Commissioner Miller had the traffic review from August and that the traffic engineer had reviewed all of the revised plans and said that Comment 1 and 6 were addressed, and then reiterated that all comments were addressed from his prior review. Commissioner Miller asked if the trip generation had been answered, and Mr. Bond indicated, yes. Commissioner Miller asked how many trips were generated, and Mr. Bond said it was in the traffic study. Commissioner Miller, reading from the study, said the trip generated was not calculated for the existing restaurant. Mr. Bond replied that in their updated study, they didn't include the restaurant, but the engineer was okay with that being omitted.

Commissioner Lustberg noted that the confusion was on the second page of the letter from August 16. It says the report indicates the proposed development net new trips without existing restaurant is anticipated to generate 148 total daily trips, of which 12 are AM trips, 3 inbound, 9 outbound; and 13 are PM trips, 8 inbound, 5 outbound. Existing restaurant anticipates generating 438 daily trips. We do not concur with the statement that a Level 1 analysis is required. Total gross trip generation is over 500 vehicles per day, therefore a Level 3 analysis would be required. That's what's confusing. Commissioner Miller asked if they had a Level 3 analysis. Mr. Bond responded that the original redevelopment did have a Level 3 study, but for this application for the amendment, they didn't do a full brand new Level 3 study, just updated the data based on this plan. Because there is no change with the restaurant use, they left it off of the traffic study. Mr. DeHaas asked if he could continue, and indicated they had submitted an updated traffic report. After consultation with the County's consulting firm, it was determined the Level 3 was not required and this was worked out, and everything is in compliance. Ms. Santamaria confirmed this was correct, that the traffic consultant does the biannual arterial time delay study and those trips were already calculated into the segment for level of service and was only looking at the new additional replacement of the units that used to be there and the restaurant was already incorporated in the segment that had plenty of excess capacity.

Commissioner Miller asked how wide the easement is on East Second Street between the pool and the rest of the development. Mr. DeHaas said he didn't know off the top of his head, but thought it was less than 20 feet, so less than two-lane traffic, and believes it's about 15 feet wide. Commissioner Miller asked if he was considering it to be one-way, and Mr. DeHaas responded in the affirmative. Commissioner Miller asked what the neighbors thought about that, and Mr. DeHaas said they were happy to have the artery through there, because it had been abandoned. Commissioner Miller stated as long as he had been here, that was a street. Mr. DeHaas said it had been abandoned legally by the County. Mr. Wolfe confirmed the BOCC had abandoned it. Mr. Bond indicated that the little meandering part of the easement, according to the abandonment resolution, is about 33 feet wide. Commissioner Lustberg added, just to clarify, that Second Street was abandoned by the County, but the County retained an easement through it. And Mr.

Bond replied that was correct. Mr. Wolfe stated the County doesn't retain an easement, but required that an easement be granted in favor of the neighborhood. It's privately owned, but the vehicles can go through. Commissioner Miller asked if there was any way to lock this down so that it would still be considered as a two-way easement. Mr. Williams stated that could be done by amending the development agreement on the fly.

After noting the time, Commissioner Miller stated the only other problem he had was with the way the height was calculated, that the method used could cause a lot of mischief with the height of the buildings, and he would like to see these calculations made the way the neighborhood behind has done their calculations, which weren't based on US-1, but rather the nearest road. Ms. Santamaria indicated the mobile home right behind does not touch US-1, so they wouldn't have the ability to do that. The difference is that this particular development goes all the way to US-1. Commissioner Miller believed that was not right to have a property that's a mile long using US-1 for the height, when alongside are individual properties that cannot do the same thing, and inquired as to the inequality. Ms. Santamaria indicated that it is correct. Commissioner Miller insisted this was unacceptable, that the inequality of this is bad and it doesn't make any sense. Further, this development goes from one zoning category to another. Ms. Santamaria confirmed this to be correct, but each zoning category has the same standards in terms of grade or crown of road. Commissioner Miller feels there is something seriously wrong with it and this is the one thing that he believes shouldn't fly, and doubts the neighbors have realized or yet visualized what this will look like.

Mr. Williams commented that the room is empty of public opposition and there has been a public input meeting that was not called for that was voluntarily engaged in by the applicant, and the public does not appear to have the same uproar or concern. Commissioner Miller stated he was here to try to use his brains and experience and to try to visualize what can happen, and basically a lot of people don't or are not capable of doing that at the moment, but when they see the building, it may be a different story. Mr. Wolfe asked if staff would clarify if the applicant's calculation of the height requirement is compliant with County Code, and Ms. Santamaria confirmed that it was. Commissioner Miller further insisted that he is objecting to this part of the agreement.

Mr. DeHaas indicated he would love to discuss it with him, that he had something to show him, but he understands his concerns. Mr. DeHaas asked that he would ask for approval and for one other thing. On page 22, paragraph (E) of the conditions, the notes state that no certificate of occupancy for permanent individual building with the exception of a temporary sales trailer office shall be issued until everything is in compliance. He would like an exemption for the laundry building over in the corner, which has storage underneath, because putting in parking and buffers on finishing that building will destroy all of that. First, by getting the CO they are fulfilling the requirements of the development agreement because they must get a CO by a certain time for one of the buildings. Second, it says they can set up a temporary storage, but they would rather use the building as the staging area. They don't have to put in the washers and dryers to get a CO, but that would be their office, providing a neat, clean, organized construction site. Commissioner Miller stated there was no such thing as a neat, clean construction site. Mr. DeHaas asked if he would "buy" a lower dust level than what you're used to as he would like

that exception put in there. There would be no COs for any dwellings until all requirements are fulfilled.

Chair Werling stated she would answer that. This has gotten dragged out and modified and changed up and shifted around forever. That was put in for a reason. Ms. Santamaria confirmed that. Chair Werling believes it needs to be kept. Mr. Williams stated this is the actual development agreement from 2008, and read the statement at page 18, the last line of the development agreement. What Mr. DeHaas is asking for is a change from the development agreement which we just told Commissioner Miller we couldn't do. Pursuant to this same paragraph at the bottom of page 18, you can have a temporary sales office/model unit without the CO, but that's it. So the laundry room is not in the exceptions.

Chair Werling indicated that was put in for a reason and believes we should stick with the original development agreement. Mr. DeHaas thanked the Commission for their consideration. Chair Werling asked for public comment.

Bill Hunter spoke, after being sworn by Mr. Wolfe, having a question about the height and stating he is still confused. There are multiple parcels, but one development. So the height of any building in the development can be measured from a road adjacent to any of the parcels. So, you join the parcels and then pick the road you want to measure from, regardless of how far it is from the building. Chair Werling responded that this whole property is off of Route 1, because now it's one entity. Ms. Santamaria indicated that was correct, and stated there is a provision in the code, Section 130-166, the aggregation of development, which was read. She confirmed that this site had been aggregated as one development and that's how it was reviewed. Mr. Bond further responded that the development agreement required them to record a unity of title which reinforces that aggregation of all parcels being one development site.

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

Commissioner Miller asked what was cited in the code that allowed the whole property to use US-1 for the calculation. Aggregation of development does not say how the height can be calculated in that manner. Mr. Bond replied it's based on the definition in the code for grade which allows you to use the crown of road or the highest elevation on site, pre-development grade, whichever is higher. Commissioner Miller asked how that spelled out that the whole property could use US-1. Ms. Santamaria stated a development is not required to pick five, six, seven sites on their development plan. They can choose one elevation and use that for the entire development. This is not the only site that has done it, all the other large scale developments have as well. They always take advantage of the highest elevation point nearest to their property. It is to their advantage, and it's not something that's inconsistent or not done in the County. Commissioner Miller reiterated all of his previous arguments. Ms. Santamaria reiterated her response.

Commissioner Lustberg commented that what Commissioner Miller wants to do is hold this developer to a standard that is different than what the rules say, and change the rules on how to determine to which elevation someone can build. But the rules are as they are. Commissioner

Miller stated he was not trying to change the rules right at this moment, but thinks they are not equitable.

Chair Werling asked for a motion.

Motion: Commissioner Ramsay-Vickrey made a motion for approval with staff recommendations. Commissioner Wiatt seconded the motion. There was no opposition. The motion passed unanimously.

ADJOURNMENT

The Monroe County Planning Commission meeting was adjourned at 1:47 p.m.