PLANNING COMMISSION
**September 29, 2021**

Meeting Minutes

The Planning Commission of Monroe County conducted a hybrid virtual and in-person meeting on **Wednesday, September 29, 2021,** beginning at 10:00 a.m.

**CALL TO ORDER** by Chair Scarpelli

**PLEDGE OF ALLEGIANCE**

**ROLL CALL** by Ilze Aguila

**PLANNING COMMISSION MEMBERS**

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| Joe Scarpelli, Chair | Present |
| Bill Wiatt, Vice Chair | Present |
| Ron Demes | Present |
| George Neugent | Present |
| David Ritz | Present |
| Douglas Prior, Ex-Officio Member (MCSD) | Absent |
| Karen Taporco, Ex-Officio Member (NASKW) | Absent |

**STAFF**

Emily Schemper, Sr. Director of Planning and Environmental Resources
Cheryl Cioffari, Assistant Director of Planning
Mike Roberts, Assistant Director of Environmental Resources
Mayte Santamaria, Senior Planning Policy Advisor
Devin Tolpin, Principle Planner
Peter Morris, Assistant County Attorney
John Wolfe, Planning Commission Counsel
Ilze Aguila, Senior Coordinator Planning Commission

**COUNTY RESOLUTION 131-92 APPELLANT TO PROVIDE RECORD FOR APPEAL**

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

**SUBMISSION OF PROPERTY POSTING AFFIDAVITS AND PHOTOGRAPHS**

Ms. Ilze Aguila confirmed receipt of all necessary paperwork.

**SWEARING OF COUNTY STAFF**

County staff was sworn in by Mr. John Wolfe.

**CHANGES TO THE AGENDA**

Ms. Ilze Aguila stated that staff is requesting Items 2 and 3 be read together; and, the applicants for Item 4 have requested a continuance to the October 27, 2021 Planning Commission Meeting.

**Motion: Commissioner Demes made a motion to continue Item 4 to the October 27, 2021 meeting. Commissioner Ritz seconded the motion. There was no opposition. The motion passed unanimously.**

**APPROVAL OF MINUTES**

**Motion: Commissioner Demes made a motion to approve the August 25, 2021, meeting minutes. Commissioner Wiatt seconded the motion. There was no opposition. The motion passed unanimously.**

**DISCLOSURE OF EX PARTE COMMUNICATIONS**

Commissioner Wiatt stated that on Item 4, he'd had ex parte communications with a number of his neighbors involving discussion of procedural process and scheduling. This will not affect his vote on that item.

(Preparer's Note: Commissioner Wiatt intended to reference Item 5, not Item 4.)

Commissioner Neugent stated he would need to recuse himself on Item 4, as he represents a client which had done some of the planning on the item, although Chair Scarpelli reminded him that Item 4 was being continued to October.

(Preparer's Note: Commissioner Neugent intended to reference Item 5, not Item 4.)

**MEETING**

**1. AN ORDINANCE BY THE MONROE COUNTY BOARD OF COUNTY COMMISSIONERS** AMENDING THE MONROE COUNTY TIER OVERLAY DISTRICT MAP FROM TIER I TO TIER III AS REQUESTED BY RUSSELL A. YAGEL, ESQ. FOR A PARCEL OF LAND LEGALLY DESCRIBED AS LOTS 1 THROUGH 14, SQUARE I, ELDORADO HEIGHTS, PLAT BOOK I PAGE 203 AND A PARCEL OF LAND IN SECTION 32, TOWNSHIP 61 SOUTH, RANGE 39 EAST AND A PARCEL OF SUBMERGED LAND IN THE BAY OF FLORIDA IN SECTION 32, TOWNSHIP 61 SOUTH, RANGE 39 EAST; HAVING REAL ESTATE NO: 00088170-000000. (FILE 2021-038)

Chair Scarpelli first announced that Item 1 is for a tier designation change and that public comment should be limited accordingly, as this is not the forum for other things that may be happening on this property. Additionally, individual speakers are limited to three minutes, and heads of organizations are limited to five minutes.

(10:03 a.m.) Mr. Mike Roberts, Assistant Director of Environmental Resources, presented the staff report. This is a request for a tier map amendment from Tier III to Tier I for Thurmond Street Partners, LLC. The property is at 98990 Overseas Highway in Key Largo at mile marker 99. Mr. Roberts presented an aerial of the property. The parcel to the left is Tier I, and the parcels to the right are currently Tier III. In 2013, the Monroe County BOCC adopted Ordinance 015-2013 for twenty-seven parcels that had been determined to have a tier designation that was not consistent with the Tier Overlay District criteria. The Tier Designation Review Committee

seated at the time recommended a Tier I designation for this parcel, and Ordinance 015-2013 specifically included the subject property changing its designation from Tier III to Tier I. The tier boundary criteria for designating Tier I, II or III outside of Big Pine and No Name Keys includes in Section 130-130(c)(1)(d) known locations of threatened endangered species as defined in Section 101-1. Threatened and endangered species means plant or animal species listed as such under the provisions of the Endangered Species Act and/or Florida Statutes and/or the Florida Endangered and Threatened Species Act identified on the Threatened and Endangered Plant and Animal Maps of the Florida Keys Carrying Capacity Study or on-site surveys. The Tier Overlay District map may also be amended to reflect existing conditions if an area is warranted because of drafting, or data errors, or re-growth of hammock. The lawful development on the subject site is limited to permitted structures placed in previously-disturbed portions of the site and no clearing of native habitat was included in any of the previously-issued permits. This parcel is designated as potentially suitable habitat, and is in the Species Focus Area Maps for the Key Largo wood rat, Key Largo cottonmouth, eastern indigo snake, Schaus swallowtail butterfly, and Stock Island tree snail. The applicants submitted an existing conditions report dated February 1, 2021 identifying Florida State endangered species, milkbark and white ironwood, on the subject property.

In addition to the Land Development Codes that have been reviewed are the Comprehensive Plan Policies 105.2.1 defines the three categories which are natural area for Tier I, transition and sprawl reduction areas for Tier II or Tier III-A, and infill area is Tier III. Natural area or Tier I is defined as, "Any geographic area where all or a significant portion of the land area is characterized as environmentally sensitive by the policies of this plan."

Based on the foregoing, and in the information in the staff report and the existing conditions on the site, staff recommends denial of the requested Tier Overlay District map amendment from Tier I to Tier III as the parcel does not meet the criteria for Tier III designation. The applicant did not provide specific evidence of a data error with the property's current tier designation, and the parcel is more appropriately designated Tier I in accordance with the criteria of Section 130-130(c)(1) and Comp Plan Policies 105.2.1, and 205.1.1.

Chair Scarpelli asked for Commission questions or comments. There were none.

Mr. Peter Morris, Assistant County Attorney, requested that he be allowed to first qualify Mr. Roberts and Ms. Schemper as experts in their respective fields. Mr. Roberts stated that he has a bachelor's degree from the University of Central Florida in limnology which is freshwater ecology, biology and chemistry; is a certified environmental planner, member of the Academy for Board Certified Environmental Professionals, and is a professional wetland scientist certified by the Society of Wetland Scientists. He has worked for the Monroe County Planning and Environmental Resources Department for nearly twelve years, and is currently the Assistant Director of Environmental Resources. He has presented to courts and administrative tribunals such as this one many times before, and has had an opportunity to review all documents comprising this application. Mr. Roberts was accepted by the Commission as an expert in the field of biology and environmental resources.

Mr. Morris then questioned Ms. Schemper, who stated she has a master's in urban design and urban planning from the University of Michigan, a certification from the American Institute of Certified Planners, and is a Certified Flood Plain Manager. She has worked for Monroe County for almost ten years and is currently the Senior Director of Planning and Environmental Resources. She participated in the preparation of the staff report submitted by Mr. Roberts and has reviewed the documents submitted as a part of this file. Ms. Schemper agrees with the determinations and conclusions articulated by Mr. Roberts. Ms. Schemper was accepted by the Commission as an expert in the field of planning.

Since the applicant elected to speak after public comment, Chair Scarpelli then asked for public comment.

Ms. Mimi Bentolila, President of Pirates Cove Homeowners Association, a community just south of the Thurmond Street Properties, also known as the wedding venue, stated that the community vehemently opposes this tier change. Thurmond Street bought the land that the wedding venue is operating on fully knowing that the land was zoned for residential use, yet they built a venue to run a commercial business. Thurmond Street Properties is trying to bypass the zoning conflict with this request to change the tier designation from Tier 1 environmentally protected land which cannot be zoned commercial, to Tier III which allows the possibility for a zoning change to commercial zoning and more intensive development including the removal of trees and tropical hammock. The community of Pirates Cove has been established since the 1950s. Many homeowners bought into this neighbourhood for the peaceful tranquility and beauty of the community. The noise from the wedding venue property is affecting their environment and way of life. Sunset Cove has seagrass, manatees, endangered birds and native vegetation that are also affected by this venue. Pelican Key, an island directly west of the venue, is a natural nesting ground for birds, and has been dramatically affected due to fireworks and loud noise. Ms. Bentolila asked that this property please not be changed from Tier I to Tier III. Not only will the Pirates Cove community be compromised but it would set a precedent for all of Monroe County and not in a good way.

Ms. Dottie Moses, President of the Island of Key Largo Federation of Homeowner Associations, stated that the Federation had submitted a letter by Mr. Richard Grosso, an environmental land use attorney, and is opposed to the tier designation change. This property is a classic reason why the tier system was put in place. There is a ten or eleven-acre property contiguous to this property and the whole idea behind the tier system was to keep the integrity of contiguous parcels of hammock in place. Whittling away at the perimeters of the hammock will eventually impact the hammock itself. The property owner has already somehow lost a half-acre of their hammock per the report. Though there were no permits issued, it has disappeared, some non-native species have been introduced into the hammock, and some adjacent land has been cleared that was part of the continuous hammock. They have not been the greatest stewards of the hammock which has been habitat for the migratory birds that come through the area. Ms. Moses does not know if a review has been done of the contiguous hammock and Everglades National Park which is adjacent to it to know whether there are any endangered species living there that

could use this hammock as well. The Federation is opposed to this. It would change the whole idea behind how the Tier I system was developed and what it was meant to protect.

Ms. Jennifer Hartman, President of Tavernier Community Association, stated they support the staff's recommendation to deny this request. Allowing a tier change such as this one may open the door to more Tier I properties throughout Monroe County being changed, and it is important to protect all of the tropical hardwood hammocks within the county.

Ms. Meredith Bud of the Florida Wildlife Federation stated that in 1990, the Florida Wildlife Federation was a plaintiff in a federal lawsuit claiming that FEMA was not properly consulting with the U.S. Fish and Wildlife Service which is a requirement of the Endangered Species Act in their administration of what is the National Flood Insurance Program in Monroe County. From this litigation, the U.S. Fish and Wildlife Service was required to update their biological opinion for the effects of the National Flood Insurance Program on federally listed threatened and/or endangered species in the Florida Keys and had to include what's called reasonable and prudent alternatives, which required Monroe County and other Keys participants to revise their flood damage prevention ordinances and include procedures to reference the use of species focus area maps. There is a settlement agreement from this lawsuit which established the species focus area maps and tier designations. The subject parcel has had no land cover changes since this tier designation. As staff noted earlier, this parcel contains hammock. The Tier I designation is appropriate and consistent with the Comp Plan. It is critical that the intent of that settlement agreement with FEMA is upheld. Arbitrarily altering this designation to Tier III would be inconsistent with the Comp Plan.

Mr. Burke Cannon, swore to God that what he was going to say was the truth and nothing but the truth. He is happy that Commissioners Neugent and Ritz did not recuse themselves from being such past good stewards of the environment. As Vice President of the Federation, board member of the TCA, past President and current Vice President of Hammer Point, he backs everything everyone has said and he cannot believe we are here with this. He keeps trying to win the lottery and when he does, there will be a lot of people that will have to pay up. This has gone on like this and all you've got to do is pay the lawyer. He has nothing against lawyers because he's hired one, though not for this. Staff has recommended against this, has done due diligence, and this is a no brainer.

Mr. Steven Hartz stated that he is a retired lawyer and has had a home in Pirates Cove 500 yards away from the subject parcel for thirty-five years. He is opposed to this application on the basis of the very thorough staff report and various letters and comments made here. Mr. Hartz pointed out that this property was declared Tier I in 2013, not a distant thing from years and years ago, in a unanimous decision of the BOCC then headed by Mayor Neugent after extensive agency review. Under the rules of the Planning Commission, the initial burden of proof is on the applicant to show one of the enumerated reasons for a tier change. No proof has been offered here at all. To the contrary, as staff points out throughout its report and especially in pages seventeen and eighteen, along with the applicant's existing conditions report, the property is a known location of endangered plant species. It contains tropical upland hammock of over one acre contiguous to a ten-acre upland hammock owned by the Everglades National Park and

requires Tier I designation. The application states that there was no illegal clearing, but Mr. Yagel who alone signed the application candidly admitted at the first community meeting that, "It is impossible for me to sit here today and say that I have personal knowledge of what has occurred on that property." The fact is they did not take advantage of any opportunity to state via affidavit or anything else what happened with the missing property. There is nothing hypothetical about the environmental sensitivity of the land here. The staff report and application itself documents the existence of a number of threatened and endangered species. The record also contains witness testimony to the actual presence on the property of three endangered bird species. The applicant bought the property knowing it was Tier I, and wants a windfall from up-zoning at the expense of the community character of the neighbourhood and beautiful environment. This is not about associated litigation. Mr. Yagel has conceded correctly that that is not a basis for changing the tier designation.

Dr. Jan Hartz, a biologist with a bachelor's of science in biology from Brown University, supports the staff report and has information to add to three of their points. After the May DRC meeting she started paying more attention to the threatened white crowned pigeon. On every day she has been on the water, almost every day she has seen white crowned pigeons flying to and from the subject property until a few weeks ago because the pigeons migrate to Cuba in early September and return in the spring, which is why they are also protected by the Federal Migratory Bird Treaty Act as Captain Ed Davis has previously testified. The staff report details certain development on the subject property that seems to be connected with the removal of tropical hammock. Second, page twenty mentions the gravel driveway and parking. Dr. Hartz has viewed videos on the internet narrated by the owner of TSP and in two of them, he's walking down the long gravel driveway pointing out, "the sixty to seventy parking spaces or even more," placed along the side of the driveway on residential land. Third, there is a negative impact on community character when tropical hammock is lost. The staff report notes that development following the tier could result in additional clearing. Community character includes, "Recognizable natural landmarks and features that provide a sense of place." Key Largo's large residential and native area land with its tropical hammocks provides a greenway space along U.S. 1 and along the water. The bay and ocean sides of the highway are largely lined with green outside of the commercial areas, and that is true about the subject properties on both sides for a long distance to the south. The five-mile-long shoreline of Sunset Cove is over 92 percent residential and native area land which includes mangroves and upland green tropical forest visible from the water. The tropical hammock greenway is a vital landmark and is part of the community character vital to residents, tourists and the economy. TSP's past behaviour includes the loss of one-half acre of forest and TSP's discovery that they created and used a beach on a neighboring federal forested land by dredging and filling thirty-nine feet of that land. The only practical enforcement for protecting the environment we have here is the tier system. Dr. Hartz is asking the Commission to follow the staff's recommendation and deny the tier change on this property.

Ms. Denise Downing of Tavernier is also asking the Commission to follow the staff's report recommending denial to the requested tier change and echoes what the others have said. It is

very important to protect the unique and precious greenway space. This makes the area very special and it is super important to protect it.

Mr. Morris then requested official recognition of the contents of the Monroe County Comp Plan and Codes, which permits this Commission to take recognition of certain facts and act upon those facts without proof, and is asking that this Commission issue a ruling recognizing those contents as authentic and not requiring any participant or party to this proceeding to submit a paper copy of the Comp Plan, the Code of Ordinances and Land Development Code, and authenticate every provision contained therein. Chair Scarpelli agreed.

Chair Scarpelli confirmed there was no further public comment. Public comment was closed. Chair Scarpelli then asked if the applicant wished to speak.

Mr. Russell Yagel, Esquire, spoke on behalf of the applicant, Thurmond Street Partners. The reality is that application stems from a 2018 code enforcement case. The property immediately to the north is also owned by this applicant, Bungalows, which is a commercial property for transient rentals. The properties across the street are all zoned commercial. The property immediately to the south of the hammock is owned by the federal government and zoned commercial. It was originally a hotel and has been converted for government use. The 2018 case was brought by the County for a violation of the zoning laws and the noise ordinance. The property is used as a vacation rental that also accommodates a wedding venue. In 2015, the owner of this property had been charged with a vacation rental violation and came into compliance by meeting the requirements of the exemption. The 2018 case is a result of the same people here testifying today. Much pressure was put on the County to bring a code enforcement case for violation of the noise ordinance and commercial use of the property. That went before a magistrate. The County's star witnesses were the Key Largo Federation of Homeowners Associations through Dottie Moses, and Steven and Janice Hartz. At the time they testified there were no discussions or testimony regarding the presence of endangered species. The existence of an endangered bird on a piece of property does not make the property Tier I. The question is whether it's habitat. There has been no evidence offered by anyone that this constitutes actual habitat. As a result of the code enforcement hearing, the magistrate concluded there was not a violation of the noise ordinance. He did conclude there was a violation of the zoning ordinance. As a result of that ruling, Thurman Street Partners took an appeal to the circuit court which reversed the magistrate and said there was no violation of the county code. As a result of that ruling, Monroe County took an appeal to the Third District. A conditional settlement agreement was entered into, which says to put this case on hold and we'll apply for a zoning change to see if we can't moot this issue. Everybody has risk when there is an appeal. So that's presently where we're at today. This was part of the process of pursuing that settlement agreement. When applying, we were told through an interpretation of the code that we could not obtain a zoning change with a Tier I designation, so that is why we are here today to address all of the arguments. The goal is not to do additional development and clear more. The application includes a conservation easement which will give more protection to the existing hammock than the tier designation does. All we want is the Tier III designation to seek a zoning change which would moot out the litigation between the parties. My client will gladly give the conservation

easement. The same characters today offering testimony about this property are the same people who were trying to get this venue shut down three to four years ago and they have no credibility. Their story changes with each venue that we're in. Mr. Yagel presented the side-by-side aerial in the staff report, stating that it shows no evidence of illegal clearing. An environmental survey was done and that surveyor came up with a different number than the County had. No one has investigated it or attempted to reconcile what the difference is from. As to public comment, the Commission must look at the credibility of the objectors who have a personal vendetta against this applicant and its use of the property. The County cites Policy 105.2.1, "Tier I shall be defined as a geographic area where all or a significant portion of the land area is characterized as environmentally sensitive." Per the County's number, 1.63 acres constitute native hammock which is 60 percent of the entire acreage. The applicant's biologist came up with 1.03 acres which is 38 percent. All or significantly all, is not 60 nor 38 percent. Policy 205.1.1, "Old and new growth of upland native vegetated areas of four acres or more should be categorized as Tier I." The problem is this site has less than 1.5 acres of hammock located on it. The County is aggregating the parcel south of this and saying, yes, you meet the criteria. This tier designation relates to the specific parcel in question. Of the 1.5 that exists on the parcel, it is fragmented, so it is not even a single area of 1.5 acres. The County's interpretation of the code has no basis in the plain text. The next argument that is made is we have threatened or endangered species. A couple of problems with that, I think it was in 2018 or 2016 a permit was issued for 439 square feet of pool and 1,122 square feet of deck. At the time those permits were issued, the property, because it is identified as a parcel on the Fish and Wildlife list, went through their evaluation and it was determined not to be problematic. It didn't even get sent to Fish and Wildlife to see if any conditions had to be added or satisfied. The idea that we have possible federal species on there, the County has already looked at it and said, no, it's not an issue. That brings us down now to the State, and the milkbark and white ironwood. I don't think the County will swear to you that every property in the Keys that has this on it is classified as Tier I. The criteria set forth in the statute actually says, factors to be considered include but are not being limited to. The County wants this because it's contiguous to the other parcel, but the reality is the criteria they are resting upon to justify a Tier I isn't supported by the plain letter of the law. We have proffered a conservation easement to provide complete protection and there will be no development on that property in the future that could not occur today. The conservation easement is actually a bigger hammer than the County presently has. The sole purpose of this application is to try to make moot a dispute that has been ongoing, expensive, and poses a risk to the County as well as my client. That's the nature of litigation. The order entered by the judge in the circuit court case was not favourable to the County. The settlement agreement provides if we're successful to getting the zoning change that would be consistent with the uses of all properties around it and will vacate the order. Comparing the 1986 baseline photo to the current photo, the only difference is the elevation at which the photo was shot. That photo suggests there is more vegetation on the property than reflected in the 1986 aerial. There have been no charges or violations and these are raw accusations with no evidence. This is a legitimate intellectual disagreement about the application of the code and that is all that is at issue here. We are asking for the tier designation and are fine with the decision being conditioned on a conservation easement to protect the hammock on the property.

Ms Schemper interjected that staff is not going into code violations during this hearing, and that there have been no permits issued allowing clearing on this property at least since 1986. Mr. Yagel responded that he is suggesting there is no unauthorized clearing and the only evidence of that is a wild accusation.

Chair Scarpelli noted that the County says there was 1.6 acres of hammock on the property and the applicant's biologist stated there was 1.03 acres. Mr. Yagel argued that looking at the aerials, the amount of cleared area doesn't look visually different, and no one at the County has attempted to reconcile the difference. Ms. Schemper noted that this was not the most current aerial on the screen and that it has a green overlay based on the mapping of hammock and may not be the best comparison, however, staff is not going through whether there has been illegal clearing right now in terms of a code violation. This is the criteria for a tier designation, and staff truly believes this meets the criteria for Tier I. This has also been reviewed by the Tier Designation Review Committee within the last ten years when the tier maps were updated and it was specifically changed from a Tier III-A to a Tier I. Mr. Yagel responded that the only reason he brought the issue up was because it was raised in the staff report.

Chair Scarpelli then asked if there were any additional questions or comments from the Commission for the applicant.

Commissioner Ritz asked if a study had been done to determine any endangered species on the property. Mr. Yagel stated his biologist report identified two vegetative species protected on the Florida list, and none on the federal list. Commissioner Ritz asked if the owner of the property had been the same since 1986. Mr. Yagel responded that this applicant acquired the property in 2014 or 2015. Commissioner Ritz then stated that he lived in Buccaneer Point for many years and now lives across the street at mile marker 98, and has been extremely sympathetic about the noise complaints going on there, but this is about the tier designation change. He was on the Planning Commission when the tier was created and was a big advocate of it, but the idea was all about acquiring the land. The idea was to have three buckets; pristine untouched land, land that was touched but still in pretty good condition, and land that was scarified and ready for development. So Tier I was sort of pure land. It was about land acquisition, not zoning. Later on it was tied to zoning because they didn't want to rezone something and make it more expensive and then have to buy it later on. The tier designations were to make sure the owners knew what they had and so the County knew where to put their money, behind Tier I land. Now, twenty years down the road, he does not know if the tier system makes sense about buying land. Looking at the photos, this isn't pure land. The land to the left looks pure and this is sort of a transitional piece, and all the land all the way to the right is scarified. Just looking at it, it's not Tier I because it's not pure. Understanding it was recently changed from III to I, just looking at it wouldn't make it Tier I in his mind.

Commissioner Neugent asked what part of the property would fall under the conservation easement. Mr. Yagel responded that it would be everything being identified as the hammock. Ms. Schemper interjected that a tier amendment cannot be conditioned on a conservation easement. If that's the route the applicant wants to take they need to first do this via a different avenue. Mr. Yagel disagreed with that analysis and suggested the Commission could condition it

and that the legal department could reach a decision on that when it was before the BOCC. Mr. Morris concurred with Ms. Schemper that in this specific forum, the Planning Commission does not have the power to fold in that kind of arrangement and the BOCC may or may not. Commissioner Neugent noted that regardless what was done, this would go before the BOCC. There were no further questions for the applicant.

Commissioner Demes stated that he is sensitive to environmental designations, the law and interpretation, anytime something is subjective, and asked staff if there was a definition of percentage and what significant means when it comes to relating species and coverage. Mr. Roberts responded that there is not anything in the code or Comp Plan that defines "significant" in those terms. In the evaluation for the tiers it is the presence and absence determination with regard to endangered species utilization. Commissioner Demes added that he is also sensitive to the fact that just because a species is present, that doesn't make it habitat. Understanding how the code is written and with the foundational documents we have, staying within those parameters, it is what it is. I went out to this site and I hear the applicant stating things to be fact that unfortunately, when someone stands at the lectern and says that the Army Corps or FDEP or FWC says this, it's not tangible enough for me to take that at face value, as gospel. And even to the attorney's point about accepting the Comp Plan, I will take it as a ruling document but I want to know that they really know what they're talking about as far as the section and specifics of the Comp Plan, not just saying the word Comp Plan. Those are all my comments on this subject. Commissioner Wiatt had nothing for the applicant.

Chair Scarpelli stated that as much as the applicant was stating that the land area is not four acres, he sees this more as an area that meets the third bullet point down, "Lands required to provide an undeveloped buffer up to 500 feet in depth if indicated by appropriate species studies between natural areas and development to reduce secondary impacts. Canals or roadways may form a boundary that removes the need for a buffer or reduces the depth." This area seems like it's more of a buffer for the actual hammock itself. The parcel to the west of this is also mostly cleared and designated Tier I as well, which indicates that this parcel is intently designated as Tier I to protect the core of the center of the Tier I hardwood hammock area. Furthermore, to Commissioner Demes' point to what is the quantitative of that, the applicant's biologist says that the milkbark, which is an endangered species, that the predominant canopy species includes milkbark. So, yes, milkbark may be present on most parcels in Monroe County and that could be a true statement, though it's probably not predominant. That, to me, makes it seem more of a tier designation change. And to Commissioner Ritz' question of how they potentially changed that from III-A to Tier I, that could have been something that they discovered, although he does not have that document and can't say that with certainty. Chair Scarpelli then asked for a motion.

Commissioner Demes moved to deny. Commissioner Wiatt seconded the motion. Chair Scarpelli asked for the role to be called on this one. Mr. Wolfe clarified that Commissioner Demes was moving to uphold the staff's recommendation and deny the requested change to the tier, which Commissioner Demes confirmed that to be correct.

**Motion: Commissioner Demes made a motion to deny the applicant's requested tier change and uphold staff's recommendation. Commissioner Wiatt seconded the motion.**

**Roll Call: Commissioner Demes, Yes; Commissioner Wiatt, Yes; Commissioner Neugent, Yes; Commissioner Ritz, Yes; Chair Scarpelli, Yes. The motion passed unanimously.**

**2. GREY PROPERTIES, LLC, VACANT LAND, BUTTONWOOD DRIVE, KEY LARGO, MILE MARKER 100:** A PUBLIC HEARING CONCERNING A REQUEST FOR A VARIANCE OF NINE FEET FROM THE REQUIRED 25-FOOT PRIMARY FRONT YARD SETBACK ADJACENT THE BUTTONWOOD DRIVE RIGHT-OF-WAY AND A VARIANCE OF TEN FEET FROM THE REQUIRED 20-FOOT REAR YARD SETBACK ADJACENT THE NORTHERN PROPERTY LINE OF THE SUBJECT PROPERTY. IF APPROVED, THE REQUIRED PRIMARY FRONT YARD SETBACK WOULD BE SIXTEEN FEET AND THE REQUIRED REAR YARD SETBACK WOULD BE TEN FEET. THE VARIANCES ARE REQUESTED IN ORDER TO CONSTRUCT A SINGLE-FAMILY RESIDENCE. THE SUBJECT PROPERTY IS LEGALLY DESCRIBED AS LOT 13, BLOCK 1, OF LAZY LAGOON, ACCORDING TO THE PLAT THEREOF, AS RECORDED IN PLAT BOOK 2, AT PAGE 126 OF THE PUBLIC RECORDS OF MONROE COUNTY, FLORIDA, HAVING PARCEL IDENTIFICATION NUMBER 00496640-000000. (FILE 2021-041)

**3. GREY PROPERTIES, LLC, 249 BAY DRIVE, KEY LARGO, MILE MARKER 100:** A PUBLIC HEARING CONCERNING A REQUEST FOR A VARIANCE OF NINE FEET FROM THE REQUIRED 25-FOOT PRIMARY FRONT YARD SETBACK ADJACENT THE BAY DRIVE RIGHT-OF-WAY AND A VARIANCE OF TEN FEET FROM THE REQUIRED 20-FOOT REAR YARD SETBACK ADJACENT THE SOUTHERN PROPERTY LINE OF THE SUBJECT PROPERTY. IF APPROVED, THE REQUIRED PRIMARY FRONT YARD SETBACK WOULD BE SIXTEEN FEET AND THE REQUIRED REAR YARD SETBACK WOULD BE TEN FEET. THE VARIANCES ARE REQUESTED IN ORDER TO CONSTRUCT A SINGLE-FAMILY RESIDENCE. THE SUBJECT PROPERTY IS LEGALLY DESCRIBED AS LOT 12, BLOCK 1, OF LAZY LAGOON, ACCORDING TO THE PLAT THEREOF, AS RECORDED IN PLAT BOOK 2, AT PAGE 126 OF THE PUBLIC RECORDS OF MONROE COUNTY, FLORIDA, HAVING PARCEL IDENTIFICATION NUMBER 00496630-000000. (FILE 2021-042)

(11:02 a.m.) Ms. Devin Tolpin, Principal Planner, presented the staff report. Although these are two separate applications for two separate properties, they are fairly identical in that the variance responses and the site plans are the same, with one along Bay Drive and the other along Buttonwood Drive. They are located in the Improved Subdivision Zoning District, are designated as Tier III on the Tier Overlay Map, and are each 2,500 square feet. The Land Development Code allows for one dwelling unit per platted lot within IS district. They require a 25-foot front yard setback, a 20-foot rear yard setback, and two side yard setbacks, one at 10 and the other at five feet. The applicant is proposing a reduction of the front yard setback to 16 feet, and a reduction of the rear yard setback to 10 feet for each of the properties. It should be noted that the reductions fall within the scope of authority for an Administrative Variance to be granted by the Planning Director, which is the type of application that was submitted. Upon the 30-day posting and noticing period, the department received requests by the surrounding property owners for this item to be presented to the Planning Commission. At the time of drafting, only

four public requests had been received to have the Planning Commission hear this item, but at this point in time more than four have been received which were forwarded to the Commissioners.

Ms. Tolpin then presented a photo of the proposed site plans with 840 square foot residences and showing the requested setbacks. The ground floor will be set back 18 feet from the front property line in order to accommodate the required off-street parking spaces. The Land Development Code authorizes the Planning Commission to grant a setback variance if and only if the applicant has demonstrated compliance with the eight required criteria listed in detail in the staff report. Staff has found the applicant has demonstrated compliance with all eight criteria for both applications and recommends approval

Mr. Morris requested a few moments to retain Ms. Schemper's qualifications as an expert, and to qualify Ms. Tolpin as an expert. Ms. Tolpin has a bachelor's degree in environmental science and policy, a master's degree in public administration, and is a certified flood plain manager; has made presentations to administration forums prior to this, has been with the County for approximately five years, and is currently a Principle Planner. Ms. Tolpin is familiar with all of the documents that comprise these files. Mr. Morris asked for a ruling recognizing Ms. Tolpin as an expert in the field of planning, and the Commission agreed. Mr. Morris then confirmed that Ms. Schemper had participated in and reviewed this staff report and was familiar with all documents and comments comprising this file and had agreed with the conclusions reached by Ms. Tolpin. Ms. Schemper was accepted as an expert in the field of Planning.

Since there were no Commission questions or comments, Chair Scarpelli then asked for public comment.

Mr. Andrew Tobin, present on behalf of Michael and Susan Larson, Bruce and Gina Dunnett, Jan and Marilyn Steadman, and Mr. and Mrs. John Ouellette, asked that he be allowed to speak after his clients, and confirmed that everyone had received a copy of the objections and alternative site plans he had submitted. Mr. Tobin cited a Supreme Court case and a Third District Court of Appeals case which he believed to be precedent, and wanted to alert the Commission to the fact that one of the criteria is based upon the minimum necessary to provide relief, from subsection (g) "The granting of a setback variance by the Planning Commission is based on the design and placement of the structure." There is no design of this structure. Mr. Tobin also believes that Ms. Tolpin may have misspoken when she said the residence would be 740 square feet.

Mr. Morris interjected, since Mr. Tobin had asked to speak after his clients, a decision needs to be made as to whether we're keeping one foot on the dock or one in the canoe. He can either speak after his clients, or this will be treated as his presentation. Mr. Tobin elected to wait his turn.

Mr. Michael Larson stated that he and his wife live adjacent to the subject properties to the east. Mr. Larson presented a slide showing homes in the neighbourhood to represent that in spite of what has been said before, it is not typical to build a house on a 50-by-50 foot lot in this neighbourhood. His home is built on four 50-by-50-foot lots and his builder was only permitted

to build one house and one garage. Additionally, he was required to have a conservation easement all around the property. To the right of that is another four lots which were combined to build one house and also required the conservation easement. To the left of the subject property the lots are 50-by-100 having only one house each. Further to the left there is another single house on two combined lots, and to the left of that a single house on four combined lots. The lots on Buttonwood Drive reflect the same. What is typical in the neighbourhood is to combine the lots. As a realtor, a 2,500 square foot lot has been substandard going back to the seventies. Far from relieving a hardship, this applicant is being granted a privilege that no one else in the neighbourhood has been granted before, and this goes against the character of the neighbourhood. Additionally, putting the houses with two parking spaces on each street would require taking down all of the existing hardwood hammock trees, which would not be required if the setbacks were met or if conservation easements were required.

Mr. John Ouellette, a resident to the west of the subject property since 1970, stated that part of the mystique of the neighbourhood and most of Key Largo is due to the hardwood hammocks. He's seen people get fined for trimming a tree without a permit and who then were brought before the Board, fined, and they had to put in extra vegetation. This contractor is going to come in and destroy all of the hardwood and vegetation and run off all of the wildlife in the neighbourhood. There is no on-street parking in the neighbourhood. This is an unprecedented situation that people are missing the fact that this is not just a house but is a two-story house which does not fit in with the character of the neighbourhood. Mr. Ouellette is opposed to the Commission allowing this property to be changed from a hammock with beautiful vegetation to two tiny two-story houses and he hopes the Commission will listen to the neighbourhood and retain the beauty of Key Largo.

Mr. Bruce Dunnett of 248 Bay Drive owns the lot opposite the subject properties with a house that complies with the setbacks. Mr. Dunnett presented a photo taken this morning of the view across the street towards the subject lots which are heavily wooded and squeezed between two lots. This variance will directly impact him and the neighbours around him. He does not support the variance and requests the Commission deny the request. Developing a house on a 50-by-50 foot lot will require removal of about 90 percent of the trees. This is a hardwood hammock full of native trees as indicated by a certified arborist, Glen Davis, who submitted a letter to the Board. Some of the trees are threatened or endangered and are some of the tallest trees in Key Largo which cannot be mitigated by simply planting saplings. A conservation easement and setbacks should be required to protect the trees just as was required for the property next door to the left. Mr. Dunnett believes a biological survey needs to be done for both lots and any deviation has to demonstrate hardship. In this case, a developer has purchased the land knowing the building setbacks better than any private individual would, and allows the developer to profit from the deviation, and is not a hardship. A house can be built on the 50-by-50-foot lots and comply with the setbacks but that is not what the developer has chosen to do.

Ms. Gina Dunnett suggested that this application be denied because this would be granting a special privilege to a property developer over the wishes of the residents and the historic trends in the neighbourhood. Most of these homes are on multiple lots. There are two exceptions

which date back to the 1950s, prior to today's regulations. This is slipping back to the 1950s. Why were today's regulations put in place if they really don't mean anything? This is a greenway space behind U.S. 1. Ms. Dunnett wants to understand the applicant's true reason and if this really justifies an exception to the setbacks. Ms. Dunnett believes this is based on pure economic motivation because there would be no exceptional hardship. Homes of 600, 700 and 720 square feet can be built on these lots while sticking to the current variances. Not having these setbacks creates a threat to public safety. This is a very narrow road and small children live here. People who have lots with the houses so close to the road actually park on the road. A driveway space may have been created for them but that's not what they do. Most recently, a County car blocked her gate and access because there is no parking on this street. A small child is going to dart out between cars and get hit. The school bus comes down this road. There is no room and the setbacks are needed for public safety. This is a hammock in a neighbourhood where the overwhelming majority of homes are on two to four lots each. This changes the character of this neighbourhood, suggests this is a hardship for a developer when there is not, and suggests it is impossible to build a house on these lots without these setbacks, which is untrue. Ms. Dunnett vehemently opposes the requested setbacks and disagrees entirely with Ms. Tolpin's remarks that they satisfied the nine criteria. Broken down individually, if documents are requested in support of how those nine points are met, she believes it will be found that the applicant fails to meet them. Ms. Dunnett then asked if Ms. Tolpin had actually been in and looked at the neighbourhood.

Mr. Andrew Tobin first pointed out that three minutes is not enough time to get into the particulars, but he would ask that the Commissioners look at the criteria in Section 102-87(g), "The granting of a setback variance by the Planning Commission is based upon the design and placement of the structure." The design has not been provided and he believes Ms. Tolpin misspoke when she stated these residences will be 840 square feet. Looking at the site plan, this is proposed for a 30-foot-high building with a concrete roof, which indicates there will be a four-foot railing and a roof deck. Mr. Tobin lives in a house which is 30 by 30 on three floors. One of his objections, though he does not believe staff intentionally failed to consider it, but the people living in this area are very concerned by the fact that this is not going to be what appears on the site plan which is a ground-level box, and will not be an 840 square foot residence. There is no restriction on how many levels this can have. This is in an X-Zone and if a variance is granted, there is nothing to prevent a three-story residence on a 50-foot lot. Mr. Tobin has also submitted small house designs and there are several small houses in this particular subdivision. Mr. Tobin asks that this application be denied on two grounds. Number one, this is a self-created hardship. The property owner owns two lots and can build one single-family house on both of these lots with zero variance. If the Commission does not agree with that position and the Supreme Court cases cited, then he would ask that the application be denied because the applicant has not submitted a design. Ms. Tolpin's statement that this is an 840 square foot residence, even if that were true which it is not true because there is no design, there's more than sufficient evidence to prove that the minimum is probably 700 square feet or less and a setback is not needed which basically is allowing a 36-wide-by-22-foot-deep house. There is not enough information provided in terms of the design and it's certainly not the minimum. The developer of course is going to want the maximum which appears to be 840 square feet on three floors plus

a rooftop deck. Mr. Tobin asks that the Commission deny this application. Mr. Tobin added that his presentation is in the nature of legal argument, whereas his clients have a lot more to say about the factual issues, but he believes the application is incomplete.

Mr. Peter Morris responded that the Planning Commission Rules of Procedure were adopted pursuant to Planning Commission Resolution P20-20, which is authorized by Land Development Code Chapter 102, following a public hearing held on June 24, 2020. Planning Commission Rule of Procedure 1(c) states in very clear terms that all information, petitions or records including but not limited to documents or legal memoranda on behalf of or from members of the public must be submitted to and received by the Planning Commission Coordinator," Ms. Aguila, "no later than five calendar days before the Planning Commission meeting date at which the applicant's application is scheduled to be considered by the Planning Commission." Mr. Morris wanted it made clear in the record that the word "documents" entitled "objections to variances" that Mr. Tobin is referring to was received at 4:20 p.m. yesterday, September 28. Additionally, the Power Point entitled "Public Hearing 9/29/21" was likewise received by Ms. Aguila at 4:20 yesterday. These documents as a matter of law may not presently be considered as part of or accepted into the record without waiving this assertion. The cases that Mr. Tobin referred to were principally Nance v. Town of Indialantic and Allstate Mortgage Corporation of Florida v. City of Miami Beach. Just to briefly break those cases open, Nance was a squib of a decision which was about five sentences which doesn't really furnish any facts or size up whether it's consistent with the fact pattern presented, and it refers to a legislative zoning decision. That's a critical distinction because this proceeding is quasi-judicial and is not a quasi-legislative hearing. Additionally, Allstate was actually reversed by Nance and likewise dealt with a quasi-legislative proceeding. There are two broad categories of variances, area variances and these variances, and the law is quite different with respect to both of those categories. In the case of City of Coral Gables v. Geary which is 383 So.2d 1127, Florida Third DCA 1980, the court stated as follows: "It is well recognized that the irregular shape or other peculiar physical characteristic of a particular parcel constitutes a classic hardship, unique to an individual owner which justifies and in some cases requires the granting of a variance. The city does contend that the alleged hardship was self created thus precluding relief because the property owner purchased the property in its present configuration with knowledge of already imposed building restrictions. We do not agree with this position. Unlike the situation in the cases cited by the city, the hardship involved here arose from circumstances peculiar to the realty alone, unrelated to the conduct or the self-originated expectations of any of its owners or buyers. In this case, since it's not an act of the purchaser which brought about the hardship into being, it is incorrect to charge him for having created it." So without waiving the contention I made at the opening of this in connection with the Planning Rules of Procedure, the case law cited by the third-party objectors is really an epithet to this proceeding. Mr. Morris then advocated on behalf of staff that as a matter of law, this constitutes an area variance, not a use variance, and as such, the law governing area variances prevails and he counsels in favour of the staff recommendation.

Ms. Schemper added that she does back up staff. There was not an oversight or confusion about the footprint versus floor area of the proposed house. The staff report clearly states it's an 840 square foot footprint proposed. Full design details have not been provided and it is not a

requirement that the exact design needs to be approved for a variance. If the Planning Commission wishes to request more detail, they can do that as a type of condition. Ms. Schemper pointed out that the homes of several neighbours being represented by Mr. Tobin and those included in the presentation showing how they were built on multiple lots, several of those actually have smaller front yard setbacks than what is being requested by this variance. They were permitted that way, some may have been built closer to the property line than their permits allowed, and there are at least two variances for this exact situation. Even having two lots side-by-side in this neighbourhood, some sort of variance to the front yard and/or rear yard is needed to build a house otherwise you are left with five feet to build within. It is not possible to build hundreds of square feet by complying with setbacks. That is part of the argument for staff's recommendation for approval on this. The Planning Commission can make their own decision or add conditions, but Ms. Schemper wanted to be sure the Commission understood where the Planning Department was coming from. The County does not have a lot-merger ordinance requirement where if you own multiple parcels you're still only allowed to build one home, though other jurisdictions may have that. Property owners who have chosen to build a house on two to four lots have chosen that because of the type of house they want to build and it is not imposed on them by the County, nor were they required to give up their density rights. Many of them probably still have those density rights attached to their property and they could transfer them off as TDRs or build a second unit if they put it on the property if they get a ROGO allocation and can design the site in a way that it works.

Mr. John Wolfe, Commission Counsel, asked if the applicant wished to speak. Mr. Rey Gomez, applicant, had nothing to add other than the fact that ten copies of the designs had been submitted and he confirmed with Ms. Tolpin that those documents had been received and were available. There is no rooftop deck or three story building.

Mr. Andrew Tobin interjected that he had not received copies of the designs as they were not in the public document domain, and noted that 840 plus 840 is over the 1,680 square feet, and that is not the minimum necessary to avoid a hardship. It may be profitable but is not the minimum. The documents provided show a minimum and anything beyond that is contrary to the ordinance. Anything at 1,680 square feet with this type of massive variance is inappropriate. They could elevate this house and park underneath the structure that has 840 square feet. For those reasons he does not think two-story plan satisfies the criteria.

Chair Scarpelli closed public comment and asked for Commission comments or questions. Commissioner Ritz noted that it is very difficult to build on a 50-by-50 foot lot. As Ms. Schemper had stated, with 20-foot front and 25-foot rear setbacks, that's 45 feet of setbacks, so a variance is required to build. The question is how much of a variance. Commissioner Ritz congratulated staff for coming up with a workable plan.

Commissioner Demes stated that he had drove up to see the lots and was taken aback by the dense vegetation on the lots. As to environmental impacts, isolated properties like that in a developed neighbourhood doesn't add, foot-by-foot, what it would next to a larger area. It is tight and a lot of lots appeared to have multi-lots for a residence. This is also an administrative relief that Ms. Schemper could have granted and he wouldn't have a problem with that if there

were individual owners with little lots trying to make their house happen, especially in today's world of it being so hard to live in the Florida Keys. Then seeing it's a developer with two lots, he wondered why this was being done. After talking to Planning staff he would have hoped for one a single structure on two lots, but hope is not a strategy, and you get back to what the regulations say. Understanding that they wouldn't be able to develop these lots, and understanding that the developer owner knew what he was getting into, this allows for administrative relief. He is sensitive to the fact that those trees are all going to be cut down and there may not be enough left to consider an easement for anything by the time you meet those requirements and setbacks with the parking required. All that said, people have a right to build, have been paying taxes, and the neighbourhood is well developed, but he would like to consider that the minimum amount of setback required to build the planned structures be given.

Commissioner Wiatt believes the hardship requirement has been met, so it boils down to how much setback is required. Commissioner Wiatt asked staff to comment on justification of approving 840 square feet of buildable area and whether any thought was given to whether that was more or less than necessary. Ms. Schemper responded that it was based on the requested variance. The minimum necessary to meet the requirement is a tough criterion to have an absolute standard. The code doesn't have a minimum amount of square feet. Considering the footprint of the area and height limit staff considers the requested setback is reasonable. Ms. Schemper then presented the online property records for the neighbourhood and compared various properties in the neighbourhood. It is a little subjective but staff looks to see if it's a reasonable approach by the applicant. Commissioner Wiatt asked if Ms. Schemper felt it was a reasonable number. Ms. Schemper confirmed that to be correct, adding that it is also based on what staff sees in other applications for housing and variances in these types of lots. This seems to be pretty in line of what people are trying to build as a modest-sized or typical-sized house. Commissioner Wiatt stated that based on that, he would move to approve.

Commissioner Neugent added that all things having been said, there is no way he could support this variance. Chair Scarpelli asked about the hardwood hammock and whether there is any truth to these lots having hardwood hammock per se. Ms. Schemper responded that with the 2009 mapping, they are not mapped as hammock. Mr. Roberts added that he had not analyzed the subject lots. The 2009 GIS habitat based on 2006 aerial photography depicts this as developed land because the whole subdivision is fairly well developed. Chair Scarpelli asked if the applicant would need a tree removal permit. Mr. Roberts responded they would absolutely require a clearing permit, regardless of this variance proceeding. Commissioner Wiatt added that depending on those results they may not be able to build. Chair Scarpelli thought it was great that the County has those checks and balances. The idea of whether you have one house on two lots and each has an 840 square foot permit or you have one bigger house on a 50-by-100 lot has the same impact. Chair Scarpelli added that he currently lives on a 50-by-100 lot in Big Pine and his house is roughly 1,400 square feet. If he was in an X-Zone he would have 2,800 square feet. Chair Scarpelli confirmed that staff had checked to see if this was within the community character. Commissioner Ritz noted that one of the reasons for setbacks is to be sure all of the houses are lined up equally. Chair Scarpelli agreed that this consistency is important for a neighbourhood.

Ms. Schemper then shared the property record screens of the neighbourhood and compared measurements of setbacks using the measuring functions on various lots, with input from Ms. Tolpin. Commissioner Demes asked about the conservation easements some homeowners had said were required, and he doesn't see the consistency of them having to have a conservation easement, if they did, and then these two lots being extremely heavily wooded. Ms. Schemper responded that this would be hard to say on the fly without looking at the property history and what any requirement may have been based on. Chair Scarpelli thought there may be an environmental issue if there is a conservation easement on the adjacent lot, though that is not what the Commission is here to talk about today. Commissioner Wiatt added that this situation reminds him of an applicant that wanted to build a home and boat ramp, and there was no way to build that home without a variance, and the Commission denied that variance; and the applicant sued the County and was forced to give that applicant the variance. When talking about a buildable lot and taking away the ability to build on a buildable lot, that comes with ramifications. Commissioner Wiatt thought the variance would get approved based on the fact that it's a buildable lot that can't be built on without a variance, but the question then becomes how much of a variance. With nothing else to hang his hat on, he would yield to staff as to whether this is a reasonable number, and was ready to move to approve. Commissioner Demes agreed and seconded the motion.

**Motion: Commissioner Wiatt made a motion to approve Item 2. Commissioner Demes seconded the motion.**

**Roll Call: Commissioner Demes, Yes; Commissioner Wiatt, Yes; Commissioner Neugent, No; Commissioner Ritz, Yes; Chair Scarpelli, Yes. The motion passed 4 to 1.**

**Motion: Commissioner Demes made a motion to approve Item 3. Commissioner Wiatt seconded the motion. There was no opposition. The motion passed unanimously.**

**Roll Call: Commissioner Demes, Yes; Commissioner Wiatt, Yes; Commissioner Neugent, No; Commissioner Ritz, Yes; Chair Scarpelli, Yes. The motion passed 4 to 1.**

**4. 13 PARK DRIVE, KEY LARGO, MILE MARKER 100:** Continued to October 27, 2021, Planning Commission Meeting.

**5. MONROE COUNTY CONCH KEY AFFORDABLE HOUSING, 2 NORTH CONCH AVENUE, CONCH KEY, MILE MARKER 62.5:** A PUBLIC HEARING CONCERNING A REQUEST FOR VARIANCES OF FIVE (5) FEET FROM THE REQUIRED 25-FOOT PRIMARY FRONT YARD SETBACK ADJACENT THE SOUTH CONCH AVENUE RIGHT-OF-WAY, A REDUCTION OF FIVE (5) FEET FROM THE REQUIRED 15-FOOT SECONDARY FRONT YARD SETBACK ADJACENT A SECONDARY PORTION OF SOUTH CONCH AVENUE RIGHT-OF-WAY (FORMALLY A PORTION OF US-1), A REDUCTION OF TWO AND A HALF (2.5) FEET FROM THE REQUIRED 15-FOOT SECONDARY FRONT YARD SETBACK ADJACENT THE NORTH CONCH AVENUE RIGHT-OF-WAY OF THE SUBJECT PROPERTY AND A REDUCTION OF TEN (10) FEET FROM THE REQUIRED TWENTY-FOOT REAR YARD SETBACK REQUIREMENT.

APPROVAL WOULD RESULT IN THE PRIMARY FRONT YARD SETBACK ALONG SOUTH CONCH AVENUE OF TWENTY (20) FEET, THE SECONDARY FRONT YARD SETBACK ADJACENT A SECONDARY PORTION OF SOUTH CONCH AVENUE WILL BE TEN (10) FEET, THE SECONDARY FRONT YARD SETBACK ADJACENT NORTH CONCH AVENUE WOULD BE TWELVE AND A HALF (12.5) FEET AND THE REAR YARD SETBACK WOULD BE TEN (10) FEET. THE REQUESTED VARIANCES ARE REQUIRED FOR THE DEVELOPMENT OF TEN (10) DETACHED AFFORDABLE DWELLING UNITS. THE SUBJECT PROPERTY IS DESCRIBED AS PARCELS OF LAND IN SECTION 14, TOWNSHIP 65 SOUTH, RANGE 34 EAST, CONCH KEY, MONROE COUNTY, FLORIDA, HAVING PARCEL IDENTIFICATION NUMBERS 00385780-000000 & 00385780-000400. (FILE 2021-098)

(12:04 p.m.) Ms. Emily Schemper, Senior Director of Planning and Environmental Resources presented the staff report for Mr. Bradley Stein, Development Review Manager, not present. This is a request for a setback variance for a property owned by the County. The BOCC has approved this property for development of affordable workforce housing and are developing it with some of the tiny homes. This item was continued previously because of an issue regarding stormwater. These are two parcels on Conch Key which previously had 15 permanent dwelling units and five transient units, for a total of 20, including mobile homes, RVs, and a few site-built structures. There are roadways on this property to the north, east and south. The County is proposing to build 10 units of affordable workforce housing and is requesting a primary front yard setback on the south side from 25 feet to 20 feet. The secondary front yard setback should be 15 and the County is requesting 10 feet for the corners of two homes. On the north side, the County is asking for a reduction from 15 feet to 12.5 feet. Parking will be underneath the homes. Between the neighboring properties to the north and what would be the rear yards here, the County is asking for a reduction from 20 feet to 10 feet. This is a variance which could have qualified as an administrative variance granted by the Planning Director, but during the noticing period the residents of the neighborhood requested this be brought before the Planning Commission for a public hearing. The main concerns are flooding and stormwater issues on Conch Avenue and the residents would like those resolved prior to the County building these units on the property. It appears the problem is not with the actual setback requests, but the residents do not want to miss an opportunity to have this stormwater issue resolved.

Ms. Schemper noted that she had stopped by the location this morning and saw Public Works working on a previous storm drain that used to be in the roadway to see if they could reopen that which would help quite a bit. Ms. Schemper presented the eight criteria for variances. Staff is still recommending approval, and though staff has no reason to say the stormwater issue does not exist and should not be resolved, staff does not believe the variance request should be held up based on that as the change in the setback requirements does not affect whether or not the stormwater issue can be resolved. The Commission needs to be careful that it could be considered some sort of exaction to say, we'll give you this setback variance but only if you fix this other issue that's not on the property.

Commissioner Neugent stated that he would be recusing himself on this vote as he is a consultant for K2M Designs. Mr. Wolfe added that if the variance request were granted, K2M would be

engaged to do more work, and he believes that is grounds for recusal of Commissioner Neugent. Mr. Peter Morris agreed. Commissioner Wiatt also restated his ex parte communication.

Commissioner Wiatt then asked for verification from staff, which he believes gets to the core of this matter, on whether or not the setback areas are appropriate or possible to be used for things like swales, retention ponds or French drains to manage stormwater. Ms. Schemper responded that the code does allow for those areas to be used for stormwater management and quite a bit of that area is being proposed to be used that way, although a full stormwater plan has not been done for this property yet. That will be required at the time of permitting. The site currently has some runoff into the street. When this is redeveloped, that should change substantially because that water will need to be retained on the site. This should improve the road problem to begin with because the property itself won't be draining into the roadway. But, the code does allow for stormwater management within the setbacks. Commissioner Wiatt added that in hearing from the public on this, normally they would be asked to focus just on the setback variance because that is what is being applied for. But in this case, it is somewhat unusual in that stormwater management is intertwined with the setback variance proposal, because those setback areas could be used to manage stormwater. If the variance is approved and structures put in that area, it will likely not be able to be used for stormwater area. Commissioner Wiatt cannot impress upon the Commission enough that stormwater management is desperately needed in this area. This property is immediately adjacent to South Conch Avenue which is the epicenter of the stormwater problem, what he would call an asphalt-lined retention pond. It is literally the worst he's seen in the Keys. That road is County property, and the proposed building site and fire department across the street is County property. If this were Hawk's Cay, this would be looked at as one big property and he sees no reason not to look at this as one big property even though it may be owned by or managed by different departments within Monroe County. This is one big property and right in the middle is a significant health hazard. Children are playing in the street here and when it rains, they're playing in stagnant water. It's not just a little bit of water and it doesn't just stay there for a few hours, it stays there for days. There is a lot of passion here and this has been ongoing for eight years. And guess who took the stormwater drain away? Commissioner Wiatt would love to hear from the folks but wanted to alert the Commission as to why they would be hearing about stormwater during a setback variance application.

Mr. Wolfe asked if the County was presenting anything further other than the staff report. Ms. Schemper responded that, if needed, Mr. Kevin Wilson was available but wasn't planning to speak, and that K2M was not present at this time. Mr. Morris then asked that Ms. Schemper's recognition as an expert in the field of Planning be carried over to this agenda item and asked her a few questions. Ms. Schemper confirmed she had participated in the preparation of the staff report by Mr. Bradley Stein and had reviewed all of the documents and public comments as part of the file associated with this application. Ms. Schemper agrees with all of the determinations and conclusions reached by Mr. Stein as articulated in the staff report. Mr. Morris added that included in the Land Development Code there is no actual definition for the word "threat" but it states, "will not create a threat to public health and safety," and the definition of "threat" in Webster's Dictionary is, "an indication of or source of imminent danger, harm, etc." Commissioner Wiatt asked about nuisance. Mr. Morris stated that nuisance is a fairly hashed out definition under decision law cases decided by the courts over time, and everyone has a sort of common understanding of what a nuisance constitutes as articulated by common law decision

making, but that during public comment he would research and come back with a working definition.

Chair Scarpelli then asked for public comment, beginning with the in-person speakers.

Mr. William Stuart Allman, a nine-year resident of Conch Key, believes the idea of affordable housing is great and would like to see it. The concern is the flooding and the stormwater issue is huge and real. There are videos and pictures of "no wake" zones in the middle of the street, and this happens during a summer thunderstorm and will be wet for five to eight days. It's ugly and there's got to be a lot of bacteria. By taking some area off for the variance, there is less area for the County to mitigate the water situation, which the County caused eight years ago when they blocked off the drain and didn't fix it. The County started today trying to figure it out but just because they intend to get it done doesn't mean it will get done, and the residents don't want to allow the variance which would take away a couple-hundred square feet of green space where this water could go to fix the problem. Kids play in the streets on Conch Key if they're not on the water. If the County gets the variance, will they be able to mitigate and get rid of this water? There's a retention pond where the firehouse is, if there was a way to get the water there. He's talked to people in the County who say, oh, it shouldn't be an issue, it should be taken care of, but he would like to have something with more teeth. He is willing to give the variance if the problem will be fixed but being told it will be fixed is not good enough.

Mr. Donald Halladay has been a resident of Conch Key for 45 years. Mr. Halladay presented pictures showing the water at 18 inches deep during a regular rainstorm, and eight inches deep in his yard. He has manatees that lay under his dock catching all the rainwater coming off the roads. Ever since the sewer went in, for the past eight years, it's gone downhill. His wife wears fishing boots every morning it rains just to get to her car, ten feet away from their door. The easements and setbacks he doesn't mind, but something has to be done with the water. This road needs to come up, or we need a thrush well or something. The road commission says they're broke, but there was no problem until the sewer was put in. His yard sounds like a frog habitat at night.

Mr. Barry Franzen, a resident of Conch Key for seven years, has pictures of Doc kayaking down South Conch Avenue. His issue with the variance is that it will exacerbate the existing problem. As to putting swales and retention on the property, he had built a new house five years ago and asked about a variance and the person at the County chuckled and said good luck, you probably won't get it, so he understands the concern where all of a sudden, your regulations are hoisting you on your own petard when you realize you can't build these properties because of the setbacks. On his 3,500 square foot lot, over 2,500 was taken up by setbacks, so he understands why the County wants the setbacks. He put his swales in and did everything according to code, and the swales on his property never fill up with water. The swales on the subject property for rainwater retention are not going to help the flooding issue. He understands why the County wants the setback variance but is not very sympathetic. He would like to see a nice development there with character of Conch Key and sees this as one issue, not just granting a variance. There are solutions. His property is where the County is digging a big hole right now trying to find this storm drain that existed at one time. He spoke with someone out there and they said they would

just build big ditches down the sides to allow water to come off the roadway and naturally percolate. The water has nowhere to percolate. There must be another solution to do this. He sees Mosquito Control wading through water on the street looking for a bucket on his property that might have some water breeding mosquitoes while he's walking through them. This project maxes out the property but has no playground or whatever. Building ditches so everyone has to drive through a ditch is not going to solve the problem. The water flows from North Conch down. There's a big swale right by the fire station and it never has any water in it. When they wash their fire engines off, the water all runs off and sits there for days. The solution could be a pump that runs it right up to the existing swale that already exists. Mr. Franzen also asked that the structures be made to look Conch Key like.

Ms. Katrina Wiatt reiterated what the neighbours had already said. The residents of Conch Key do back this affordable housing project 100 percent, and this is one of the only places in the county to approve and have no disagreement with a very low and low only affordable housing group coming into the neighbourhood. The variance issue, in particular the 20 feet along South Conch Avenue which takes five feet away from the variance, is right smack in the middle of this ongoing stormwater issue. As discussed, you've got the County owning property, the County firehouse, the County road, and a County program. Recognizing there are different parts of the County that need to fix this, she believes it is unreasonable to ask the residents to simply nod their heads on a variance that looks like it could make this situation worse. If you look at that 20 feet, there's driveways that must come down to meet the road, which means there's got to be water coming off of those properties into South Conch Avenue. While the project itself will have to address stormwater mitigation for only that project, there is County property where the project is, the County road and the County fire house, and coordination is needed for an entire resolution to the problem. How to make sure that happens, she is not the expert. As a community, they want the project and want those individual tiny homes which will be in line with Conch Key, but is asking the County to please figure out how to get this stormwater issue taken care of.

There were no more public speakers. Public comment closed. Mr. Morris then gave the definition of nuisance, "interference so severe it would constitute a nuisance of any circumstances." Mr. Morris cautioned, as counsel to staff, that the Commission to be careful of the law here and not veer into the County roving legislative body or Public Works Department rather than a tribunal restraining this body to the criteria enumerated for the granting of this variance. The standard for this variance is under Section 102-187(d)(3). He recognizes there is a very legitimate concern about an existing condition regarding stormwater in this area, but the Commission needs to be attentive to the specific text of the code here in considering standard (d)(3) which says, "granting the variance will not create a threat to public health and safety or create a public nuisance." The key word to hone in on here is "create." It doesn't say "fail to fix" or "worsen." The testimony heard today reinforces that there is an existing problem and the granting of this variance would not create it as it already exists. Beyond that, approval of the variance may not accomplish the removal of an existing matter of public concern, but it certainly doesn't create one. There is no competent, substantial evidence in support of the theory that the granting of the variance will create it. It does clearly appear that members of the public have

legitimate concerns about an existing problem, but this forum isn't the proper forum to solve this problem, especially in view of the text that this Commission is bound by and in view of the fact that the problem already exists. Mr. Morris is certain that the BOCC and Mr. Wilson will be paying very close attention to these expressed concerns.

Commissioner Wiatt disagreed. This is a new development with people moving into an area with a pre-existing hazard, exacerbating an existing problem with new folks, putting new people in harm's way, and therefore this creates a nuisance and public health and safety problem for the new people in the new development. This is a pet peeve of Commissioner Wiatt's. Pretty much everyone on the island thought this stormwater problem would be taken care of when the development process was initiated on 2 North Conch Avenue. To the residents' dismay, there was no discussion about that and the first thing heard about the development moving forward was a request for the setback variance. So it wasn't going to happen. His first thought was why are new families with children being moved right to the epicentre of a significant issue in Monroe County without addressing that issue first. It does not make sense to him. Commissioner Wiatt submits that this is creating an additional hazard and an additional nuisance because new people are being moved on the property. This can be nitpicked all you want, but common sense tells him this is not good planning to have a situation like this that goes unaddressed. Commissioner Wiatt suggests that this is not in compliance with item three on page five, and his suggestion would be that a condition be created that would get this brought back into compliance with item three; i.e., as a condition to the proposal, "Monroe County will either repair the existing stormwater drainage system," which they're working on, "or install a new drainage system for South Conch Avenue. The repair or new installation will be capable of effectively managing the drainage of stormwater from South Conch Avenue. This repair or installation will also be maintained into perpetuity by the County or their representative."

French drains have already been used but their success is limited because they need to be maintained as they fill with silt and lose their effectiveness, and there is no real maintenance program in the County to periodically go out to these areas and scrape the surface and apply new material. So even if they work for a bit, they don't work long term and the problem comes back. The residents of Conch Key have been asked to support not only a low-income affordable housing project, but to also give up their setback, and it's their setback areas, and all they're asking in return is a commitment from the County to effectively address the stormwater issues on South Conch Avenue. Commissioner Wiatt does not think this is a big ask.

Mr. John Wolfe cautioned that the legal standard here on creating a hardship has to do only with the variance, not hardship itself, so they can build the project and move the people in. It can be agreed or disagreed to as to whether it's good planning, but this is regarding whether the variance creates the additional nuisance, which is a legitimate concern. Secondly, everyone recognizes this is a huge problem but in the last variance application, Mr. Morris and Ms. Schemper both noted that like zoning, you cannot condition granting a variance upon something. Mr. Wolfe then asked whether what Commissioner Wiatt was asking for was doable or whether it has the same problem as in the last variance application. Mr. Morris agreed that it is similar. The analysis changes a little because it's dealing with the local legislature of Monroe County, the

BOCC. Mr. Morris believes there are serious constitutional concerns on whether the Planning Commission can impose an exaction not provided for at law under 102-187, upon the Monroe County BOCC. However, it is entirely appropriate to inject whatever strongly-voiced language of an aspirational nature exhorting the applicant, the BOCC, to pursue work of that sort. Mr. Wolfe added that at the very least, it would be within legally permissible parameters to insert language that states that any granting of this variance will not create any further new nuisance and will not diminish the ability of the landowner, the County here, to fulfill its legal responsibility to manage all stormwater on site, that it will remain on site or otherwise adequately be taken care of. It obviously would have been nice to hear from Public Works to what their level of commitment is. It's not totally linked but it would be nice to hear from the applicant what their intention is and how far they intend to pursue this. Mr. Morris agreed that language similar to what Mr. Wolfe expressed would be amenable. In the federalist structure, for the body closest to the electorate, precatory language to the effect expressed by Commissioner Wiatt would be well received. The Monroe County BOCC is the most politically responsive layer of government that the residents and citizens have so it would not likely fall on deaf ears.

Commissioner Demes stated that the attorneys had addressed his first comment. He understands it's the County owning the property and the road, and that we're asking to hold the County hostage based upon those conditions, as opposed to looking at this as if it was a private landowner and what would be asked. It's okay if you can get away with it. Commissioner Demes added that he had driven out there, it was raining, and in his little car he was afraid to even drive down the road. The first thing he noticed is that North Conch Drive is at a much higher elevation which adds to the problem. This is a complex problem and he doesn't know whether the chicken or the egg came first. He saw the area the resident was showing pictures of where it looked like a canal flowing through a yard. Part of this could have been addressed with swales in every yard going to the outfall. The thought of closing an ocean outfall is unbelievable because it is so hard to get an outfall to open water. Being sensitive to that, he looked at the subject lots and the soils look to be compacted oolitic limestone along with concrete slabs from former construction, and he does not see this property retaining any water right now. Commissioner Demes does not see it getting much worse but staying virtually the same from flash rains. It's going to run off no matter what is done to that property and he sees no single solution. But for this variance, what are you going to do? As to using powered pump injection wells, he does not believe anyone wants those facilities in their yard because they're ugly, loud, there forever, and would degrade the property. Eventually, swales through properties, a combination of French drains, and clearing the surface water outfall is extremely important. The Conch Key residents are taxpayers and are living through absolute hell right now. Quality of life is nonexistent in periods when it rains and they can't function as a normal community with that much water. There are parts of it where you couldn't have normal boots high enough to walk through the property, and his car would be destroyed going through there in that deep of water. Commissioner Demes expected Mr. Kevin Wilson to be here today based upon the last meeting or whenever this was spoken about and how instrumental Mr. Wilson was in looking at this storm drain to be able to enlighten everyone. Commissioner Demes does not know what the right solution is. A combination of solutions is possible. We're looking at climate change and this is water runoff today. He believes a lot more needs to be done for this community. At the

same time, things can be done with this project to go forward and he doesn't think it should be held hostage, though he's all for it if it can be done legally to get the County to do something they should do as a responsible government for these taxpaying people in this community.

Commissioner Wiatt added that as Commissioner Demes stated, this is a very complex problem. The residents have seen no viable options to date, and without those viable options we have no idea how much land mass or area is going to be needed to implement them; i.e., a shallow injection well, where does it go, where does the pipeline or trench or drainage system go from there to the pump, to pump it across the street over to the retention ponds to the fire house. There are too-numerous-to-mention options, yet we don't have any idea which one might be viable. That is why the folks are afraid to give up any land at this point without some idea of how this stormwater issue will be approached. It's premature to give up that property and that's the push, and that's why this is a stormwater problem and not so much a setback variance problem. It's all intertwined and complicated.

Commissioner Ritz noted that Mr. Kevin Wilson had joined meeting, but first confirmed with Ms. Schemper that this development would retain their water on their property and will not be contributing to the problem. Ms. Schemper confirmed that to be correct and additionally it would help to improve or get rid of some of the problem because currently that the site is not retaining all of its water, which Mr. Wolfe confirmed is a legal requirement to get a building permit. Commissioner Ritz then stated whether it was 20 feet or 25 feet, they are going to retain their own water and are going to retain or capture some of the water that's running off the street in a swale. Ms. Schemper responded that there is no requirement to capture water from the street, though it may happen incidentally somehow. Commissioner Ritz continued that the question now goes to Mr. Wilson because typically, there's a right-of-way on the side of the street, and that right-of-way should be a swale, and the swale should catch the water from the street into the County's right-of-way, the County-owned right-of-way at the edge of the pavement, and asked if that generally is what was supposed to happen.

Mr. Kevin Wilson, Assistant County Administrator for Public Works, Engineering, and several other departments, stated there would not be a swale adjacent to the pavement to capture the water running off of the pavement, and explained that swales are only one method to capture water on the roadway and it only works when there is enough room in the shoulder at an elevation lower than the road itself. In this location, most of the development land is higher than the road and the shoulder. The design for this property will be done in accordance with 114-3 of the stormwater which will require all of the water to be captured on the property. As a practical matter, there will need to be some kind of catchment basin at the property line on the driveways to capture water that might come off the property and then dispose of it somehow in the ground, probably with an exfiltration trench. Mr. Wilson agreed with Commissioner Demes that you don't really want to pump solution because that gets complicated. As to the question of what the County will be doing out there, there are already some French drains or soakage pits, some in front of Mr. Halladay's house, that have probably gotten blinded over and need repair. They are trying to locate the drain that used to be there and have found at least part of the pipe on the east side of the road, but all utilities aren't marked yet so they will be back out there after those are

marked. Important to remember, some water comes off this property today and when the development is done, that won't be allowed. The setback belongs to the property and the property of a private developer cannot be used to put water from the roadway onto the property. This development is being done by the Housing Authority. There is probably water coming down the hill off U.S. 1 onto North Conch Avenue, and because the slope down to South Conch Avenue is much greater, probably some goes down and collects at the bottom of the hill. Something will need to be done about that over time. The street drain is not very high compared to sea level and during King Tides water will back up through it. They will try to install some kind of duck bill check valve but it won't guarantee that water won't be backed up. And, as sea level rise gets worse, the problem will be exacerbated.

Commissioner Ritz stated that he agrees with 99 percent of other Commissioners' comments and wishes the drainage could be tied directly to the variance, but it doesn't sound like it can legally be tied as a mandatory requirement. However, a strongly-worded plea can be made to the County Commission. He is very sympathetic to the residents and their concerns, and anything the Commission can do to help they should do, regardless if it's directly in their wheelhouse. Commissioner Ritz would make a motion to approve this with a strongly-worded message to the BOCC, almost verbatim of what was proposed, except to say it's strongly urged rather than required.

Commissioner Demes asked Mr. Wilson about the water needing to be retained on the property and that he never really sees that happening, and wanted to know if it's based on a certain intensity over an incremented time as far as how the water retention on the property is calculated. Mr. Wilson confirmed that to be correct and added that until the recent change in the code to include residential properties, there was not a requirement for residential properties to keep all the water on their site. In speaking of houses that are raised higher than others on a street, there was no code requirement to force them to retain the water on their property. That now exists in the code so over time, that will improve. There are specific rain intensities for which the system needs to be designed, and it's something like the three-day, 24-hour rain, which in most of Monroe County is an eight to nine-inch rainfall over a 24-hour period.

Chair Scarpelli added that he believes this development will greatly improve the stormwater situation. It is likely that all the water that lands on that property ends up in the roadway at a certain point, especially with a deluge rain, and the solid limestone might as well be solid concrete. This is a definite issue. With the newer stormwater retention rules that have been implemented, this site will have to treat the water in a better manner than any prior residential project, which is a definite positive. What's unfortunate is the U.S. 1 runoff, and he asked if there was anything that could be done with FDOT regarding that. Mr. Wilson answered yes, and stated they generally do that as they work on new sections of U.S. 1, and they have also started looking at some of the bridge runoff. Commissioner Scarpelli also asked about unblocking this drain and what the current seal level would do with that, and whether a backflow preventer could help the problem.

Commissioner Wiatt commented that prior to the drain being blocked off there was little or no saltwater intrusion. He believes that would be limited to the times of King Tides which no one

can explain. Commissioner Wiatt believes the folks that live there would be happy to put up with a bit of ocean water intrusion on a very sporadic basis versus when it rains a lot, and thinks the drain is a viable idea. No one has asked why the drain was originally blocked, which was actually a safety issue. This storm drain had a metal grate and over the years it had deteriorated from cars driving on top of it and it caved in. So a property owner called in to ask that they work on that, and instead of replacing the grate and cleaning the line and doing repair work, they went to the extreme option and filled it in. None of that is speculative. There are eyewitnesses to that, including himself. Unfortunately, it was a self-inflicted wound. Commissioner Wiatt has no problem changing "wills" to "shoulds" in the conditions. There is a window to do the right thing and keep this whole situation friendly and to everyone's benefit, but one thing this letter asking for the variance of a setback has done has organized the folks on the island. If this isn't addressed, there is no question in his mind that it will become adversarial. Then, instead of using words like "nuisance" or "hazard," they will be using words such as "negligence," and that's not good for anybody. So when the Commission says this needs to be addressed in the strongest possible terms, we all need to recognize that the citizens of Conch Key have other options.

Commissioner Demes wanted to add that he is glad he drove up there because this can't be looked at on a piece of paper. You take your car and drive down that road in a rainstorm and then talk about it.

Chair Scarpelli asked Ms. Schemper if this project needed to go through a plan approval process where the public would have another opportunity to speak on this project. Ms. Schemper responded that since there's 10 units of affordable housing and it's all detached dwellings, this would go straight to building permit.

Commissioner Wiatt made a motion, stating that the Planning Commission asks in the strongest possible way that Monroe County either repair the existing stormwater drainage system or install a new drainage system for South Conch Avenue. This repair or new installation should be capable of effectively managing the drainage of stormwater from South Conch Avenue. This repair or new installation should also be maintained in perpetuity by the County or their representative. Mr. Wolfe stated that was fine, but the first part would be that the Planning Commission approves the variance with those requests following, and that the second part conveys the strong will of the Planning Commission.

Ms. Schemper clarified that it's not a condition but sort of a secondary assertion by the Planning Commission. Commissioner Wiatt agreed, saying the Commission approves the setback variance but suggests in the strongest possible way, et cetera. Mr. Wolfe suggested saying requests in the strongest possible way.

Commissioner Demes said he would second it.

**Motion: Commissioner Wiatt made a motion to approve with the previously stated strong requests. Commissioner Demes seconded the motion.**

**Roll Call: Commissioner Demes, Yes; Commissioner Wiatt, Yes; Commissioner Neugent, Recused; Commissioner Ritz, Yes; Chair Scarpelli, Yes. The motion passed unanimously.**

## BOARD DISCUSSION

Commissioner Demes commented that when information is passed to the Commissioners at the meeting is normally allowed, or whether it should come to the Chairman first to decide whether they should look at it. He prefers to look at things in advance rather than on the fly in a meeting if it's going to be accepted, and especially if counsel is supposed to be able to review it. Today was a little bit much for him and he would ask that it be decided whether it's allowed before looking at it.

Mr. Wolfe stated that the procedure is for something that comes in within the five days, the Commission is first asked to decide whether they will allow it. If given a one-paragraph item, that may be able to be looked at, but a seven-page treatise won't be reviewed. That procedure should be resumed and should have been being done. Commissioner Demes asked if that also could be done at the front of the agenda item. Mr. Wolfe agreed. Commissioner Ritz added that the Commission wants to hear from the public and hears from them at the meeting, so information is being received immediately. Whether it's by the public talking to us or handing us something, it's the public's problem if the Commission doesn't have time to read what they've given. But he hates telling someone, no, I'm not going to listen to you because you didn't get it to us on time. It may not be listened to very thoroughly because it's being heard for the first time, where if received a week ahead of time it can be read and digested. Commissioner Neugent thought this practice went back to Len Mapes era where he was vociferous about people not bringing last-minute information to the Commission, and he thought that it was actually made a policy. Mr. Wolfe stated that there is a five-day policy, and his experience has been that if it was something short and easy, the Commission agrees to see it, but if it's long and complicated, then no. Commissioner Neugent reminded Mr. Wolfe that Alicia Putney used to do that at every planning meeting.

## ADJOURNMENT

The Monroe County Planning Commission meeting was adjourned at 1:21 p.m.