

PLANNING COMMISSION
January 24, 2012
Meeting Minutes

The Planning Commission of Monroe County conducted a meeting on **Tuesday, January 24, 2012**, beginning at 10:06 a.m. at the Marathon Government Center, 2798 Overseas Highway, Marathon, Florida.

CALL TO ORDER

PLEDGE OF ALLEGIANCE

ROLL CALL by Gail Creech

PLANNING COMMISSION MEMBERS

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| Denise Werling, Chair | Present |
| Randy Wall, Vice Chair | Present |
| Jeb Hale | Present |
| Elizabeth Lustberg | Present |
| William Wiatt | Present |

STAFF

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| Townsley Schwab, Senior Director of Planning and Environmental Resources | Present |
| Susan Grimsley, Assistant County Attorney | Present |
| John Wolfe, Planning Commission Counsel | Present |
| Mike Roberts, Administrator, Environmental Resources | Present |
| Mayte Santamaria, Assistant Director of Planning and Environmental Resources | Present |
| Joe Haberman, Planning & Development Review Manager | Present |
| Mitch Harvey, Comp Plan Manager | Present |
| Tiffany Stankiewicz, Development Administrator | Present |
| Tim Finn, Planner | Present |
| Gail Creech, Planning Commission Coordinator | Present |

COUNTY RESOLUTION 131-91 APPELLANT TO PROVIDE RECORD FOR APPEAL

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

SUBMISSION OF PROPERTY POSTING AFFIDAVITS AND PHOTOGRAPHS

Gail Creech confirmed receipt of all necessary paperwork.

SWEARING OF COUNTY STAFF

All staff members intending to speak were sworn in by John Wolfe.

CHANGES TO THE AGENDA

There were no changes to the agenda.

APPROVAL OF MINUTES

Motion: Commissioner Lustberg made a motion to approve the minutes of the December 1, 2011 meeting. Commissioner Hale seconded the motion. There was no opposition. The motion passed unanimously.

Motion: Vice Chair Wall made a motion to approve the minutes of the December 21, 2011 meeting. Commissioner Wiatt seconded the motion. There was no opposition. The motion passed unanimously.

MEETING

New Items:

1.A public hearing to consider and finalize the ranking of allocation awards held in abeyance in the Dwelling Unit Allocation System for the July 14, 2009, through July 12, 2011, ROGO Years 18 and 19. Allocation awards will be allocated for all unincorporated Monroe County, excluding the Big Pine and No Name Key Sub-area.
(File #'s 29072 and 2010-109)

(10:09 a.m.) Tiffany Stankiewicz presented the staff report. Ms. Stankiewicz reported that the Planning Department is recommending the release of all allocations held in abeyance except for two applications, which shall remain in the competition system, for residential dwelling unit allocations beginning July 14, '09 and ending July 12, '11. The two Lower Keys applications from Quarter Year 19 previously ranked 9 and 10 are not recommended for allocation because of a tier change, which results in a reduction of points making them insufficient for an allocation award.

Chair Werling asked for public comment. There was none.

Motion: Vice Chair Wall made a motion to recommend approval. Commissioner Wiatt seconded the motion. There was no opposition. The motion passed unanimously.

2.A public hearing to consider and finalize the ranking of applications in the Dwelling Unit Allocation System for the July 13, 2011, through October 12, 2011, ROGO quarter (1st Quarter Year 20). Allocation awards will be allocated for all unincorporated Monroe County.
(File #2011-088)

(10:11 a.m.) Tiffany Stankiewicz presented the staff report. Ms. Stankiewicz reported that the Planning Department recommends approval of the Lower Keys applicants ranked 1 through 6 for allocations, Big Pine/No Name applicants ranked 1 through 2 for allocations based upon mitigation available, Upper Keys applicant ranked 1 through 12 for allocations and Upper Keys administrative relief applicants 1 through 3 for allocations. There were no affordable housing applicants.

Chair Werling asked for public comment. There was none.

Vice Chair Wall pointed out that only six allocations are recommended in the Lower Keys out of 14 available because the Planning Commission is only allowed to allocate so many Tier I properties per quarter.

Motion: Vice Chair Wall made a motion for approval. Commissioner Wiatt seconded the motion. There was no opposition. The motion passed unanimously.

3. CONSIDERATION OF A RESOLUTION TRANSMITTING TO THE STATE LAND PLANNING AGENCY AN ORDINANCE BY THE MONROE COUNTY BOARD OF COUNTY COMMISSIONERS AMENDING POLICY 101.20.2 TO ADD SECTION 6 INCORPORATING THE LOWER KEYS LIVEABLE COMMUNIKEYS PLAN INTO THE MONROE COUNTY 2010 COMPREHENSIVE PLAN BY REFERENCE; PROVIDING FOR SEVERABILITY; PROVIDING FOR THE REPEAL OF INCONSISTENT PROVISIONS; PROVIDING FOR TRANSMITTAL TO THE STATE LAND PLANNING AGENCY; PROVIDING FOR THE FILING WITH THE SECRETARY OF STATE AND FOR AN EFFECTIVE DATE; AND PROVIDING FOR THE INCLUSION IN THE MONROE COUNTY 2010 COMPREHENSIVE PLAN.

(File # 2011-110)

(10:13 a.m.) Mitch Harvey presented the staff report. Mr. Harvey reported that the Lower Keys Livable CommuniKeys Plan (Lower Keys LCP) is a community-driven planning process that addressed individual needs of the island communities in the Florida Keys. The Lower Keys LCP covers the area between Mile Markers 14.2 and 29, excluding the offshore islands. The Lower Keys LCP foundation was established through public input at workshops where community participants identified the perceptions and desires for the Lower Keys and created a vision statement. Mr. Harvey read aloud the Lower Keys LCP vision statement.

Mr. Harvey explained that there are seven elements in the Lower Keys LCP which takes the vision of the community and uses that as a guide for staff when reviewing proposals for development applications and land use changes. To further the community vision that addresses special needs and concerns of the six island subareas within the Lower Keys LCP, tables were prepared which identify the goal, objective and policy that apply to each of the six subareas. One of the overriding issues that came out of this process is that people in the Lower Keys like the area that they live in and would not like to see radical changes. Mr. Harvey then described the process used to notify the property owners in this area and the property owners' ability to participate in the process. The appendices attached to the LCP were described. Mr. Harvey emphasized the importance to understand that this whole plan gets adopted and incorporated into the comprehensive plan, not just the goals and objectives and policies.

A public transmittal hearing in front of the Board of County Commissioners (BOCC) is scheduled for February 13th. Staff will get back objections, recommendations and a comment letter from the Florida Land Planning Agency around April and then will be back in front of the BOCC for final adoption in June. The proposed amendment is consistent with Objective 101.20 and Policy 101.20.1 of the Monroe County comprehensive plan, the principles for guiding development for the Florida Keys area of state critical concern and those sections of Florida

Statutes which identify what should be in a comprehensive plan and identifies the public participation process. Staff recommended approval.

Chair Werling asked for public comment.

Bill Hunter of Sugarloaf Key thanked staff that worked for many years to make this plan happen. Mr. Hunter stated that throughout all of the workshops and meetings residents of Lower Sugarloaf made it very clear that they like the way the community is today and they do not want to see significant changes. The subject of casinos and gambling never came up before because nobody thought it would ever happen in the Lower Keys, but some of the recent legislative activity has now become a concern. The Board of the Sugarloaf Shores Property Owners Association voted last week unanimously to request that before this plan receives final approval it reflect the community's desire that gambling facilities not be approved on Lower Sugarloaf.

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

Vice Chair Wall asked Mr. Harvey to address the gambling subject. Mr. Harvey spoke of the hurdles associated with bringing casinos into an area and stated he feels it would be unattainable. If Mr. Hunter's request does get entered in the Lower Keys LCP, Mr. Harvey would request that it be included for the entire Lower Keys area. Commissioner Wiatt believes that the desire that gambling facilities not be approved would best be put in the master comprehensive plan as opposed to smaller area comprehensive plans. Mr. Schwab agreed and added that can be addressed because the County is working on their comprehensive plan update at this time. Mr. Hunter stated he would be comfortable with that proposal.

Commissioner Lustberg requested that a flexible definition of "small business" be included. Mr. Harvey stated that could be worked on as part of the comprehensive plan update. Commissioner Lustberg then pointed out that "small business" is not included in the individual policies.

Ricardo Calvo of HDR Engineering, who is the County's consultant in this matter, was present. Mr. Calvo agreed that there is no formal definition of a small business, but believes there is a practical understanding of what is meant by that term. Mr. Calvo does not believe that adding a formal definition at this time would change the nature of this plan, as the community will be the first to make sure that the practical understanding definition of a small business is carried through. Commissioner Wiatt agreed that some level of definition for small business is needed, and again stated that the best place to do that is in the comprehensive plan, which covers the entire County.

Commissioner Lustberg then voiced concern having to do with the provisions for the term "locally owned." Commissioner Lustberg brought up the lawsuit in Islamorada prohibiting chain stores and Key West's prior inability to regulate ownership of hotels being converted into condos. Mr. Wolfe responded that Monroe County has no jurisdiction to dictate who owns businesses in the County. Ms. Santamaria clarified that the Lower Keys LCP promotes small locally-owned businesses, but does not prohibit any single type of entity. Commissioner Lustberg stated that there is nothing in the actual policies that would actually promote locally-owned businesses over out-of-state owned businesses and it makes her uncomfortable to put

something in a planning document as a stated goal that the County is not in a position to back up with a policy. Mr. Schwab added that this is a planning tool that is general and is painting a vision, and does not think the ability to communicate that vision should be thwarted as long as it was not contradictory to the law.

Vice Chair Wall voiced his concern with the term “locally owned” appearing in the document. Discussion was had regarding how binding the document is as opposed to being the community’s wish list. Mr. Calvo noted that this is a framework planning document, not a regulation-based document. This document presents the intent and the spirit of the community. Commissioner Wiatt added that locally-owned businesses should be promoted as long as it is legal. Commissioner Hale agreed.

Commissioner Lustberg stated that the ideas listed in Goal 2B, specifically nonpoint source discharge, should be looked at to implement County-wide. Mr. Harvey agreed that some of the water issues are a Keys-wide problem. Commissioner Wiatt again stated that this would best be addressed in the comprehensive plan update. Commissioner Lustberg agrees with it being emphasized in the Lower Keys LCP as an objective.

Mr. Schwab proposed changing the language in Objective 1.4 on Page 30 from “shall expand” to “shall encourage” with regard to small locally-owned businesses.

Cindy Dressel, board member of the Cudjoe Gardens Property Owners Association, stated that the Cudjoe Regional Water Treatment Plan should not be enforced without the promised monies from the state government, because more than half of the people in the area would not be able to afford to keep their homes and still pay what it will cost to put that in without state money. Chair Werling explained that no enforceable type of wording is to be included in this LCP. Commissioner Lustberg agreed that the state should provide the money.

Commissioner Lustberg questioned whether the language on Page 37 of the draft plan, second paragraph down, should be changed from “construction that was scheduled for 2011” to “construction that was completed.” Mr. Harvey will confirm that it has been completed before making that change. Commissioner Lustberg then pointed out the language on Page 45, “FKAA’s water distribution system upgrade plan during fiscal year 2011.” Mr. Schwab stated that the plan can be reviewed to look for those kinds of issues and update those kind of statements since this plan has been evolving for some period of time. Commissioner Lustberg then commented that cesspits were not mentioned when the treatment of sewage was addressed. Commissioner Lustberg then commented that the language “with so much of Florida Keys taxes going to the school system” on Page 49 should be removed since Florida is at the bottom regarding per-student funding for education.

Motion: Vice Chair Wall made a motion to recommend this to the BOCC with the changes addressed today and staff is requested to make. Commissioner Wiatt seconded the motion. There was no opposition. The motion passed unanimously.

4.Northstar Resort Enterprises Corp. Property, 99060 Overseas Highway (US 1), Key Largo, Mile Marker 99: A request for approval of an amendment to a major conditional use

permit. The amendment would allow the property owner to construct and operate a campground for 110 recreational vehicles in the interim time between the effective date of a development agreement between the landowner, Northstar Resort Enterprises Corp., and Monroe County and the completion of an unconstructed 138 unit resort hotel approved by Planning Commission Resolution #P02-07. The subject property is legally described as a portion of lots 4, 8, 9, 11 and 12 in Section 32, Township 61 South, Range 39 East (PB1-68) and Block 3, Lot 3, El Dorado Heights (PB1-203), Key Largo, Monroe County, Florida, having real estate number 00088020.000000.

(File #2011-124)

(11:15 a.m.) Joe Haberman presented the staff report. Mr. Haberman reported that the site plan is before the Planning Commission for approval, as well as the phasing plan. The development agreement regarding this project was approved by the Planning Commission in September 2011. Staff recommended approval of the major conditional use amendment with conditions, which were then outlined by Mr. Haberman. Commissioner Wiatt asked if there were any material changes to what was seen back in September. Mr. Haberman responded that there have only been some tweaks to the site plan and all setback and parking issues have been resolved by the applicant.

Joel Reed, planner, was present on behalf of the applicant. Mr. Reed was sworn in by Mr. Wolfe. Mr. Reed then explained that this conditional use part of the request is to use the site and develop it in the interim as a 110-unit RV park with some accessory amenities until such time as the development can proceed of the 138-unit resort hotel that has already received approval. The site is in Key Largo at Mile Marker 99. The development is going to be within the established setbacks of the approved resort hotel. The locations of the primary entrance and drives to the property have been kept consistent with what was already approved.

Phase 1 of the project would be for the 110-unit RV park. The second phase would then bring in 27 hotel rooms. Phase 3 would remove all of the RVs and implement the final 138-unit resort hotel. The siteplans for each phase were shown. Mr. Reed outlined the history of this project.

Chair Werling asked for public comment. There was none.

Mr. Reed then added that the applicant was also seeking approval of 10-by-10 chiki huts to be included as part of the record as far as an amenity to the RV pads. Mr. Haberman stated that he has not had a chance to review that to make sure it is in compliance, but that it probably is. The Planning Commission can approve it as part of a new site plan right here because this new site plan will be associated with the resolution approving it, and the text amendment passed a few months back would consider an accessory chiki hut allowed as of right. That text amendment is with the state right now, and if they do not approve it, under the existing code the applicant would need a minor deviation added. Mr. Reed gave a more detailed description of the RV pads. Commissioner Wiatt suggested including the chiki huts as a sixth condition. Mr. Haberman added that the chiki huts should be limited to 399 square feet or less since an accessory use cannot exceed the size of a principal use. Mr. Reed confirmed for Mr. Haberman that the chiki huts would not have electric or plumbing, and Chair Werling asked for that to be a condition also.

Motion: Commissioner Wiatt made a motion to approve this amendment to a major conditional use permit with the conditions described, adding Condition Number 6, for the review of a green buffer and chiki huts less than 399 square feet with no utilities for individual RV pads. Vice Chair Wall seconded the motion. Vice Chair Wall asked if there was a good argument for making the size of the chikis 150 square feet rather than 399. Jim Saunders, applicant, agreed 150 square feet is fine. Commissioner Wiatt amended his motion to change the square footage from 399 to nothing more than 150. Vice Chair Wall seconded the amendment. There was no opposition. The motion passed unanimously.

5.Thompson Acquisitions, LLC, Intersection of Atlantic Avenue and Atlantic Boulevard, Key Largo, Mile Marker 99.5: A request for a variance of ten (10) feet from the required twenty-five (25)-foot front yard setback along the rights-of-way of Atlantic Boulevard and Atlantic Avenue. As a result, the front yard setback along the rights-of-way of Atlantic Boulevard and Atlantic Avenue would be fifteen (15) feet; however, the setback of 15 feet on the Atlantic Avenue side of the property would only apply to the areas shown on the site plan submitted with the variance application. The subject parcels are legally described as Lots 208 and 209, Port Largo First Addition (PB6-48), Key Largo, Monroe County, Florida having real estate numbers 00453471.000100 & 00453470.000200.

(11:32 a.m.) Joe Haberman presented the staff report. Mr. Haberman reported that the applicant applied for both a minor conditional use and an administrative variance. While reviewing the minor conditional use permit application staff found they could not approve it because the setbacks have to be adjusted first or the site plan would have to be changed. The applicant opted to apply for the administrative variance. With an administrative variance staff makes a preliminary recommendation that is not a decision and then sends out the surrounding property owner notifications. If anybody in the community calls for a public hearing the decision is deferred to the Planning Commission. The conditional use is pending and is not being decided today. Only the variance, which is a dimensional variance to the setbacks along Atlantic Avenue and Atlantic Boulevard, are being considered today. Staff made their initial recommendation without hearing from the community, because public input comes later in the process. Staff is interested in what the public has to say to see if they have any valid reasons to reevaluate some of the standards, but looking at the standards without the community comments staff found they were met. Staff recommended approval of the variance with conditions, which were then read into the record.

Joel Reed, planner, was present on behalf of the applicant and was previously sworn. Mr. Reed explained that what the applicant is requesting today is an administrative setback variance. Mr. Reed hopes today will be a great chance to explain to people that do not understand the process or do not understand the request that is being asked for. The applicant, David Thompson, was then introduced to the Commissioners.

David Thompson was sworn in by Mr. Wolfe. Mr. Thompson stated that both he and his neighbors are here today because everybody wants the smartest design and the best site plan for the surrounding community as possible.

Mr. Reed showed a possible option if all the setbacks were complied with, which goes to the 35-foot height maximum. Mr. Reed explained that the front yard setback is the most restrictive setback on the property. Mr. Reed projected on the screen examples of some setbacks, as well as a slide showing the location of this property. Properties with setback variances that surround the subject property were shown. The zoning is suburban commercial zoning with mixed uses. The subject lot sits in Downtown Key Largo. The site is an odd-shaped lot, and the applicant did try and set up the site in a manner to the maximum extent possible without creating an undue hardship to the applicant. Mr. Reed continued to show slides of surrounding properties.

Mr. Reed stated that there is not a question of whether or not this lot can be developed. Mr. Reed then showed the land uses of surrounding properties. This property is located in the area of the Downtown Key Largo Master Plan that was adopted by the state. The purpose of the Key Largo Master Plan was to retain and expand a mix of retail, tourist and public park uses and encourage commercial development within this area. This is an appropriate area for development. This site meets all of the parking, density and intensity regulations. Mr. Reed stated that the applicant has come up with a building that is fitting within the overall character of the area. The applicant did not feel that a three-story structure was the most appropriate building for this area, so the other option the applicant came up with requires a setback variance for a two-story structure with an overall height of about 29 feet that is hidden mostly by the vegetation that already exists on site. Mr. Reed described Mr. Thompson as a long-time resident, owner/builder, with a long history of quality projects with strict management of his properties.

Chair Werling asked for public comment.

Fred Nickerson, Key Largo resident, was sworn in by Mr. Wolfe. Mr. Nickerson owns residential property which borders the proposed development and opposes the setback variance request. Mr. Nickerson believes the added traffic is a health and safety factor and the proposed structure is not in keeping with community character and quality of life. Mr. Nickerson stated this property is odd because of the configuration, as well as it is located in the middle of a residential area.

James Crawford, owner of two lots behind the subject property, was sworn in by Mr. Wolfe. Mr. Crawford stated that he is directly affected by this variance. Mr. Crawford requested Mr. Thompson put a six-foot concrete wall between the two properties for security reasons and also for runoff. Mr. Crawford requested the dumpster be located on the side towards the park so it is not facing all the residential properties.

Ann Nickerson, Key Largo resident and vice-president of the Port Largo Residential Property Owners Association, was sworn in. Ms. Nickerson reported that the board feels this variance is not appropriate at all for this area. The president of the association has written a letter, which Ms. Nickerson then read aloud, which stated the over 200 property owners in Port Largo feel strongly that allowing a setback variance for this commercial development will unnecessarily degrade the standards and the visual aesthetics of the community. Ms. Nickerson stated that she collected 26 signatures in opposition of this in only two hours and feels that the applicant knew what he was buying and knew what he could do with it. Ms. Nickerson added that there is no

retail space in this immediate area. Ms. Nickerson submitted letters from Port Largo residents for the record.

Gene Lentz, Port Largo resident, was sworn in by Mr. Wolfe. Mr. Lentz is presently the owner of Remedies, an established business for over 40 years in Key Largo. Mr. Lentz pointed out that this property has been permitted for commercial operation for 35 years and questioned why the community has not come forward before now. Mr. Lentz believes a building less than 35 feet that requires a small setback variance is a gift. Mr. Lentz pointed out that this is a well-structured building that includes affordable housing, which is important in the Keys. Mr. Lentz also pointed out that the proposal is for a green building and stated it would be prudent to approve this variance request.

Mark Tanner, resident of Key Largo, was sworn in by Mr. Wolfe. Mr. Tanner pointed to the single-family homes surrounding the property. Mr. Tanner believes this project belongs out on US-1, not in a residential area. Vice Chair Wall pointed out that there are duplexes and fourplexes also surrounding this property. Mr. Tanner asked for this to be stopped long enough for the neighbors to build a fight against it.

Mr. Thompson read aloud a letter from Stuart Marr, a property owner in the Port Largo subdivision and resident of Key Largo for over 40 years. Mr. Marr voiced his support for the development, and listed one reason for supporting it to be the property has been zoned suburban commercial for over 35 years and the proposed project is entirely consistent with that zoning, as well as other reasons. Chair Werling had it confirmed that Mr. Marr owned the property prior to Mr. Thompson.

Marlene Weeks, Port Largo resident, was sworn in by Mr. Wolfe. Ms. Weeks commented that it is to Mr. Marr's benefit to be able to have Mr. Thompson be able to develop this property. Ms. Weeks provided some history of this property when Mr. Marr tried to sell this property to the Keys Marine Academy of Science. Ms. Weeks disagreed that this commercial building would be considered normal for this neighborhood. Ms. Weeks perceives the two options being shown as an underlying threat and does not believe either one of those scenarios is a good scenario for the property. Ms. Weeks also believes this is going to affect the marketability of the properties in the area. Ms. Weeks questioned the location of this hearing so far away from the citizens affected by this project. Vice Chair Wall explained that it was the wishes of the County Commission that all the Planning Commission hearings take place centrally. Ms. Weeks voiced concern regarding the added traffic this project would bring into her neighborhood.

Michael Zupan, Port Largo resident, was sworn in by Mr. Wolfe. Mr. Zupan explained his difficulties in getting a permit from the County to put a kitchen facility in the downstairs of one of his properties due to the fact that Port Largo was a single-family development. Mr. Zupan does not believe this project conforms to what commercial property is already developed on Atlantic Avenue, nor does it conform to the character of the whole subdivision of Port Largo. Mr. Zupan agreed that this project is going to cause property values to go down in this area. Mr. Zupan also believes this will create a safety hazard due to the traffic increase this will bring. Mr. Zupan asked to read for the record letters from his neighbors. Chair Werling stated they can be introduced into the record and become part of the public record of the hearing. Mr. Zupan then

read aloud a letter from Paul Snow, who owns the lot directly across from the subject property. Mr. Snow objects in principle to the overall project proposed because it will be primarily a retail venture in an otherwise residential area and also objects to the request for variance on the grounds that the proposed project will be placed that much closer to his property line. Mr. Snow requested that the Planning Commission decline the proposed variance requested. Mr. Zupan then submitted the letters to Ms. Creech.

Alexander Monteagudo, owner of 11 properties in Port Largo, was sworn in by Mr. Wolfe. Mr. Monteagudo stated that the applicant should have considered when he bought the property the requirements in place and objected to the applicant asking for a variance.

Gay Marie Smith, Port Largo resident, was sworn in by Mr. Wolfe. Ms. Smith believes this design would be great if on US-1. Ms. Smith voiced concern regarding preserving native vegetation on the lot, as well as the impact traffic will have on pedestrians and bicyclists at the park. Ms. Smith addressed the properties shown with no variances for setback intrusions by stating that many houses in setbacks were prior not required to have variances. Ms. Smith asked the Commissioners to not approve the variances because it does not go with the community character in Port Largo.

Susan Hammaker, Key Largo resident, was sworn in by Mr. Wolfe. Ms. Hammaker stated she was present because she has a passion for finding and creating academic, cultural and recreational opportunities for children in pre-K to K and beyond. Ms. Hammaker pointed out that the applicant is a green builder. Ms. Hammaker stressed that there is a great need for community-based activities and this appears to be such a use. Ms. Hammaker urged the Planning Commission to think carefully about this variance.

Derek Crawford was sworn in by Mr. Wolfe. Mr. Crawford questioned whether this project was going to be a daycare, due to the prior speaker's comments. Chair Werling emphasized the issue to be decided today is for the variance for the setback only.

Pauline Klein, secretary of the Island of Key Largo Federation of Homeowners Association (IKLFHA), was sworn in by Mr. Wolfe. Ms. Klein read aloud a letter from the IKLFHA. The membership voted to oppose granting of this setback variance as it would forever change the residential character of that subdivision and asked the application for variance on both of the lots be denied. Ms. Klein agreed that US-1 is definitely the better place for a project like this.

Marlene Weeks suggested that the Planning Commission recommend to the applicant to table this discussion and meet with the surrounding community members to mediate some of these issues so that an agreement can be made that is both good for the neighborhood and financially reasonable and sound for Mr. Thompson.

Fred Nickerson pointed out that the triplexes and duplexes in the neighborhood are nonconforming, and in case of a hurricane, if damaged, they will not be able to be replaced as a duplex or triplex. Chair Werling reiterated the fact that the hearing is about the variance, not the project.

Ms. Grimsley read into the record the purpose of the suburban commercial district.

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

Mr. Reed, in response to a few of the public comments, stated that the 40-year history of the zoning, the comprehensive plan and the master plan have kept the zoning and the proposed uses the same as what is being proposed today. A traffic study was done and it was found that the proposed development will not degrade the level of service of surrounding roadways. The eight points in the variance criteria have been met. Mr. Reed asked the request be reviewed for what it is: A variance, not a zoning case. Mr. Reed clarified for Vice Chair Wall that the tier designation is III-A and that the planting requirement is essentially going to be done with vegetation that is already on the property with infill of some shrubs and understory where necessary to meet the buffer requirements. Mr. Reed also informed Vice Chair Wall that there was a variance granted for the park across the street.

Commissioner Wiatt questioned the exceptional hardship to the applicant if the variance were not granted. Mr. Reed responded that making an appropriate scale and designing the project within the odd configuration would be a hardship. Mr. Schwab corrected 6B of the criteria in the staff report which states that a single-family residence use may be better suited given the shape and size of the property. Mr. Schwab pointed out that is not permitted anyway.

Commissioner Lustberg asked if staff's recommendation is still approval after listening to public input. Mr. Schwab stated that staff has not heard anything that would change that perspective. There was discussion of what the applicant could build without the setback variance. Mr. Thompson described how he has refined this design to have as minimal an impact as possible. The open space requirements are more than double what is required. Mr. Haberman added that the existing first condition locks the applicant into the site plan which shows the building with just one story over covered parking, and it could be conditioned further to say so long as they develop in the setback they cannot go over so many feet or so many stories as well. Mr. Reed agreed to conditioning to a maximum overall height as shown in the site plans and elevations submitted with the applicant's package, excluding the solar apparatus.

Commissioner Lustberg had it confirmed that the members of the public understood that if the variance was not granted there will still be the same density and intensity allowed in a different configuration. Vice Chair Wall stated that the open space in this project is very significant and believes this is a brilliant plan.

A recess was held from 1:28 p.m. to 1:44 p.m. to obtain the elevations submitted on the plans.

Vice Chair Wall announced that the maximum height above existing grade is 29 feet three inches on the plans. Commissioner Lustberg suggested determining whether the Planning Commission wants to approve this before adding conditions. Commissioner Wiatt stated that he does not believe that Item B, exceptional hardship, has been completely met. The lack of exceptional hardship and the community's resistance to the project causes Commissioner Wiatt to not support the variance. Chair Werling agreed, but feels that consideration should be given to some

of the other issues to benefit the neighborhood and everyone concerned to the best possible outcome.

Vice Chair Wall stated that the Planning Commission has granted variances in the past specifically because there was a hardship created because such an inordinately high percentage of the land fell into the setback because of the unusual shape of the property, which this property fits that criterion perfectly. Commissioner Hale believes the shape of the lot does create an exceptional hardship, which has caused the Planning Commission to grant variances on prior occasions.

Vice Chair Wall suggested conditioning the project to a limitation of 30 feet and two stories. Commissioner Hale requested the additional condition of open space required to be not less than 40 percent.

Motion: Commissioner Hale made a motion to approve the variance, but impose additional conditions that the height not exceed 30 feet, including everything, the building is not to exceed two stories, and the open space would have to be at least 40 percent. Vice Chair Wall seconded the motion. Vice Chair Wall then had it confirmed that it is reasonable to anticipate that the trees that fall in the buffer area are protected. **Commissioner Hale amended his motion to add the condition of keeping as much of the existing buffer native as possible. Vice Chair Wall seconded the amended motion.** Commissioner Lustberg asked if the large number of neighbors opposing the project in and of itself would create a public nuisance. Mr. Wolfe explained that a public nuisance usually refers to the use of the land and the land use characteristics. **The roll was called with the following results: Commissioner Hale, Yes; Vice Chair Wall, Yes; Commissioner Lustberg, No; Commissioner Wiatt, No; and Chair Werling, No.**

6.The Crab Shack, 24580 Overseas Highway (US 1), Summerland Key, Mile Marker 25: A request for approval of a 2COP (beer and wine, on premises and package) Alcoholic Beverage Special Use permit. The subject property is legally described as Block 1, Lot 33, Summerland Key Cover Addition #2 (PB4-100), Summerland Key, Monroe County, Florida, having real estate number 00190620.000000.
(File #2011-133)

(2:09 p.m.) Tim Finn presented the staff report. Mr. Finn reported that the applicant is requesting approval of a 2COP beer and wine on-premise and package alcoholic beverage special use permit to allow for the retail sale of beer and wine for on-site consumptions and package sales. Mr. Finn gave a brief overview of the site. Staff recommended approval with conditions. Those conditions were outlined by Mr. Finn.

The applicant did not wish to speak. Chair Werling asked for public comment. There was none.

Vice Chair Wall asked why there is not a beer and wine on-premises only license. Mr. Haberman responded that the list in the code is a little bit dated and a text amendment will probably be proposed to update that section of the code.

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

GROWTH MANAGEMENT COMMENTS

Mr. Schwab reminded the Commissioners that on the 6th of February Keith & Schnars will give a presentation on the second portion of the Evaluation and Appraisal Report.

ADJOURNMENT

The Monroe County Planning Commission meeting was adjourned at 2:20 p.m.