PLANNING COMMISSION
September 26, 2018
Meeting Minutes

The Planning Commission of Monroe County conducted a meeting on **Wednesday, September 26, 2018,** 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 Debra Roberts

PLANNING COMMISSION MEMBERS

Denise Werling	Absent
William Wiatt, Chair	Present
Ron Miller	Present
Kristen Livengood	Present

STAFF

Emily Schemper, Acting Sr. Director of Planning and Environmental Resources	Present
Steve Williams, Assistant County Attorney	Present
John Wolfe, Planning Commission Counsel	Present
Mike Roberts, Sr. Administrator, Environmental Resources	Present
Bradley Stein, Planning and Development Review Manager	Present
Cheryl Cioffari, Comprehensive Planning Manager	Present
Debra Roberts, Planning Coordinator	Present

ANNOUNCEMENT

Mr. John Wolfe announced that with only three Commissioners present, less than the full five members, any applicant is entitled to a continuance until the next meeting. Any item heard today must pass with at least two votes. There were no requests for a continuance

COUNTY RESOLUTION 131-92 APPELLANT TO PROVIDE RECORD FOR APPEAL

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

SUBMISSION OF PROPERTY POSTING AFFIDAVITS AND PHOTOGRAPHS

Ms. Debra Roberts confirmed receipt of all necessary paperwork.

SWEARING OF COUNTY STAFF

County staff members were sworn in by Mr. Wolfe.

CHANGES TO THE AGENDA

Ms. Emily Schemper stated that the applicant for Item 1 had requested a continuance to a date uncertain as they are not ready. Item 6 was resolved and is no longer on the agenda.

APPROVAL OF MINUTES

Motion: Commissioner Livengood made a motion to approve the August 22, 2018, meeting minutes. Commissioner Miller seconded the motion. There was no opposition. The motion passed unanimously.

MEETING

2. ROBERT HOLLADAY, 830 CRANE BOULEVARD, SUGARLOAF KEY, MILE MARKER 19.3: AN APPEAL, PURSUANT TO SECTION 102-185 OF THE MONROE COUNTY LAND DEVELOPMENT CODE, BY AN AGGRIEVED OR ADVERSELY AFFECTED PERSON, AS DEFINED BY F.S. SECTION 163.3215(2), TO THE PLANNING COMMISSION, CONCERNING ISSUANCE OF BUILDING PERMIT #17104591, DATED APRIL 16, 2018, APPROVING A 68-FOOT MONOPOLE COMMUNICATIONS TOWER. THE SUBJECT PROPERTY IS LEGALLY DESCRIBED AS LOT 4, BLOCK 1, NORTH SUGARLOAF ACRES, SECTION 1 (OR407-695), UPPER SUGARLOAF KEY, MONROE COUNTY, FLORIDA, HAVING REAL ESTATE NUMBER 00117510-000400.
(FILE 2018-100) **Continued from August 22, 2018**

Mr. Bradley Stein, Planning and Development Review Manager, presented the staff report. This is in the Land Use District Suburban Commercial with a FLUM designation of Mixed Use Commercial. Based on the review of the application and material provided, staff had not erroneously approved the 68-foot tall communications tower by right, which is the question under Land Development Code Section 130-93(c)(8), new antenna supporting structures pursuant to Section 146-5(a) which requires a Major Conditional Use Approval under the Suburban Commercial District. Under Section 146-3(d)(6), any existing or proposed antenna supporting structures with an overall height of 70 feet or less above ground level is exempt from the provisions of Chapter 146, wireless communications facilities. It has been determined that the proposed antenna supporting structure was approved at a height less than 70 feet and that it is exempt, including Sections 146-4(a) which requires Major Conditional Use approval for a new antenna supporting structure within the SC District, and Section 146-5(a) which lists the development standards for a new supporting structure, so it's exempt from all of those provisions. Section 130-9(3)(c)(8) of the Land Development Code requires Major Conditional Use Approval pursuant to Section 146-5(a) which this is also exempt from. Staff did not take this determination lightly. This is something that the previous director, the current director and staff had discussed and this is the determination made when the permit was approved. Staff recommends denial of the appeal on the basis that no decision, determination or interpretation by the administrative official with respect to provisions of the Land Development Code as set forth in Section 102-185(b) was made in error approving the 68-foot tall antenna supporting structure. The decision by staff that the proposed antenna supporting structure under 70 feet tall is exempt from the provisions of Chapter 146 wireless communications facilities, pursuant to Section 146-3(d)(6) and was a correct determination approving by permit the 68-foot tall antenna supporting structure.

Chair Wiatt asked if there were questions for staff. Commissioner Miller asked what Ngvd meant on the map. Mr. Stein responded that was the grade. Ms. Schemper added that it is National Geodetic Vertical Datum. Commissioner Miller thought that's what it was and then asked for the official measurement, as he had seen 72.5 Ngvd. Mr. Stein responded that it should be subtracted from the original grade. Mr. Williams stated that the appellant should be heard from next. Chair Wiatt called on the appellant.

Mr. Van Fischer, representing the Upper Sugarloaf Residents Association, stated he had filed the appeal. Mr. Fischer noted that Mr. Stein had pointed out that Section 130-93, which involves Suburban Commercial allowable uses, requires that new antenna supporting structures have a Major Conditional Use; and, that towers less than 70 feet are exempt from provisions of Chapter 146. The disagreement and basis of the appeal is the application of that exemption found in Chapter 146 as it applies to the requirements of Chapter 130-93. The table found in Section 146-4 is a summary of requirements of Chapter 130 in the various Zoning Districts, and regarding Suburban Commercial, a new antenna supporting structure requires a Major Conditional Use. Staff's decision was that since this table is in Chapter 146, it therefore exempts the requirements of Chapter 130. Mr. Fischer disagrees that the Code allows this, and then read the Rules of Construction in Section 101-2(b), to include the provision that imposing the greater restriction or regulation shall be deemed to be controlling, emphasizing "shall." An exemption is less restrictive than a MCU requirement and, as such, with this conflict within the Code, any ambiguity is answered by the Rules of Construction. Secondly, looking at how Chapter 130 applies to the various Zoning categories and allowable or authorized uses, particularly Section 130-74(a), "No structure or land in the County shall hereafter be developed, used or occupied unless expressly authorized in a Land Use District in this article." Mr. Fischer believes if a use is not expressly authorized, then it is not allowed. In Suburban Commercial Zoning regarding a new antenna supporting structure, a MCU is required. The third point relates to well-established legal rules of interpretation, particularly that once a law has been enacted, that is the law as written and there is a prohibition to read into or insert language into a law or rule. In this instance, Section 130-93 has been read into, that a tower less than 70 feet in height is allowed as of right, when the Code does not say that. Mr. Fischer believes the permit was issued contrary to what the LDC requires and should properly go through the Major Conditional Use process, and this is what the Upper Sugarloaf Residents Association is asking for.

Chair Wiatt asked if Mr. Fischer's position is that any tower in Suburban Commercial, whatever size, requires a Major Conditional Use. Mr. Fischer confirmed that to be correct, emphasizing that otherwise, considerations found in Chapter 146-5 would no longer apply to a tower less than 70 feet. Further, if it was the BOCC's intent to allow owners less than 70 feet as of right, then that's what the Code would need to be amended to actually say.

Commissioner Miller asked Mr. Fischer where he could find the 101-2 argument in his appeal. Mr. Fischer stated he was making it today orally and would respectfully say that the Rules of Construction are always applicable. Commissioner Miller asked for a copy, if it is germane. Mr. Steve Williams responded that the appellant would have brought it for them if it was a basis for his appeal. Mr. Fischer responded that it is in the Land Development Code and had not brought copies. Commissioner Miller asked for it to be read one more time. Mr. Fischer began reading

and Mr. Williams stopped him for not having the most current version. Ms. Schemper then read the latest version of 101-2(1) and (1)(b). There were no further questions for Mr. Fischer.

Chair Wiatt asked if the applicant would like to speak. Mr. David Paul Horan spoke on behalf of the applicant, Robert Holladay. The appellant is saying that under SC Zoning, any new antenna 70-foot or less is a Major Conditional Use under Chapter 110 and Section 130, but actually, back in the 1970s, every single home in the Middle Keys had an antenna-supporting structure, which the Mosquito Control planes would remove occasionally. Lots of people had shortwave antennas that could be rolled up and down. A lot of these are gone now as there is AT&T, Comcast, Dish, et cetera, but back then, an under-70-foot antenna was not a MCU but a necessity. Mr. Horan stated he has watched rules replace thinking over the past 50 years, and process replace responsibility. Today's appeal is not about what's right or wrong but whether staff's approval was done in the right way, and it was. This is exempt. To take Sugarloaf's invitation to construe everything via a most-restrictive interpretation of the LDC and grant today's appeal is the death of common sense. This appeal is a reminder that if every permit application is viewed as an opportunity to "just say no," all it takes is an attempt to make the most restrictive interpretation you can make. Civics is defined by Webster as the study of rights and duties of citizens and how government works. Today's appeal is based on staff's interpretation of specific local laws. We need to agree on what is law. The Monroe County Development Code is local law passed by local legislative leaders. In this country under our Constitution, law is a restriction on previously unrestricted rights. It's that simple. The Constitution presumes that when we are born, we are free. Then we vote elected legislative leaders into positions where they can restrict previously unrestricted rights. Executive and judicial branches cannot pass laws. That's Civics 101. If you agree that law is a restriction on previously unrestricted rights, you've got to agree that law should be looked at as black or white. The rights that are the foundation of this country are rights against law. It makes no sense to grant today's appeal by going beyond Section 160 or 146-3 of the Land Development Code which exempts antenna-supporting structures of less than 70 feet. Ten months ago, the planning staff had a letter from the Upper Sugarloaf group which is identical to today's appeal and they rejected the idea that this should be viewed as a Major Conditional Use. Staff had ten months to look at it and made that decision with their attorneys. Staff came to this Commission today with a very big presumption of validity. Getting a permit through staff and planning is a laborious, expensive process and is not easy. After Hurricane Irma, information was received through U.S. 1 Radio. Having overcome so many issues and having addressed Upper Sugarloaf's invitation to take the most restrictive interpretation they can come up with, the appeal to the Planning Commission must be denied.

Commissioner Livengood asked if under this Code, if she would be able to erect a 70-foot radio tower on top of her house if she were in an SC area. Mr. Horan responded that if it were less than 70 feet, she would be able to. And, if broadcast TV was ever brought back, she would probably want to do that.

Chair Wiatt asked for public comment.

Ms. Myron Egron of Upper Sugarloaf, after being sworn in, recapped that in 2014, Keys Media had submitted an application for a 199-foot tower which was approved by Planning against public outcry. Staff had not done a study on how its placement would impact adjacent property

owners in the neighborhood. The Upper Sugarloaf Residents Association banded together, wrote hundreds of letters and spent hours with engineers and realtors, and had been successful in stopping that construction. It was denied based on being against community character and that it would have a negative impact on adjacent property value. The fall zone was addressed, along with the fear of anything flying off, catching fire and a potential danger of having it so near her property. The fall zone was extended to 110 percent of the height of the tower to any adjacent resident property line. She had requested this fall zone be extended further by adding "or 400 feet, whichever was greater." That had been denied under Ms. Mayte Santamaria, under the suggestion that the tower's height was not extended because of the demographics of the Keys and to be fair. Ms. Egron believes Ms. Santamaria was indicating that the 70-foot tower application would be approved if the 199 one wasn't. Those additional words were not added and now, all of the very same reasons that the 199-foot tower they had fought so hard to avoid had been denied, a 70-foot tower has been given the go ahead to be constructed. Ms. Egron stated that she knows that Florida Keys Media is very popular and most everyone except her listens to the radio, but there are fiber-optic lines going all the way down the Keys, including to the Florida Keys Media building. When their generator was turned on it was like standing on an Air Force Base runway. All of these things were spoken of at the 190-foot tower meetings and now it is going on again. Ms. Egron stated that if this goes ahead, no one will be able to live in her house, much less a potential buyer when she decides to sell it, which should be in the very near future. A sound barrier should be required for the generator. As to the height of the tower being 68 feet, Keys Median has added to their property and it is at a much higher grade than Mad Bob Road. These projects are approved without consideration to nearby neighbors and nearby property owners. Ms. Egron also requested that no additional permits be awarded for additional building on the tower as the last application had. Ms. Egron opposes this project, stating that with all of the rules and regulations, the Commission is not representing the people. This is falling on deaf ears and no one is hearing residents' concerns. Last year during the hurricane, Florida Keys Media continued to operate without a tower. Ms. Egron believes the applicant is already kicking up their heels because they got this 70-foot tower, it is for their personal financial gain, and all of the noise and fears she had with the 199-foot tower are coming back to fruition.

Mr. Bill Becker, after being sworn in, introduced himself as the news director at U.S. 1 Radio, having been with the station since 1980, and a resident of Upper Sugarloaf Key. The prior speaker had mentioned hundreds of letters received at the time of the last application. Many of his neighbors had apologized for signing those letters and the petition as they had been misinformed and deceived into believing that this was a cell phone tower, and there had been no mention of U.S. 1 radio. U.S. 1 Radio did stay on the air during the hurricane but it was very close and they were almost not on the air. They had been broadcasting over the internet which is flakey, goes in and out, and did eventually fail. The internet is a backup to what is really needed. They had relied on a microwave antenna strapped to the railing on the back of the building to transmit the signal to the microwave tower on Ramrod which had enabled them to stay on the air. Rick Lopez had been out by the railing when the wind was blowing over 100 mph and the microwave dish started to fly off, and he happened to catch it. Had he not caught it, they would have been totally off the air with no connection to anyone. Days after the hurricane, people were coming to the station to get information. This is how they had kept up the service they had been providing for years. This tower will enable a secure method of microwaving the signal to other

transmitter towers. The internet will still be a backup but it is not something to rely on full time. Mr. Becker asked for the Commission to deny the appeal.

Commissioner Livengood asked if there would be another dish on this tower that could fly off in the event of a hurricane. Mr. Becker responded that it would be much more secure and able to withstand Category 5 winds, that the dish strapped to the railing was a makeshift backup.

Sheriff Rick Ramsay, after being sworn in, stated that he does feel for Ms. Egron and other residents on Sugarloaf. He lives right next to Radio Free America which has four 1000-foot towers behind his house with lights and a Verizon cell tower behind that. The reality is that this is for public safety and is a necessity. U.S. 1 Radio had been very important before, during and mostly after the hurricane. They were the only form of communication available which was critical for life-saving measures. Sheriff Ramsay had made a point to drive there every day to get law-enforcement messages out to the citizens. The internet is nice but it was down. Fiber-optic line is nice if it's functional but did not help during the hurricane situation. He wishes the tower behind his house was 68 foot instead of 1000 foot. This is a mono pole and is not that high. There are thousands of electric poles across this county higher than that. Citizen outcry was made when a tower in Marathon was put in, and now no one notices it's there. These are hurricane-rated towers. None of the Sheriff's towers blew off in the last storm, though they did require realignment. All towers have power generation but are not running 24-hours a day; it may be only once a month. Post-hurricane, everyone had their generators running. This tower is important and supplies a critical need for this community. The impact is minor and it has been shaved down to a 68-foot mono-pole. Sheriff Ramsay would like the Commission to follow the recommendation of staff as they have researched and looked into it. He believes this is an appropriate use.

There was no further public comment. Mr. Van Fischer offered rebuttal comments, reiterating that he is not here to discuss the merits of the tower, but that this has the potential to be a precedent-setting decision. As the Code is written, he believes a Major Conditional Use is required. The public comments relate to reasons why the BOCC may amend the Code in the future, but this is not how the Code is written.

Commissioner Miller asked staff if this was as of right and whether it would go through any further review. Ms. Schemper responded that it had already been reviewed and a permit issued based on the Land Use District, setbacks, and Florida Building Code. Commissioner Miller asked if there had been any noise mitigation. Ms. Schemper responded only what was required by the Building Code. Commissioner Miller asked if development standards in 146-5 were looked at. Ms. Schemper responded that it is very specifically exempt. Mr. Williams interjected that once the tower is less than 70 feet, it is specifically exempt from that review, and that 146-5 should not be looked at. Ms. Schemper added that 146-5 is not up for debate today, that the appellant is appealing whether or not a Conditional Use Permit is needed. The appellant has not stated that they disagree that it's exempt from those standards. Commissioner Miller stated this is a new structure with no review required to be gone through, if looking at 146-5, because it is less than 70 feet. The important section in Commissioner Miller's mind is Section (n) regarding adverse effects on adjacent properties and compatibility with community character. This is throwing the baby out with the bathwater as there is a community around this structure and there

should be some kind of review. Commissioner Miller asked if 146-4 couldn't be used for this property for a new structure and a Major Conditional Use is required in SC, when this law would apply if it doesn't apply now. Ms. Schemper responded that it would apply if it were over 70 feet, which is the key. Ms. Schemper also pointed out the table in 146 and in Chapter 130 under the Land Use District where an attached tower, which can also be up to 70 feet, is specifically permitted as of right. So if this same tower were attached to a building, it would be as of right. Commissioner Miller then asked about 101-2 and whether it was germane to this argument. Mr. Williams responded that it was not, that basically Mr. Fischer has attempted to guide the Commission down a path wanting the Commission to interpret the plain meanings of Code to reach an absurd result, which he would counter with the principle called the Doctrine of Absurdity which Mr. Horan had touched on. Mr. Williams remembers the days of getting ABC, CBS and NBC with a television antenna. The absurd result would be that if the internet didn't exist tomorrow and there was no Comcast Cable, roughly 70,000 parcels in Monroe County would require a 20-40 foot TV antenna, which would be required to get a Major Conditional Use based on Mr. Fischer's reading of the Code. Under the rules of the BOCC, which had been reviewed, approved, and allowed for public discussion, the number picked was 70, and this tower is on the short side of 70. Under 70 feet is not subject to Chapter 146.

Chair Wiatt asked the appellant if any tower would not be exempt in SC District, as he couldn't imagine when this initial exemption was put in place, that they were not trying to exempt towers in SC District because people not only have TV but VHF, and still do have VHF. The higher the tower, the further you can transmit and receive from offshore, so it doesn't fly. He cannot see a situation where SC would be exempt from the exemption. The tower is less than 70 feet so it's fairly cut and dry.

Commissioner Miller asked if he could delve into the land of absurdity by asking if there was anything to prohibit the tower from being painted neon orange. Mr. Horan's response was good taste, and Commissioner Miller stated that that was becoming a rare commodity. Mr. Williams responded that the tower under 70 feet would go along with good taste. Commissioner Miller noted that the painting wouldn't help with the signal anyway. Ms. Schemper gave an example of a sign not being allowed on the tower outside of the sign regulations.

Commissioner Livengood stated that U.S. 1 has been a good neighbor to everyone in Monroe County and she believes they will continue to be, and hopes they would put something around there to help mitigate the noise as U.S. 1 Radio is a needed thing in the community.

Motion: Commissioner Livengood made a motion to deny the appeal. Commissioner Miller seconded the motion. There was no opposition. The motion passed unanimously.

3. AN ORDINANCE BY THE MONROE COUNTY BOARD OF COUNTY COMMISSIONERS AMENDING THE MONROE COUNTY LAND USE DISTRICT ZONING) MAP FROM SPARSELY SETTLED (SS) AND NATIVE AREA (NA) TO MIXED USE (MU), FOR PROPERTY LOCATED AT 26351 OLD STATE ROAD 4A, RAMROD KEY, MILE MARKER 26.5, DESCRIBED AS BEING PART OF THE NORTHEAST ¼ OF SECTION 31, TOWNSHIP 66 SOUTH, RANGE 29 EAST, MONROE COUNTY, FLORIDA, HAVING PARCEL ID 00114150-000000 & 00114150-000400; AS PROPOSED BY ANNA

HUBICKI, ESQ. ON BEHALF OF RUDOLPH AND ROSEANN KRAUSE TRUSTEES; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL OF CONFLICTING PROVISIONS; PROVIDING FOR TRANSMITTAL TO THE STATE LAND PLANNING AGENCY AND THE SECRETARY OF STATE; PROVIDING FOR AMENDMENT TO THE LAND USE DISTRICT (ZONING) MAP; PROVIDING FOR AN EFFECTIVE DATE.
(FILE 2018-014)

Ms. Cheryl Cioffari, Comprehensive Planning Manager, presented the staff report. This property currently has a Land Use Zoning District designation of Sparsely Settled, Native Area and Suburban Commercial, and a Future Land Use Map designation of Mixed Use Commercial and Residential Conservation. Additionally, the property is subject to a specific Subarea Policy in the Comp Plan, Policy 107.1.2, the Ramrod Mixed Use Area 1, which limits the uses and development potential as specified on page three of the staff report. Back in 2010, the applicants proposed a site-specific Text Amendment to the Comp Plan which was adopted, and the FLUM categories were amended from RCA and MC, to RC and MC. The current Zoning designations on the property are inconsistent with the existing and current FLUM categories on the property and with the Subarea Policy. Florida Statutes require that the Land Development Regulations be consistent with and implement the Comprehensive Code, so that is why this is before the Commission today. A community meeting was held on June 28, 2018, and the item went before DRC on July 24, 2018. Page eight of the staff report shows the net change. There would be an increase of three residential market rate dwelling units, a decrease of 110 rooms or spaces for transient units, an increase of five affordable dwelling units, and an increase in non-residential development potential of 119,368 square feet. However, regardless of the Zoning, the specific Subarea Policy controls and limits the maximum number of dwelling units to five. Staff finds the proposed Zoning Amendment is not anticipated to adversely impact community character of the surrounding area, is bringing the property into compliance, and is consistent with the 2030 Comp Plan, the Lower Keys Liveable CommuniKeys Plan and the Land Development Code. As required by Section 102-158 of the Land Development Code, these changes to the Land Use District Map are needed for new issues and for data update as explained. Florida Statutes require the Comp Plan to be consistent with the FLUM categories and that is the reason for the change. Staff recommends approval. The applicant and agent are also present if needed.

Commissioner Miller asked what the affordable allocation would be. Ms. Cioffari stated that the max net density could be used for affordable. It would either be looked at as market rate units with TDRs where to get to the bonus density the TDRs must be transferred in, or because affordable housing is being provided, which is the incentive. This property has one residence now. Four more could be added and the owner could choose for those to be affordable.

Chair Wiatt asked if the applicant wanted to speak. Ms. Anna Hubicki, Esquire, spoke on behalf of the applicant, stating that this property had been previously designated as business use and general use. The use has been consistent since the mid 1970s and is being used in a commercial manner. The existing use is for a construction office which will be ongoing. In order to do anything different on the property, the construction business would not be able to operate. There are no future plans to do anything different on the property. The FLUM and Comp Plan have already been updated, so this request for the Land Use District Map to be updated is the last piece of the puzzle to allow for consistency.

Commissioner Livengood asked if the property were to be sold in the future, what the impacts could be. Ms. Hubicki responded that the Comp Plan Subarea Policy, the Ramrod Mixed Use Policy developed in 2010, is the most controlling, restricting movements of any subsequent owner of this property. The restricted movements are to what's going on right now. There may be a small window for a couple of extra houses, though there is no room for those houses if the business continues to operate, which it is the plan to continue the business operations.

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

Commissioner Miller asked for some clarification which was provided by Ms. Schemper and Ms. Cioffari. Commissioner Miller then asked if there were any more properties like this. Ms. Cioffari responded that there was only one more on Ramrod Key, and five Subarea Policies throughout the County. Commissioner Miller stated that he is not particularly happy with increases in density. Ms. Cioffari explained that the density was established in the Subarea Policy adopted in 2010, so there are no changes in density. Commissioner Miller asked for further explanation of the net changes which was reiterated by Ms. Cioffari, who added that perhaps the table on page eight could have been clearer.

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

4. AN ORDINANCE BY THE MONROE COUNTY BOARD OF COUNTY COMMISSIONERS AMENDING THE MONROE COUNTY YEAR 2030 OMPREHENSIVE PLAN AMENDING POLICY 101.3.3 TO ALLOW FOR THE AWARD OF ROGO ALLOCATIONS TO TIER I AND III-A FOR THE REDEVELOPMENT OF LAWFULLY EXISTING ROGO EXEMPT MARKET RATE DWELLING UNITS WITH A REPLACEMENT AFFORDABLE DWELLING UNIT ROGO ALLOCATION; 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 #2018-107)

Ms. Cheryl Cioffari presented the staff report, explaining that the BOCC had given direction to staff to process Text Amendments to the Comprehensive Plan and the Land Development Code which is Item 5 on the agenda, to incentivize the development of affordable housing by allowing the issuance of affordable housing ROGO allocations in Tier I and Tier III-A designated parcels in order to replace existing market rate dwelling units with a deed restricted affordable housing unit. Currently, affordable ROGO allocations can only go to Tiers II and III. A community meeting was held on June 26, 2018, at the Marathon Government Center, and was considered by DRC on July 24, 2018. The thought process behind this change is that the award of an affordable allocation, when combined with the transfer of a market rate ROGO allocation, may incentivize the development of affordable housing. There are some properties in the County designated Tier III-A, and they have an existing market rate unit that may have been impacted by the storm, for example, and by either the nature of the construction or the type of unit existing on the property, it may have been a more affordable type of housing unit than the typical site-built,

brand new construction. In order to encourage the redevelopment of that housing unit, the idea would be to allow for an affordable allocation to go to that Tier III-A property so the existing market rate unit could be transferred off, and the resulting unit would be rebuilt as an affordable allocation. To make that happen, the Comp Plan and Code need to be changed to allow affordable allocation awards to go to Tier I and Tier III-A. Staff recommends that be allowed with certain conditions. First, the property has to contain an existing market rate dwelling unit that meets the criteria in Section 138-22(a) and is determined to be exempt from ROGO. The proposed replacement affordable home would meet Florida Building Code and is not a mobile home, shall be deed restricted for a period of at least 99 years pursuant to standards in the Land Development Code, and the proposed site plan does not propose any additional clearing of habitat. With those conditions, an applicant would be able to receive an affordable allocation award on the property. The proposed amendments are consistent with the 2030 Comp Plan, Principles for Guiding Development and staff recommends approval.

Commissioner Miller asked how this would be compatible with ROGO. Ms. Cioffari explained that a ROGO allocation would still need to be applied for and obtained. Commissioner Livengood asked if the market rate could be transferred to another island or if it would stay on the same island. Ms. Cioffari responded that it could be transferred in accordance with transfer procedures which require it to stay in the same planning subarea. Right now, the interim development order that halted the transfer of market rate units was approved, so there is a moratorium on this. However, the BOCC adopted a resolution reducing the scope which allows market rate units to be transferred to IS or URM properties, not working waterfronts and Tier III. So even though there is a stop on most of it, in an effort to encourage and help people move forward, these are parts of the wheel that need to come in to make it work. Commissioner Miller asked why Tier III was not used. Ms. Cioffari explained that Tier III already exists. Chair Wiatt asked for public comment.

Mr. Bill Hunter of Sugarloaf Key asked if this award of an affordable ROGO were for a ground level home, would it be able to remain a ground level home. Ms. Schemper responded that the intent of this is that it would only apply to replacement housing, not existing structures, but when a home was being rebuilt, the rebuilt home would have to come into compliance with all of the current regulations. Chair Wiatt asked if that meant rebuilt more than 50 percent of the value of the home. Ms. Schemper stated that that needed to be clarified. Chair Wiatt added that right now, his discussion relates to whether this would apply to homes that were looking at doing less than 50 percent. Ms. Schemper added that one of the criteria listed was that the proposed replacement affordable dwelling unit meets Florida Building Code. Meaning, if it was an existing structure, they would need to bring it into compliance with everything, including flood. Ms. Schemper noted that this should be more specific. Chair Wiatt thought the only way to get around that would be to say, met all applicable Code at the time of construction, meaning when it was built. Whether or not the County wants to is another question. Ms. Schemper stated that the Commission could direct staff how to clarify it or request staff to provide clearer language. This could be worked out now or staff could work on it before it moves ahead.

Commissioner Miller then asked if market rate and affordable allocations were the driver of non-residential where so much non-residential is awarded compared to the amount of market rate. Ms. Schemper explained that for residential there is a set number of allocations and it is divided

between affordable and market rate. It had originally been one pool with a cap on the total number of residential units. The Comp Plan divided that up between affordable and market rate. Non-residential originally was based on a ratio to keep the balance between residential and non-residential. When the Comp Plan was updated, there were some revisions to NROGO. The language has come out, but the numbers were already established. So, in theory, it is still based on the original ratio. Commissioner Miller asked if this program were successful, if this could put the County in a position with those people entitled to market rate allocations, and how would it work with the highway capacity for hurricane evacuation. Ms. Schemper stated that this does not propose any increase in the overall number of allocations. This refers to people retaining the right to their market rate, replacing it with an affordable ROGO, and then a market rate could be transferred elsewhere by either selling to someone else or developing themselves. Commissioner Miller stated that they would be entitled to a market rate allocation, but may not have a property. Ms. Schemper added that, in theory, someone could apply for an affordable allocation to rebuild their home on their property, and then the market rate ROGO exemption that they already owned could be retained or sold to someone who wants to transfer it somewhere else. If it got rebuilt somewhere else it would be connected to a building permit, but it would be through the transfer procedure rather than the allocation award procedure. Commissioner Miller asked if, in a worst case scenario, the County would have to buy it if there were no more development allowed in the Keys, where the County would also face a taking for the market rate given out because of this program. Ms. Cioffari explained that if someone took advantage of this, they would be holding the market rate ROGO until whenever, but they would have it. The County wouldn't have to give them an allocation as they would already have it. Commissioner Miller responded that this then is an IOU. Ms. Schemper agreed. That the number of ROGO allocations in the County is the limiting factor, not the availability of land as there are too many buildable parcels compared to the number of ROGO allocations. This is also already calculated into the hurricane evacuation. Commissioner Miller observed that they would have to be allowed to build and would go in front of people who have properties that haven't yet received an allocation. Ms. Schemper stated that he was correct, and this is already true today, though is limited to Tier III properties. Currently, if someone has a Tier III property already developed, they could ask for an affordable ROGO allocation on that property and transfer the market rate elsewhere. This expands the ability to deed restrict existing housing units as affordable with an affordable ROGO allocation, freeing up the market rate to potentially build on another property.

Chair Wiatt stated that he had not read anything about defining the type of affordable housing ROGO that would be given away during the transfer, so why would anyone do anything but moderate. Ms. Schemper stated that this is the same situation as for new development of affordable housing. For someone to agree to deed restrict a market rate housing unit to a moderate level is a pretty big decision. Chair Wiatt reiterated that right now, in reality, moderate and even median affordable rent control is above market rate. Ms. Schemper responded that she understood that, but that it doesn't exacerbate the issue that already exists. Chair Wiatt added that his only problem with this is he sees no control where that anyone doing this would use anything but moderate under the affordable housing. The affordable housing allocations are being burned up with median and moderate being the highest percentage and it worries him, though he knows he sounds like a broken record on this topic. Commissioner Miller told him not to worry about that, as he also is concerned about this. Chair Wiatt asked if staff had any concerns about it. Ms. Schemper responded that if the moderate allocations were used up, the

only thing left for people building new affordable housing would be the lower income categories. Chair Wiatt noted that would be unless the County decided to take 300 allocations which have been offered up and readjust the categories, which would result in the same issue. Commissioner Miller added that there is a great piñata in the sky full of affordable allocations, and it opens up and the affordable allocations come down to is, and there is no end to it.

Ms. Cioffari explained that while she was working on this, she had tried to stay as flexible as possible. Though she understands the concern, she believes this would probably be utilized by more single-family residences. If it were limited to very low, the economics may not facilitate the redevelopment. Chair Wiatt and Commissioner Miller agreed that if there was no restriction, everyone would go for moderate. Chair Wiatt also added that if everything has to be brought up to Code, no one would want to do it for less than moderate because it becomes a very valuable structure, and that this really adds to available market rate and he does not know why any concessions are being given. Commissioner Miller agreed, stating that it should have to be median or below. There was lengthy back-and-forth on this topic among the Commission and staff. Ms. Schemper clarified that for Tier II and III, those properties can receive an affordable allocation and the list of criteria does not apply. This proposal is to open up the other tiers to receiving affordable ROGO allocations only if replacing a previously-existing home. The BOCC direction was about replacement housing, not taking an existing home built in 1972 that is lawfully non-conforming to current Codes and plopping an affordable ROGO on it. It is about rebuilding a home, not a mobile home, and to incentivize lower-risk housing. The Planning Commission could recommend a change to that and staff would bring it to the BOCC. Mr. Wolfe interjected that the whole point was to take an Irma-damaged house, targeting people here earning money who are still livingin the home, who need to transfer the market rate off to get some more money to help them rebuild. If they got $45,000 for the market rate allocation, that would subsidize their ability to rebuild. It was discussed that market rate ROGOs would be worth between $45,000 and $60,000. It was then discussed how if a property owner with a deed restricted property has an income increase, they would no longer qualify to stay in their own home and would have to move out. Additionally, sales prices are not controlled based on income categories, only on the size of the home. Ms. Schemper asked if the Commission wanted to include criteria that this was only available for median, low and very low income levels. Chair Wiatt stated that if they go that route, they might as well just say median because then everyone would go with median. He would like to see some sort of review of the implications to burning the affordable housing allotments on moderate only with this particular piece of Code. Commissioner Miller suggested unforeseen consequences should be explored before moving forward. Commissioner Livengood asked if this came about due to certain Maggie houses and things going on in Big Pine. Ms. Cioffari responded that it was not specific to that project as those were built on vacant parcels without existing development. This had come from the BOCC as another initiative to try to encourage and protect de facto affordable housing. Ms. Schemper added that the Community Land Trust properties were one of the possible targets of this as well.

Commissioner Wiatt asked if anyone had thought through the type of affordable ROGO. Ms. Schemper responded that that is a bigger issue on everyone's mind with every single affordable housing project that comes up. She does not believe this amendment, as proposed, would exacerbate that. There are still approximately 350 moderate affordable housing ROGOs available and 212 in the lower categories available, whether they are used on these properties or

other properties. Chair Wiatt then suggested these all be used on moderate and burn those up as opposed to burning ones that might be allotted for a different income level. They would ask for moderate anyway and would get it if it were available. Ms. Schemper thought that could only be assumed. Commissioner Livengood suggested capping it at 50 moderate, and then staff could check to see if the project was working. Commissioner Miller added that he had not envisioned this program as something that would allow someone to stay in their home and then sell the market rate for cash. Ms. Schemper stated that it wasn't a requirement, but rather a potential, and believes the BOCC acknowledged that there would be multiple situations. There was extensive discussion regarding market rate allocations being available immediately to someone purchasing that market rate allocation. Chair Wiatt asked what this would do to the pool of moderate and if it would affect developers building affordable housing if the number of moderate allocations were not available. Ms. Cioffari responded that if the moderates were used up, they would not be available for the developers to request, and whether that stops a development is unknown. Chair Wiatt again expressed concern for unforeseen consequences. Commissioner Livengood asked how many properties in the County could use this program. Ms. Cioffari responded that it was not limited to homes damaged by the hurricane, that there may be those replacing a home, and this could encourage maintaining the original home as affordable. Commissioner Miller asked about someone owning a mobile home park and whether they would be able to eat up any one category completely or if there was no concern about that. Mr. Wolfe responded that inclusionary housing deals with redevelopment of mobile home parks. Ms. Schemper added that when someone replaces more than 10 mobile homes, 30 percent need to be replaced as affordable housing. Someone replacing a mobile home with an affordable unit is not subject to inclusionary housing as they are already replacing with an affordable. Market rate can only go to Tier III, IS or URM Zoning, and not working waterfront. The inclusionary housing program is not being changed. Mr. Williams noted that items not on the agenda were now being discussed.

Commissioner Miller didn't want to see restrictions presently in place being allowed to be circumvented. Ms. Schemper added that what is being proposed does not change anything regarding where a market rate can be transferred to, so whether it's under the regular transfer program or the mobile home incentive program, all rules in place would remain. Chair Wiatt asked if, after all of these discussions, staff was still comfortable with recommending approval. Ms. Schemper stated she did not believe there would be so many of these that the 350 moderate affordable allocations would be depleted. And, in any given ROGO quarter, there is the opportunity to readjust the ratio of moderate to a lower category in the affordable pool. Chair Wiatt spoke in favor of the lower categories, indicating he would not want to see allocations pulled from low income to replace the moderates. Commissioner Miller's concern was the inability to limit the mix. Ms. Schemper asked if he wanted to add a requirement that if someone was doing more than one property at once, there would need to be a certain percentage. Commissioner Miller indicated that he would. Commissioner Livengood suggested a possible requirement for it to be a homesteaded property. Ms. Schemper indicated that could be added. Chair Wiatt again stated that if staff was comfortable after all of the discussion, he would be willing to vote in the affirmative. Ms. Schemper commented that some of the concerns discussed were already addressed in the Code, that this would just open up the possibility of affordable ROGOs going to more sensitive Tiers for redevelopment. Some of the Commission's concerns may be better put into a larger Text Amendment as they may be a bigger issue that

needs to apply to all affordable projects throughout the Keys, regardless of Tier, and she was not sure how everything could be integrated into this amendment. Commissioner Miller suggested staff start with saying "only one ROGO" would be eligible rather than a whole mobile home park owned by one person, for instance. Chair Wiatt emphasized that he was more concerned with the ratio. Ms. Schemper reiterated that presently, a market rate can be taken somewhere else, and the only difference here is allowing affordable on Tier I and Tier III-A. Commissioner Miller then realized this ordinance was more restrictive than he had initially thought.

Motion: Commissioner Miller made a motion to approve with conditions on requests for multiple properties. Commissioner Livengood seconded the motion. There was no opposition. The motion passed unanimously.

5. AN ORDINANCE BY THE MONROE COUNTY BOARD OF COUNTY COMMISSIONERS AMENDING MONROE COUNTY LAND DEVELOPMENT CODE SECTIONS 138-24 AND 139-1(A)(6)C. TO ALLOW FOR THE AWARD OF ROGO ALLOCATIONS TO TIER I, TIER II, TIER III AND III-A FOR THE REDEVELOPMENT OF LAWFULLY EXISTING ROGO EXEMPT DWELLING UNITS WITH A REPLACEMENT AFFORDABLE DWELLING UNIT; 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 2018-108)

Ms. Cheryl Cioffari, Comprehensive Planning Manager, presented the staff report, indicating the language for this item was the same as that in the prior item for the Comprehensive Plan Amendment, this being the companion piece amending the Land Development Code.

Chair Wiatt asked for questions and then for public comment. There were none. Public comment was closed.

Motion: Commissioner Miller made a motion to approve with same conditions as Item 4. Commissioner Livengood seconded the motion. There was no opposition. The motion passed unanimously.

ADJOURNMENT
The Monroe County Planning Commission meeting was adjourned at 12:50 p.m.