AGENDA

MONROE COUNTY SPECIAL BOARD OF COUNTY COMMISSIONERS MEETING
February 15, 2024
10:00 AM

The Board will convene at the Murray E. Nelson Government Center
102050 Overseas Hwy, Key Largo
The meeting is open to the public.
Members of the public can also attend will be via Communications Media Technology at:
Zoom webinar: https://mcbocc.zoom.us/j/89204098700
To report problems with the broadcast or Zoom webinar, please call (305) 872-8831.

ADA ASSISTANCE: If you are a person with a disability who needs special accommodations in order to participate in this proceeding, please contact the County Administrator's Office, by phoning (305) 292-4441, between the hours of 8:30 a.m. - 5:00 p.m., prior to the scheduled meeting; if you are hearing or voice impaired, call "711". Live Closed Captioning is available via the MCTV portal @ https://cloud.castus.tv/vod/monroe/video/60832c9dcf67bb7ac0c21791?page=HOME&type=live for meetings of the Monroe County Board of County Commissioners.

A person may submit written comments or other physical evidence on a particular agenda item for consideration at the BOCC meeting via email to Lindsey Ballard @ ballard-lindsey@monroecounty-fl.gov County Administrator's Office, no later than 3:00 P.M. on the Monday prior to the meeting. The email must include the submitter's name, address, phone number and email address and the agenda item number the documents/comments are regarding. Any intellectual property submitted must include the appropriate authorization for use. Any person who wishes to be heard shall, prior to an item being called, provide the Clerk with his/her name and residence, and the agenda item on which he or she wishes to be heard. An individual has three minutes to address the Commission. However, the first person representing an organization has five minutes to address the Commission. Subsequent speakers for the same organization have three minutes to address the Commission. For land use items, the petitioner and, if the owner is different than the petitioner, then the owner of the property that is the subject of the land use item, will be allowed 20 minutes to address the Commission. Other people are allowed five minutes to address the Commission. Speakers appearing remotely via communications media technology may speak under the same time constraints as those speakers appearing live before the Commission. Remote speakers need not fill in a speaker card before speaking but must identify themselves and their addresses at the beginning of their remarks. Failure to do so may result in early termination of their speaking privileges for that item. For additional assistance, please call (305) 292-4441 or email your inquiry to: ballard-lindsey@monroecounty-fl.gov.

Please note that all time approximate items are listed in bold.

CALL TO ORDER

SALUTE TO FLAG

A. ADDITIONS, CORRECTIONS, AND DELETIONS

A1. Approval of agenda.

B. PUBLIC HEARINGS

B1. An Ordinance by the Monroe County Board of County Commissioners amending the Monroe County Land Development Code to establish Section 130-143, creating the Tavernier Commercial Overlay District, including the purpose and intent, boundary, applicability, and NROGO allocation standards, as proposed by Smith/Hawks PL on behalf of Cemex Construction Materials Florida, LLC.

A1

COUNTY of MONROE
The Florida Keys



BOARD OF COUNTY COMMISSIONERS
Mayor Holly Merrill Raschein, District 5
Mayor Pro Tem James K. Scholl, District 3
Craig Cates, District 1
Michelle Lincoln, District 2
David Rice, District 4

Special Board of County Commissioners Meeting Meeting
February 15, 2024
Agenda Item Number: A1
2023-2098

BULK ITEM: No **DEPARTMENT:** Administration

TIME APPROXIMATE: **STAFF CONTACT:**

AGENDA ITEM WORDING: Approval of agenda.

ITEM BACKGROUND:

PREVIOUS RELEVANT BOCC ACTION:

INSURANCE REQUIRED:
No

CONTRACT/AGREEMENT CHANGES:

STAFF RECOMMENDATION:

DOCUMENTATION:

FINANCIAL IMPACT:

COUNTY of MONROE
The Florida Keys

BOARD OF COUNTY COMMISSIONERS
Mayor Holly Merrill Raschein, District 5
Mayor Pro Tem James K. Scholl, District 3
Craig Cates, District 1
Michelle Lincoln, District 2
David Rice, District 4

Special Board of County Commissioners Meeting Meeting
February 15, 2024
Agenda Item Number: B1
2023-1073

BULK ITEM: No **DEPARTMENT:** Planning & Environmental Resources

TIME APPROXIMATE: **STAFF CONTACT:** Emily Schemper

AGENDA ITEM WORDING:

An Ordinance by the Monroe County Board of County Commissioners amending the Monroe County Land Development Code to establish Section 130-143, creating the Tavernier Commercial Overlay District, including the purpose and intent, boundary, applicability, and NROGO allocation standards, as proposed by Smith/Hawks PL on behalf of Cemex Construction Materials Florida, LLC.

ITEM BACKGROUND:

On March 23, 2022, the Planning and Environmental Resources Department received an application from Smith/Hawks, PL (the "Agent") on behalf of Singletary Concrete Products, Inc. and Cemex Construction Materials Florida, LLC (the "Property Owners" and "Applicants") and The Vestcor Companies, Inc. and Blackstone Group – Tavernier 925, LLC (the "Developers") to amend the Monroe County Land Development Code. The initial application and proposed text would establish the Tavernier Key Commercial Overlay District to allow for a nonresidential ROGO (NROGO) allocation of up to 70,000 square feet on property located at 92501 Overseas Highway, Key Largo, with parcel identification numbers 00490250-000000 and 00089490-000000 (the "Property"). The Applicants have submitted multiple amended and restated applications and revisions to the proposed text since the initial submittal. The current amended and restated application (the "Application") was received via email on November 20, 2023.

The proposed text was most recently revised and resubmitted to the Planning Department [*via email*] on January 19, 2024. The amended text as it is currently proposed would establish the Tavernier Commercial Overlay ("TCO") District (the "Overlay") and allow for an NROGO allocation of up to 49,900 square feet, which could allow for the development of a 49,900 SF commercial supermarket, including a liquor store, on the Property.

Please see attached Staff Report for item background, proposed amendment

language, and analysis.

PREVIOUS RELEVANT BOCC ACTION:
N/A

INSURANCE REQUIRED:
No

CONTRACT/AGREEMENT CHANGES:
N/A

STAFF RECOMMENDATION:

The Monroe County Planning and Environmental Resources Department's professional staff recommends that the BOCC **CONTINUE** the Applicant's request to amend the Land Development Code ("LDC") establishing Section 130-143, the Tavernier Commercial Overlay District**, until such a time that all current requests to amend the Comprehensive Plan, Land Development Code, Future Land Use Map and Land Use District Map, and the proposed Development Agreement, are processed and prepared to be heard at the same BOCC Hearing to ensure consistency of all concurrently proposed amendments relative to this Property.**

In the event that the BOCC elects to vote on this item at the February 15, 2024, public hearing, the Planning & Environmental Resources Department's professional staff recommends **DENIAL** of the proposed amendment to the Land Development Code establishing Section 130-143.

DOCUMENTATION:

BOCC SR2.pdf
Exhibit 1 PC Resolution.pdf
Exhibit 2 PC Resolution.pdf
Proposed Revised Langauge Cemex LDC Overlay.pdf
Exhibit 4 Draft Ordinance.pdf

FINANCIAL IMPACT:
N/A

MEMORANDUM

MONROE COUNTY PLANNING & ENVIRONMENTAL RESOURCES DEPARTMENT

To: Monroe County Board of County Commissioners

Through: Emily Schemper, AICP, CFM, Senior Director of Planning and Environmental Resources

From: Cheryl Cioffari, AICP, Assistant Director of Planning
Devin Tolpin, AICP, CFM, Planning and Development Review Manager

Date: January 23, 2024

Subject: An ordinance by the Monroe County Board of County Commissioners amending the Monroe County Land Development Code to establish Section 130-143, creating the Tavernier Commercial Overlay District, including the purpose and intent, boundary, applicability, and NROGO allocation standards, as proposed by Smith/Hawks PL on behalf of Cemex Construction Materials Florida, LLC (File 2022-053)

Meeting: **February 15, 2024**

I. REQUEST

On March 23, 2022, the Planning and Environmental Resources Department received an application from Smith/Hawks, PL (the "Agent") on behalf of Singletary Concrete Products, Inc. and Cemex Construction Materials Florida, LLC (the "Property Owners" and "Applicants") and The Vestcor Companies, Inc. and Blackstone Group – Tavernier 925, LLC (the "Developers") to amend the Monroe County Land Development Code. The initial application and proposed text would establish the Tavernier Key Commercial Overlay District to allow for a nonresidential ROGO (NROGO) allocation of up to 70,000 square feet on property located at 92501 Overseas Highway, Key Largo, with parcel identification numbers 00490250-000000 and 00089490-000000 (the "Property"). The Applicants have submitted multiple amended and restated applications and revisions to the proposed text since the initial submittal. The current amended and restated application (the "Application") was received via email on November 20, 2023.

The proposed text was most recently revised and resubmitted to the Planning Department [*via email*] on January 19, 2024. The amended text as it is currently proposed would establish the Tavernier Commercial Overlay ("TCO") District (the "Overlay") and allow for an NROGO allocation of up to 49,900 square feet, which could allow for the development of a 49,900 SF commercial supermarket, including a liquor store, on the Property.

In the application that was submitted on November 20, 2023, the Applicants state the reason for the requested amendment is: "*LDC Section 138-51 (b) provides a maximum nonresidential floor area allocation of ten thousand square feet (10,000 sf) and Section 138-51 (c) prohibits an allocation of nonresidential floor area that expands the structure to more than 10,000 square feet of nonresidential floor area, excluding: a) a structure in the Urban Commercial (UC) land use (zoning) district may receive an allocation that expands the structure to not more than 50,000 square feet and b) a structure within an overlay district established in a community master plan, in which the maximum shall be governed by the master plan if applicable, or within Chapter 130 specifically allowing such a structure of over 10,000 square feet. Notwithstanding the standards contained in section 138-51(c), the proposed revised amendment permits an NROGO allocation of up to, but not exceeding, forty-nine thousand, nine hundred square feet (49,900 sf) for specific mixed-use properties in Tavernier that make up the overlay district, and will allow for the construction of a Publix grocery store, including a liquor store, that fits with the architectural design and community character of the City of Tavernier that it will serve.*"

The Applicants' full explanation and justification of the proposed amendment is included in the file for the application (File 2022-053).

Concurrent Applications

File 2022-054: A corresponding Land Use District (Zoning) map amendment for the Property to apply the Overlay.

File 2022-012: A request for a Major Conditional Use Permit to develop the Property in two phases. Phase 1 of the development proposal includes the construction of a 64,080 square foot grocery and liquor store (a commercial retail use). Phase 2 of the development proposal is the development of 86 attached, deed-restricted affordable housing dwelling units. Pursuant to LDC Section 139-1(f), any nonresidential development subject to the inclusionary provisions of the LDC are required to obtain certificates of occupancy on said deed restricted affordable housing prior to the resulting nonresidential use and structure. *As of the date of this report, a revised application and plan set has not been submitted with this file.*

File 2023-205: A request to amend the Monroe County 2030 Comprehensive Plan to establish a site-specific subarea policy on a portion of the Property. **As of the date of this report, this application remains incomplete**.

File 2023-206: A request to amend the Future Land Use Map (FLUM) on a portion of the Property from Mixed Use Commercial (MC) to Residential High (RH). **As of the date of this report, this application remains incomplete.**

File 2023-207: A request to amend the Land Use District (zoning) on a portion of the Property from Suburban Commercial (SC) to Urban Residential (UR). **As of the date of this report, this application remains incomplete.**

It should be noted that the proposed text references a development agreement as being required for any development within the proposed overlay. <u>As of the date of this report, an application for a development agreement has not been submitted.</u>

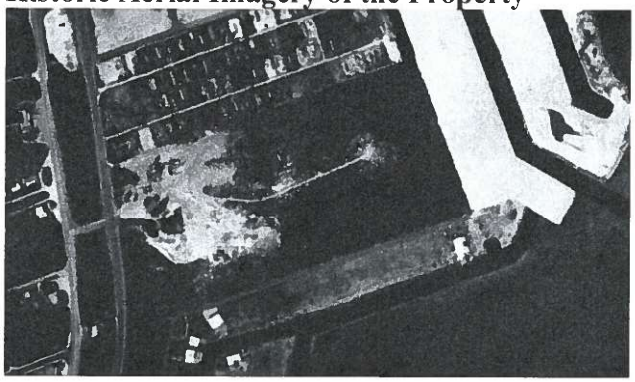
II. BACKGROUND INFORMATION

Site Information:
Location: 92501 Overseas Highway, MM 92.5, Tavernier (Island of Key Largo)
Boundary: Affected parcels are outlined in **orange** in the image below.
Parcel ID Numbers (2 Parcels): 00490250-000000 and 00089490-000000
Applicant: Singletary Concrete Products Inc. and CEMEX Construction Materials Florida, LLC
Agent: Smith / Hawks, PL
Size of Affected Portion of Property: 841,940.3 SF (19.33 acres) gross area; including 611,384.2 SF (14.04 acres) upland, 209,913.57 SF (4.82 acres) mangroves, and 20,642.5 SF (0.47 acres) manmade pond according to the submitted boundary survey signed and sealed by David S. Massey on May 26, 2022
FLUM Designation: Mixed Use / Commercial (MC)
Land Use Districts: Suburban Commercial (SC); proposing overlay land use district
Tier Designation: III
Flood Zones: AE (EL 8, 9, 10, and 11); VE (EL 11)
CBRS: No
Existing Uses: previously developed as a cement plant with outdoor storage
Existing Vegetation/Habitat: Undeveloped Land, Exotic, Mangrove, Hammock, and Water
Community Character of Immediate Vicinity: Adjacent land uses include residential to the north, east, and south with commercial retail to the west across US1. Part of the Tavernier Creek to Mile Marker 97 U.S. Highway 1 Corridor District Overlay (TC), established by LDC Section 130-128.

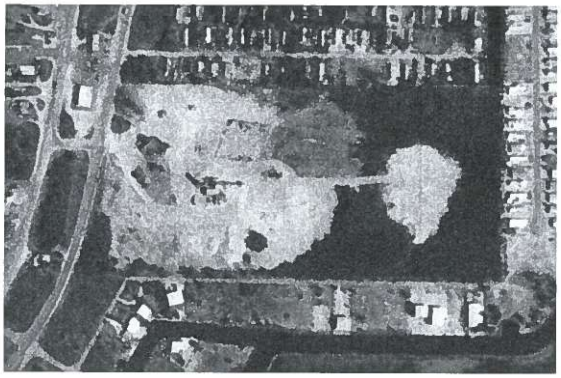


Property outlined in orange (image dated 2022)

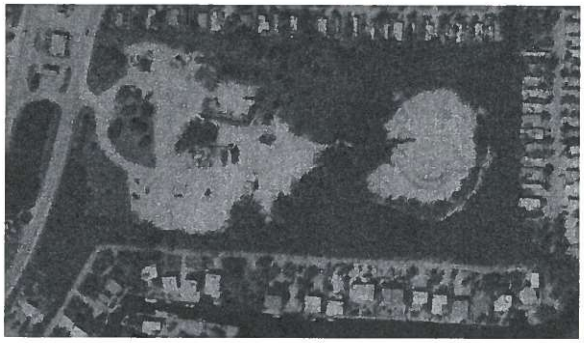
Historic Aerial Imagery of the Property



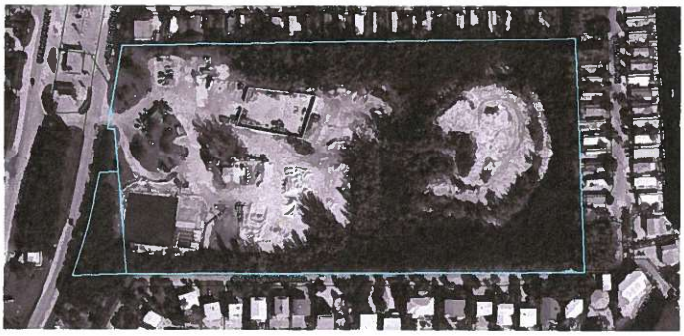
Subject Property (image dated 1968)



Subject Property (image dated 1975)



Subject Property (image dated 1994)



Subject Property (image dated 2002)

Concept Meeting

In accordance with LDC Section 102-158(b)(1), a concept meeting was held on June 28, 2022, and it was determined that the proposed text amendment will **not** have a county-wide impact because the proposed amendment is limited to a portion of Tavernier.

Community Meeting and Public Participation

In accordance with LDC Section 102-159(b)(3), a community meeting is not required for Land Development Code text amendments that do not have a county-wide impact. However, a community meeting is required for the accompanying Land Use District Map Amendment Request (File 2022-054), which is requested to apply the proposed overlay to the Property. The Community Meetings for File 2022-054 were held on August 18, 2022, and on January 5, 2023. Concerns from the Community Meetings included, but were not limited to:

- Inconsistency with community character and the Tavernier Livable CommuniKeys Plan;
- Increased traffic and the associated negative impacts;
- The County's insufficient balance of ROGO Allocations to accommodate the development request;
- Access off US1; and
- Negative environmental impacts

Development Review Committee Meeting and Public Input

On October 25, 2022, the DRC considered the proposed amendment and provided for public input. On November 14, 2022, the Chair of the DRC signed Resolution No. DRC 13-22, recommending **DENIAL**

of the proposed amendment to the Land Development Code establishing Section 130-143 to the Planning Commission and Board of County Commissioners.

Planning Commission Hearing

On April 28, 2023, the Planning Commission passed and adopted Planning Commission Resolution No. P16-23 recommending **DENIAL** of the proposed amendment to the Land Development Code establishing Section 130-143 to the Board of County Commissioners.

At the Planning Commission hearing, comments from the public included a concern that the proposed affordable housing component of the project (86 affordable dwelling units) would not be built. Bart Smith, on behalf of the Applicant, indicated that the Applicant would include language in the proposed text amendment that the affordable units would be required to be built prior to the proposed large scale retail building, and confirmed that the Applicant acknowledges that they are responsible for securing the required ROGO allocations for the proposed units and would be willing to include language stating such within the proposed text amendment.

Excerpt from page 10 (public comment) of April 28, 2023 PC Minutes:

> it because we already need a lot of traffic mitigation. The fact that the applicant is doing an affordable housing project seems to be the controlling thing here, when in order to do this they're required to have an affordable housing component. It is secondary to them but it shouldn't be secondary to the community. It should be phase one., as she is concerned that as phase two it may never get done. This is not something acceptable to the community character of Tavernier or there wouldn't be this many people here participating. Ms. Miller thanked the Commission for listening.

Excerpt from page 15 of April 28, 2023 PC Minutes:

> Ms. Schemper had been surprised at how strong the argument came across regarding this retailer being the economic engine needed for the affordable housing. The meat of the amendment allows the large non-residential structure. It's really not written to guarantee that any housing is there. The question would be for the applicant, if they would be willing, to write into the amendment something about the affordable units being required where the ROGOs are coming from, what happens if you don't get the ROGO allocations, et cetera.
>
> Mr. Smith responded that they would certainly write in that they were required because if they're required to be CO'd, then the applicant has put themselves in a position that if they don't get them built, then the other part can't occur. Ms. Schemper asked if the owner would then be suing the County because the applicant wasn't given ROGO allocations. Mr. Smith stated it would be up to the applicant to obtain the development rights. They have talked to the Village of Islamorada who is amenable to do an IOA to provide the units because it's in their back yard. So, by any mechanism necessary but the applicant is required to obtain the development rights. Ms. Schemper asked if Islamorada had 86 affordable ROGOs or market rates. Mr. Smith stated they had the 300 July ones. Ms. Schemper stated that currently, those are not allowed to be transferred to Monroe County per the Monroe County ordinance. Mr. Smith stated that that ordinance was not effective yet and was on appeal. Ms. Schemper stated that was the same for Islamorada. Mr. Smith stated that as soon as the hurricane evacuation was addressed, then that's final, whereas Monroe County's was appealed on, on numerous grounds. But the applicant acknowledges they have to be able to get the development rights. Ms. Schemper asked if that would be something the applicant would be willing to write into the amendment. Mr. Smith confirmed that to be correct, it was always the intent on that. The two parts work in unison with the commercial retail buying down the cost of the land to make the affordable housing feasible.

It should be noted that amendments to the version of the proposed text that was reviewed by the Development Review Committee and Planning Commission were submitted on May 25, 2023, November 13, 2023 and again on January 19, 2024. The most recently revised text includes a reduction in the amount of allowable NROGO allocation from what was proposed and discussed at the Planning Commission Hearing. The submitted changes to the text are identified [in orange text] below in Section III.

Previous Relevant BOCC Action

On September 16, 1988, an Application for a Land Use Map amendment from Suburban Commercial (SC) to Industrial (I) (File# M9315) was received by the Planning Department. It appears that this file was never processed because it was submitted when the new Comprehensive Plan was being drafted and the pending application was put on hold and eventually closed.

On June 30, 2003, a Letter of Understanding (LOU) was issued, to address the potential construction of 300 affordable housing units on the Property. A development application nor approval followed the issuance of this LOU.

III. APPLICANTS' PROPOSED LAND DEVELOPMENT CODE TEXT AMENDMENTS

The Applicants' proposed text, as submitted on September 22, 2022, is shown as follows: additions are in blue underline. Following the Planning Commission meeting on April 28, 2023, the most recently revised text submitted on January 19, 2024 is shown in orange double underline with deletions ~~double stricken through~~.

Chapter 130 – LAND USE DISTRICTS

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ARTICLE IV. – OVERLAY DISTRICTS

Sec. 130-143. Tavernier ~~Key~~ Commercial Overlay District

(a) Purpose and Intent. The purpose of the Tavernier ~~Key~~ Commercial Overlay District is to implement applicable goals, objectives, and policies of the Comprehensive Plan and to allow larger-scale commercial retail development in a scarified area of the Upper Keys that primarily serves the needs of permanent residents of the Upper Keys. The intent is to provide accessible necessities to permanent residents of the Upper Keys, while ~~reducing traffic and trip generation on Overseas Highway and~~ maintaining the character of Tavernier.

(b) Boundary. The Tavernier ~~Key~~ Commercial Overlay District shall be shown as an o~~O~~verlay district on the Official Land Use District ~~(zoning)~~ map. The Tavernier ~~Key~~ Commercial Overlay District shall be shown as the boundary of the parcels with Monroe County Parcel ID numbers 00490250-000000 and 00089490-000000, and depicted in the map below ~~legally described as~~:

[*insert map here*]

(c) Applicability. Development within the Tavernier Commercial Overlay District shall be subject to the following standards:

1. An amendment to the Official Land Use District Map is required and such overlay shall be shown on the Official Land Use District Map
2. The development of a single nonresidential structure that contains more than 10,000 square feet within the Overlay District shall be subject to the terms and conditions of an approved Development Agreement as defined in sections 110-132, 110-133, and must include:

    a. Provisions for the development of 86 workforce housing dwelling units; and
    b. Preferred leasing standards for essential workers of the workforce units; and
    c. An approved site plan that includes the following in addition to all site requirements in accordance with the Land Development Code:
        i. A pedestrian walkway connecting the nonresidential parking area to the right of way known as Orange Blossom Road. Required lighting for the pedestrian walkway must be in compliance with Chapter 114, Article VI.
        ii. If outdoor lighting is proposed, in addition to all requirements of Chapter 114, Article VI, such lighting shall be designed and located such that the maximum illumination measured in footcandles at any exterior property line adjacent to residential uses, not included in this overlay, shall not exceed zero (0) for cutoff and noncutoff lights, with the exception of the pedestrian walkway or any lighting required for life safety, as provide by Monroe County.

3. All property lines adjacent to U.S. 1 shall provide a Class E Scenic Corridor Buffer.
4. All development shall be permitted in accordance with the permitted and conditional use requirements of Chapter 130, Article III, Permitted and Conditional Uses.
5. Industrial uses are not permitted within the Overlay. Notwithstanding the preceding sentence, lawfully nonconforming industrial uses within the Overlay are permitted to remain, and operate, until such time as a building permit is issued for the nonresidential structure more than 10,000 square feet.

~~In order for a property owner to utilize the standards, exemptions and reductions conferred within the Tavernier Key Commercial Overlay District, an amendment to the Official Land Use District (Zoning) Map shall be required and such overlay shall be shown on the Official Land Use District (Zoning) Map.~~

(d) Maximum Development Potential.

1. There shall be no allocated or maximum net density standard available for residential market-rate or transient dwelling units.
2. The Tavernier Commercial Overlay District shall be limited to a maximum total development potential of:
    a. 49,900 square feet of nonresidential floor area; and
    b. (86) deed restricted workforce housing dwelling units; and
    c. accessory uses and structures.

(e) NROGO Allocations. Notwithstanding Section 138-51, the Tavernier ~~Key~~ Commercial Overlay District shall have the following NROGO allocation standards provided that the criteria set forth in subsections (f), (g) and (h) are satisfied:

~~a.~~ 1. Maximum allocation of nonresidential floor area. The ~~maximum~~ amount of nonresidential floor area to be allocated or transferred to the Tavernier ~~Key~~ Commercial Overlay District shall be limited to a maximum of ~~70,000~~ 49,900 square feet.

~~b.~~ 2. Maximum floor area per structure. ~~Nonresidential principal~~ A single nonresidential principal structure~~s~~ within the Tavernier ~~Key~~ Commercial Overlay District shall be permitted to receive an allocation that expands the structure to more than 10,000 square feet, but not to exceed a maximum of ~~70,000~~ 49,900 square feet of nonresidential floor area.

(f) No building permit shall be issued for a structure receiving an NROGO Allocation or transfer that would expand a nonresidential structure within the Overlay to more than 10,000 square feet unless and until building permits for all 86 workforce housing units have been issued, which permits shall not be unreasonably withheld.

~~Any use within the Tavernier Commercial Overlay district shall be subject to all land development regulations of the underlying zoning district with the exception of those regulations controlling NROGO allocations.~~

(g) All new residential units developed within the overlay district shall be subject to the ROGO permit allocation system or transfer of ROGO exemptions of existing lawfully established permanent market rate or affordable dwelling units that have less than five years remaining on the required deed restriction pursuant to Section 138-22(b)(4)b.

(h) Prior to the issuance of a Certificate of Occupancy for a nonresidential structure that is more than 10,000 square feet:

1. At least 50% (43) of the required 86 workforce housing units must have received a Temporary Certificate of Occupancy; and
2. At least 50% (43) of the required 86 workforce housing units must have received approved foundation inspections.

~~The overlay district shall be limited to a maximum of 70,000 square feet of nonresidential development and eighty-six (86) deed restricted affordable housing dwelling units, and accessory uses, and shall be subject to all land development regulations of the underlying zoning district with the exception of those regulations controlling NROGO allocations.~~

(i) All other provisions of the Comprehensive Plan, Tavernier Livable Communikeys Plan, the Tavernier Creek to Mile Marker 97 US Highway Corridor Development Standards and Guidelines and the Land Development Code apply unless expressly exempted herein.

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Staff has reviewed the proposed amendment and in the event that the BOCC chooses to adopt the Overlay, Staff recommended changes are included as Exhibit 3 to this Staff Report and are reflected in the draft Ordinance.

IV. ANALYSIS OF PROPOSED AMENDMENT

Proposals to amend the text of the Land Development Code are reviewed in accordance with Chapter 102, Article V. Land Development Code Section 102-158(a) specifically identifies the purpose of Article V *Amendments* and states:

> **Purpose.** The purpose of this article *[Article V- Amendments]* is to provide a means for changing the text of this Land Development Code, which also includes changes to the land use (zoning) district map and overlay district maps. It is also intended to add to the statutory procedures and requirements for changing the future land use map (FLUM) at the transmittal stage. The process for changing the text of the Comprehensive Plan shall follow the process established Chapter 163, Part II, Florida Statutes, and shall require a Concept Meeting as detailed in subsection (d)(3) of this section, and shall provide for community participation as specified in Section 102-159(b). **This article is not intended to relieve particular hardships, nor to confer special privileges or rights on any person, nor to permit an adverse change in community character, analyzed in the Technical Document (data and analysis), but only to make necessary adjustments in light of changed conditions or incorrect assumptions or determinations as determined by the findings of the BOCC. In determining whether to grant a requested amendment to the text of this Land Development Code, or land use (zoning) district map, or overlay map, the BOCC shall consider, in addition to the factors set forth in this article, the consistency of the proposed amendment with the provisions and intent of the comprehensive plan and consistency with the principles for guiding development in Section 380.0552, F.S. [emphasis added].**

Staff is reviewing the proposed amendment for consistency with the County's Comprehensive Plan, the Tavernier Livable CommuniKeys Plan, internal consistency with the Code and State Statutes (including 163.3187, F.S.,), Rules, and balancing all the requirements and policy issues.

Comparison of Development Potential

The Property is currently located within the Suburban Commercial Land Use (zoning) District, Mixed Use/ Commercial Future Land Use, and is designated as Tier 3 on the County's Tier overlay map. Under the existing zoning requirements, both commercial retail and employee housing dwelling units are permitted uses. The primary change that would result from adoption of the proposed overlay is the ability to construct a nonresidential structure that is over 10,000 square feet, up to 49,900 square feet, with receipt of that nonresidenital floor area allocation within a single allocation quarter [*for properties within the overlay*].

To better understand the Applicants' request, below is a summary of the maximum development potential of the Property based on 14.04 acres (611,384.2 SF) of upland[1] under the current Code as compared to the maximum development potential under the proposed text amendment:

	Nonresidential Square Footage (SF)	***Max Net Density***	***Allocated Density***
Existing Code	Commercial retail:	202.11 units	42.11 units

[1] Upland acreage is based on survey completed by Massey-Richards Surveying & Mapping, LLC and digitally signed by David S. Massey on May 26, 2022.

(ref. LDC Sections 130-157 and 130-164)	Low intensity: 213,984 SF Medium intensity: 152,846 SF High Intensity: 91,708 SF		
Proposed Code *(ref. LDC Sections 130-157 and 130-164)*	Commercial retail: Low intensity: 213,984 SF Medium intensity: 152,846 SF High Intensity: 91,708 SF	202.11 units	42.11 units

	Maximum NROGO Allocation	***Maximum Square Footage (SF)***
Existing Code *(ref. LDC 138-51)*	10,000 SF/ Allocation Quarter	10,000 SF/ Structure
Proposed Code *(ref. proposed LDC Section 130-143)*	49,900 SF/ Allocation*	49,900 SF/ Structure; and/or 49,900 maximum SF within overlay
* The maximum nonresidential floor area to be allocated or transferred to the Tavernier Key Commercial Overlay District shall be limited to a maximum of 49,900 square feet.		

The Applicants' proposed text would relax the development restrictions within the Overlay by allowing for the potential NROGO allocation of up to 49,900 square feet within a single allocation quarter and for a single structure as opposed to a maximum of 10,000 square foot per structure as set forth in LDC Section 138-51. As currently drafted, it is apparent that the intent of the overlay is to limit the nonresidential development potential of the Property to no more than 49,900 square feet of nonresidential floor area and 86 units of deed restricted affordable housing.

It should be noted that as of November 16, 2023, there are approximately 33 affordable ROGO allocations available. **Therefore, there is not currently a sufficient number of ROGO allocations available to develop the 86 units of affordable housing referenced throughout the Applicants' concurrent applications for development. The Applicants are aware that there is not a sufficient number of ROGO allocations currently available for the proposed project and that the County cannot guarantee that additional ROGO allocations will become available for the Applicants.**

Traffic Review

Due to the specificity of the proposed development through this application and concurrent applications, Staff requested that a Level III Traffic Study be submitted, reviewed and approved before the proposed text amendment be considered by the Planning Commission. A Level III Traffic Study was initially received by Staff on November 10, 2022, updated in February 2023, May 2023, November 2023 and again January 2024. The Study and subsequent revisions have been forwarded to the County's Transportation Consultant (AECOM) for review, with the most recent review comments dated November 21, 2023.

As of the date of this report, the comments that remain outstanding are listed below:

1. The TIS states that the Liquor store is located within Publix but will have its own entrance and not be accessible from Publix. Please confirm whether the 2,100 sf liquor store is part of the 49, 340 sf supermarket or not. If part of the supermarket, then for trip generation purposes the supermarket square footage needs to be reduced.

2. ITE Trip Generation Manual provides both average rates and fitted curve for the proposed land uses. Fitted curve seems to generate more daily trips for the proposed land uses. Please confirm why average trip rates were used as opposed to the fitted curve?
3. Overseas Highway / US 1 & Project Driveway intersection evaluation discussion in the TIS indicates that once the site is fully developed, occupied and operational a signal warrant analysis will be conducted. Considering that a new signal will have an impact on US 1 traffic flow, Monroe County in general does not prefer adding new signals if a less restrictive improvement (other than a signal) can accommodate the traffic demand. As such, we recommend including an assessment of potential impacts to US 1 traffic flow as part of any future analysis or studies related to adding a signal at this location. Also, considering a recent signal at Burton Drive which is approximately 950 feet from the project driveway location and access management spacing requirements, a signal at the project driveway may not be desirable.
4. As indicated in Table 6, Segment 21 (Plantation) is projected to be overcapacity. The shortfall of 76 daily trips in Segment 21 must be mitigated. As indicated in the previous comment/ responses and discussed at the March 27, 2023 meeting, the applicant should develop specific mitigation measures consistent with the LDC Section 114-2(a)(1)b.
5. As discussed at the March 27, 2023 meeting between the applicant and Monroe County, the method of using Placer. Ai data to offset capacity is not consistent with the industry standards / procedures and LDC Section 114-2(a)(1)b.
6. The truck turning paths show the trucks making turns from the through lane (not from the dedicated turn lanes). Please review and update as needed. Also, please be advised that the site plan as presented may need to be changed according to the Monroe County and Tavernier Design Guidelines. As such, there may be additional comments during future reviews.
7. Please confirm if the timing/phasing used as part of the Synchro analysis for US 1 and Burton Drive intersection is the latest / final signal timing obtained from FDOT.

Based on the trip generation numbers provided in the submitted Revised Traffic Study, it appears the daily trip generation is as follows:

ITE Code 220: 86 units * 6.02 = 518 daily trips
ITE Code 850: (47,240 SF/1000) * 97.77 = 4,619 daily trips
ITE Code 899: (2,100 SF/1000) * 107.21 = 225 daily trips

Total= 5,362 daily trips (without excluding pass-by trips)

This calculation does not include any "internal capture" that may exist between the proposed residential units and nonresidential square footage. The submitted Level III Traffic Study goes on to provide a more detailed analysis of the daily trip generation, potential impacts to affected segments of US1 and potential impacts to relevant intersections.

If the proposed LDC text amendment and corresponding LUD Overlay map amendment are approved, these comments would be addressed during the major conditional use approval review process. As of the date of this report, the Applicants have yet to propose any mitigation measures consistent with the requirements set forth in LDC Section 114-2(a)(1)b. The Applicants' assert that with the addition of a new Publix at the Property, less vehicles will be traveling through Segment 21 (MM 86.0 – MM 91.5) as the existing customer base that lives within Segment 22 (MM 91.5 to MM 99.5) would "transfer

nearly all of their supermarket shopping trips to the new Publix store in Tavernier." Although this may be a compelling argument, there are two major flaws. First, this type of analysis has not historically been accepted with regards to mitigation. Second, there is nothing in the proposed LDC Text Amendment or corresponding applications that would only allow the development of a Publix Supermarket. Rather, the proposed commercial retail space could be occupied by any number of existing or unknown businesses or corporations, as the LDC does not and cannot regulate or require a specific business to occupy the Property.

Consistency with the LDC

In accordance with LDC Section 102-158(d)(7)(b), the BOCC may consider the adoption of an ordinance enacting the proposed map and text amendments to this Land Development Code based on one or more of the following factors:

1. **Changed projections (e.g., regarding public service needs) from those on which the text or boundary was based;**

   Per the Applicant: No response provided.

2. **Changed assumptions (e.g., regarding demographic trends);**

   Per the Applicant: No response provided.

3. **Data errors, including errors in mapping, vegetative types and natural features described in volume 1 of the plan;**

   Per the Applicant: No response provided.

4. **New issues;**

   Per the Applicant: No response provided.

5. **Recognition of a need for additional detail or comprehensiveness; or**

   Per the Applicant: "The proposed Overlay is based on a need for additional detail or comprehensiveness. The current Code has provisions that encourage overlay districts to be created to benefit and promote the character of the community in its development. Permitting the Overlay furthers the objectives of the Code as it encourages the orderly development and construction of commercial structures or buildings that fit with the architectural design and community character of the Tavernier community. The Overlay encourages sound, attractive, and practical procedures for the Tavernier community, and such provisions will result in flexible planning that benefits the community the Overlay will serve.

   Staff does not support the claim that the proposed text amendment to the Land Development Code would address a need for additional detail or comprehensiveness. Alternatively, it appears that the proposed amendment would be creating inconsistencies between the proposed overlay and the adopted Land Development Code and Comprehensive Plan.

   To address the concerns of inconsistency, the Applicants must address the following two (2) main issues: 1) consistency with the Tavernier LCP and Mile Marker 97 U.S. Highway 1 Corridor

Development Standards and Guidelines ("US1 Guidelines") and 2) consistency with community character.

The Applicants assert that the Overlay "furthers the objectives of the Code as it 'encourages the orderly development and construction of commercial structures or buildings that fit with the architectural design and community character of the Tavernier community". However, the proposed language does not support this assertion nor have the Applicants submitted data and analysis demonstrating consistency with community character.

In accordance with LDC Section 101-1, **community character is defined as the image and perception of a community as defined by the recognizable natural and built landmarks, boundaries and features that provide a sense of place and orientation and the interrelationship of all these characteristics.**
The Property is within the Suburburban Commercial (SC) Land Use District and the Tavernier Creek to Mile Marker 97 U.S. Highway 1 Corridor District Overlay (TC), established by LDC Section 130-128. **All proposed development within the existing overlay must comply with the Tavernier Creek to Mile Marker 97 U.S. Highway Corridor Development Standards and Guidelines, which are adopted as part of Chapter 130 of the Land Development Code**. The Property is also subject to the policies and guidelines provided in the Tavernier Livable CommuniKeys Plan, which is adopted as part of the County's Comprehensive Plan.

The Tavernier Creek to Mile Marker 97 U.S. Highway Corridor Development Standards and Guidelines include specific building types, with the intent of guiding the development of new construction so that it continues to define the character of Tavernier and so that the massing, scale, and materials of new structures are compatible with this existing character. The guidelines provide for the construction of large commercial buildings through the aggregation of smaller buildings, as depicted in the excerpts from the guidines pictured below:

5. Building Types

The intent is to guide the development of new construction so that buildings continue to define a character for Tavernier and that the massing, scale and materials of new structures are compatible with this character. These are the recommended types for new construction in the corridor. The listed building types are not the universe of buildings that can be developed in the corridor; they are merely applied examples of the guidelines and standards in this document. Figure 27 does not accurately reflect all county regulations and is illustrative of building concept only.

Large Commercial Building

The intent is to create a building prototype that would fit in the General Urban zone deep lots or in the suburban zone.

This building type is characterized by the aggregation of smaller buildings; where possible, these should be arranged as to create positive accessible open space (Figure 27). The building may be clad with siding or finished with stucco. The primary façade is lined with arcades and balconies; windows are covered with operable Bahama shutters, and roofs are standing seam metal.



Figure 27 Large Commercial Building Type

Multifamily Residential

The architecture of the building should consist of the materials recommended in these guidelines and it should be compatible with architectural and urban character of Tavernier. Access to individual units should be obvious from the street level (Figure 28).

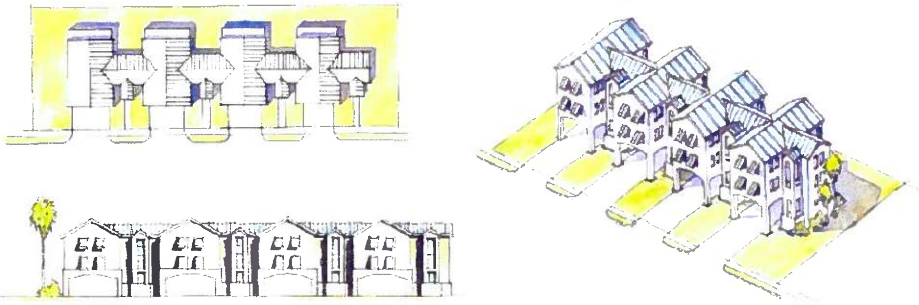
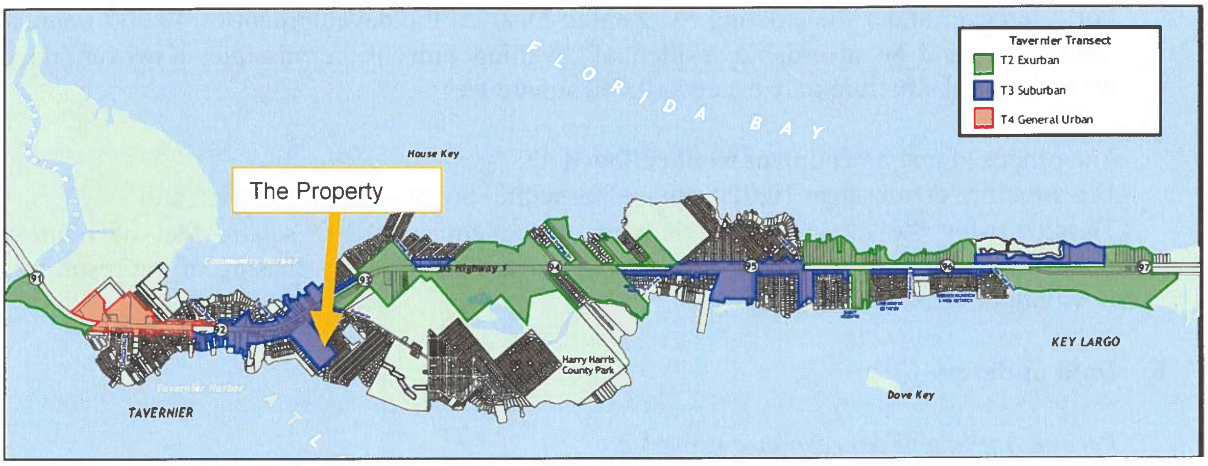


Figure 28 Multi Family Building

To further guide new development within the TC Overlay, these guidelines utilized transect zoning. The transects do not eliminate the standards set by the County's Code or zoning laws, but are intended to help organize the regulations according to the transect with which the property belongs. The Transect Map, which is adopted as part of the Land Development Code through Section 130-128, is pictured below:



As depicted in the above map, the Property is within the Suburban Zone of the TC overlay, which "is characterized by intermittent occurrences of open space, residential development of diverse densities, and industrial and general commercial uses following a pattern similar to that found in the mainland suburbs." According to the Glossary, *Suburban,* is "characterized by low density residential, this zone is more vegetated than the general urban zone. In this zone blocks tend to be larger." Alternatively, according to the Guidelines, "the urban zone is the area where most of the retail and commercial mixed use development are found and it is the area that the community identifies as its center".

The establishment of the proposed overlay would allow for a single nonresidential structure of up to 49,900 square feet on the Property. This is not consistent with the adopted Guidelines, which encourage the aggregation of smaller buildings when considering large scale commercial development. The proposed amendment would allow for the size of a nonresidential structure that is inconsistent with the established community character that is indicated by the existing smaller scale development within the Suburban zone. **This is inconsistent with existing community character and would allow for development that does not comply with LDC Section 130-128 nor Comprehensive Plan Policy No. 105.1.2.**

> **Land Development Code Section 130-128(b)**: The Tavernier Creek to Mile Marker 97 U.S. Highway 1 Corridor Development Standards and Guidelines are hereby adopted by reference and declared a part of this chapter. Within the overlay district, as designated on the Tavernier Creek to Mile Marker 97 U.S. Highway 1 District Overlay Map, uses permitted as of right and **uses requiring a minor or major conditional use permit shall be reviewed based upon the Tavernier Creek to Mile Marker 97 U.S. Highway 1 Corridor Development Standards and Guidelines and approved if found in compliance with these standards and guidelines.**
>
> **Comprehensive Plan Policy No. 105.1.2:** Monroe County shall enforce the design guidelines established within the Livable CommuniKeys Plans and its land development regulations which ensure that future uses and development are compatible with scenic preservation and maintenance of the character of the casual island village atmosphere of the Florida Keys.

For reference, under the existing SC Zoning District, the development of 49,900 nonresidential square feet and 86 affordable residential dwelling units is permissible; however, no one (1) nonresidential structure may exceed 10,000 square feet.

The proposed text amendment would allow both:
1) a structure greater than 10,000 square feet within the SC Zoning District; and
2) allows for the allocation or transfer of the entire 49,900 square feet of nonresidential development (NROGO floor area) at one time. Therefore, no phasing of the resulting project would be required.

6. Data updates;

Per the Applicant: No response provided.

7. Consistency with the Comprehensive Plan and the principles for guiding development as defined in Section 380.0552, Florida Statutes.

Per the Applicant: No response provided.

Staff has not found the proposed text amendment consistent with the Comprehensive Plan and the principles for guiding development as defined in F.S. Section 380.0552 as noted in section V of this Report.

The proposed amendment is <u>not</u> consistent with Comprehensive Plan Policy 101.5.6:

> The principal purpose of the Mixed Use/Commercial (MC) future land use category is to provide for the establishment of mixed use commercial land use (zoning) districts where various types of commercial retail and office may be **permitted at intensities which are consistent with the community character** and the natural environment. Employee housing and commercial apartments are also permitted. In addition, Mixed Use/Commercial land use districts are to establish and conserve areas of mixed uses, which may include maritime industry, light industrial uses, commercial fishing, transient and permanent residential, institutional, public, and commercial retail uses.
>
> This future land use category is also intended to allow for the establishment of mixed use development patterns, where appropriate. Various types of residential and nonresidential uses may be permitted; however, heavy industrial uses and similarly incompatible uses shall be prohibited. The County shall continue to take a proactive role in encouraging the preservation and enhancement of community character and recreational and commercial working waterfronts.
>
> In order to protect environmentally sensitive lands, the following development controls shall apply to all hammocks, pinelands, and disturbed wetlands within this land use category:
>
> 1. only low intensity commercial uses shall be allowed;
> 2. a maximum floor area ratio of 0.10 shall apply to nonresidential development; and
> 3. maximum net residential density shall be zero.

Additionally, as previously discussed, the Property is subject to the Tavernier Creek to Mile Marker 97 Livable CommuniKeys Master Plan. In accordance with Comprehensive Plan Policy 101.19.2, the Community Master Plans shall be incorporated into the 2030 Comprehensive Plan as a part of the plan and be implemented as part of the Comprehensive Plan.

The Livable CommuniKeys Master Plan for Tavernier Creek to Mile Marker 97 dated February 11, 2005 and adopted by the Board of County Commissioners on February 16, 2005 through Ordinance 002-2005 is incorporated by reference into the Comprehensive Plan. The term Strategies in the Master Plan is equivalent to the term Objective in the Comprehensive Plan and the term Action Item is equivalent to the term Policy; the meanings and requirements for implementation are synonymous.

In reviewing the Tavernier CommuniKeys Plan, it is evident that the vision was to preserve the heritage and natural setting of the existing community, with limited redevelopment of commercial properties. The CommuniKeys Plan even includes an Action Item [*below*] that prohibits the designation of new commercial land use districts beyond those that are already contained within the Master Plan in order to prevent further sprawl or strip commercial zoning.

Action Item 3.1.3 of the Tavernier Livable CommuniKeys Plan: Prohibit the designation of new commercial land use districts beyond that contained in this Master Plan in order to protect the existing viability of the US1 Corridor Area and Community Center and to prevent the further sprawl or strip commercial zoning.

The proposed text amendment is inconsistent with the Tavernier Livable CommuniKeys Plan, which renders the proposed amendment inconsistent with Comprehensive Plan Policy No. 101.19.2.

(d.) In no event shall an amendment be approved which will result in an adverse community change to the planning area in which the proposed development is located or to any area in accordance with a livable communikeys master plan pursuant to findings of the board of county commissioners [Ref. Code Section 102-158(d)(7)d.].

Per the Applicant: "There will be no adverse change to unincorporated Monroe County if the Overlay is approved. As discussed herein, there are no increased concurrency, environmental, or practical impacts associated with the increased NROGO permitted within the Overlay. All such development will be required to at a minimum comply with level of service, concurrency, and performance standards as set forth in the Code."

Staff **anticipates** the proposed amendment **will** result in an adverse community change to Tavernier.

The theme throughout the Tavernier LCP is one of protection for the natural environment, preservation of the historic elements of Tavernier and guided development and growth in a manner that is compatible with community goals. The LCP provides a number of goals, objectives and action items to enact policies consistent with the theme and intent of the LCP. In reviewing the Tavernier LCP and the Community Vision statement therein, it appears the proposed amendment may not be consistent with the Community Vision:

We envision the Tavernier Creek Bridge to Mile Marker 97 Planning Area as:

An island community committed to preserving its heritage, natural setting and stands of native tropical hardwood hammocks, with improvements to the visual character of the U.S. 1 corridor, limited redevelopment of commercial properties, and neighborhoods where residents have access to the water and recreational facilities.

The text amendment as drafted proposes to relax the development restrictions on the Property without providing adequate data to support such a change nor demonstrating consistency with the Tavernier LCP and existing community character.

For example, within the Suburban Zone, the intent of the building configuration standards is to break down the apparent mass of buildings wider [*or deeper*] than 50 feet by creating façade insets at intervals appropriate to the mass of the building. The maximum continuous façade of any building fronting US1 cannot be greater than 50 feet. A building wider than 50 feet will be architecturally defined as a series of smaller units, with insets between primary façades. The inset façade shall not be setback less than six (6) feet.

The overlay and text as proposed, do not include provisions that support or expand upon construction consistent with the architectural theme of Tavernier.The primary change that would result from adoption of the proposed overlay would be the ability to construct a nonresidential structure that is over 10,000 square feet [*on properties within the overlay*].

The Tavernier Community is well established and primarily developed in accordance with the adopted guidelines and Livable CommuniKeys Plan. As the primary component of the text amendment is the ability to construct a nonresidential structure that is greater than 10,000 square feet, staff considered the affect the amendment would have on the existing character of the Tavernier Community as a whole, and within the Suburban Transect. To aid in this review for consistency,Staff reviewed the size of existing buildings of surrounding properties within both the Suburban and Urban transect zones. According to data from the Monroe County Property Appraiser's website, the largest existing commercial structure within 600 feet of the Property is approximately 12,000 square feet, known as the Vaughn Building. For reference only, some recogizable commercial buildings within Tavernier are described in the table below:

Common Property Name	Building Square Footage (approximate)	Transect Zone per US1 Design Guidelines
Tavernier Towne*	526,686	General Urban
Mariners Hospital*	75,737	General Urban
FKEC Property	59,403	General Urban
Tavernier Commercial Center	26,782	General Urban
'Old' Bank of America	9,420	Suburban
Vaughn Building	12,000	Suburban
*Nodes of community center per Guidelines and LCP		

Pursuant to LDC Section 101-1, **community character means the image and perception of a community as defined by the recognizable natural and built landmarks, boundaries and features that provide a sense of place and orientation and the interrelationship of all these characteristics**.

The allowance of a structure that is up to 49,900 square feet is much larger than existing structures within the transect area noted as Suburban and would be inconsistent with the established community character. The existing LDC, when coupled with the TC Overlay Guidelines and Tavernier LCP, intentionally limits the maximum size of each structure.

As previously stated, the proposed text amendment is inconsistent with the Tavernier Livable CommuniKeys Plan, which renders the proposed amendment inconsistent with Comprehensive Plan Policy No. 101.19.2. Additionally, the proposal is inconsistent with Comp Plan Policy 101.5.6 which states that various types of commercial retail and office may be **permitted at intensities which are consistent with the community character** and the natural environment.

V. CONSISTENCY WITH THE MONROE COUNTY YEAR 2030 COMPREHENSIVE PLAN, THE PRINCIPLES FOR GUIDING DEVELOPMENT, AND FLORIDA STATUTES.

A. The proposed amendment <u>is not</u> consistent with the Goals, Objectives and Policies of the Monroe County 2030 Comprehensive Plan. Specifically, it is inconsistent with:
Policy 101.5.6

The principal purpose of the Mixed Use/Commercial (MC) future land use category is to provide for the establishment of mixed use commercial land use (zoning) districts where various types of commercial retail and office **may be permitted at intensities which are consistent with the community character** and the natural environment. Employee housing and commercial apartments are also permitted. In addition, Mixed Use/Commercial land use districts are to establish and conserve areas of mixed uses, which may include maritime industry, light industrial uses, commercial fishing, transient and permanent residential, institutional, public, and commercial retail uses.

This future land use category is also intended to allow for the establishment of mixed use development patterns, where appropriate. Various types of residential and nonresidential uses may be permitted; however, heavy industrial uses and similarly incompatible uses shall be prohibited. The County shall continue to take a proactive role in encouraging the preservation and enhancement of community character and recreational and commercial working waterfronts.

*****

Policy 101.19.1
Monroe County shall develop, maintain, and update periodically, as appropriate, with public input, the Livable CommuniKeys Community Master Plans. Community Master Plans will be maintained in accordance with the following principles:

1. Each Community Master Plan will contain a framework for future development and redevelopment including the designation of growth boundaries and future acquisition areas for public spaces and environmental conservation;

2. Each Community Master Plan will include an Implementation Strategy composed of action items, an implementation schedule, and a monitoring mechanism to provide accountability to communities;

3. Each Community Master Plan will be consistent with existing Federal and State requirements and overall goals of the 2030 Comprehensive Plan to ensure legal requirements are met. While consistency with the goals of the 2030 Comprehensive Plan is paramount, the 2030 Plan will be updated and amended where appropriate;

4. Each Community Master Plan will be closely coordinated with other community plans and other jurisdictions to ensure development or redevelopment activities will not adversely impact those areas;

5. Each Community Master Plan will include appropriate mechanisms allowing citizens continued oversight and involvement in the implementation of their plans. Through the Community Master Plans, programs for ongoing public involvement, outreach, and education will be developed;

6. Each Community Master Plan will include a Capital Improvements program to provide certainty that the provision of public facilities will be concurrent with future development;

7. Each Community Master Plan will contain an environmental protection element to maintain existing high levels of environmental protection as required in the 2030 Comprehensive Plan;

8. Each Community Master Plan will include a community character element that will address the protection and enhancement of existing residential areas and the preservation of community character through site and building guidelines. Design guidelines for public spaces, landscaping, streetscaping, buildings, parking lots, and other areas will be developed through collaborative efforts of citizens, the Planning Department, and design professionals reinforcing the character of the local community context;

9. Each Community Master Plan will include an economic development element addressing current and potential diversified economic development strategies including tourism management. The preservation and retention of valued local businesses, existing economies, and the development of economic alternatives will be encouraged through the process;

10. Each Community Master Plan will contain a Transportation Element addressing transportation needs and possibilities including circulation, safe and convenient access to goods and services, and transportation alternatives that will be consistent with the overall integrity of the transportation system not resulting in negative consequences for other communities; and

11. Each Community Master Plan will be based on knowledge of existing conditions in each community. The Planning Department will compile existing reports, databases, maps, field data, and information from other sources supplemented by community input to document current conditions; and

12. Each Community Master Plan will simplify the planning process providing clarity and certainty for citizens, developers, and local officials by providing a transparent framework for a continuing open dialogue with different participants involved in planning issues.

Policy 101.19.2
The Community Master Plans shall be incorporated into the 2030 Comprehensive Plan as a part of the plan and be implemented as part of the Comprehensive Plan. The following Community Master Plans have been completed in accordance with the principles outlined in this section and adopted by the Board of County Commissioners:

*****

2. The Livable CommuniKeys Master Plan for Tavernier Creek to Mile Marker 97 dated February 11, 2005 and adopted by the Board of County Commissioners on February 16, 2005 is incorporated by reference into the 2010 Comprehensive Plan. The term Strategies in the Master Plan is equivalent to the term Objective in the Comprehensive Plan and the term Action Item is equivalent to the term Policy; the meanings and requirements for implementation are synonymous. Adopted by Ordinance 002-2005.

*****

Policy 105.1.2
Monroe County shall enforce the design guidelines established within the Livable CommuniKeys Plans and its land development regulations which ensure that future uses and development are compatible with scenic preservation and maintenance of the character of the casual island village atmosphere of the Florida Keys.

Policy 105.1.3
Monroe County shall, through its development standards and Land Development Code, continue to foster the retention and redevelopment of small businesses on the U.S.1.
Tavernier LCP
Community Vision
We envision the Tavernier Creek Bridge to Mile Marker 97 Planning Area as: An island community committed to preserving its heritage, natural setting and stands of native tropical hardwood hammocks, with improvements to the visual character of the U.S. 1 corridor, limited redevelopment of commercial properties, and neighborhoods where residents have access to the water and recreational facilities.

Action Item 3.1.1: Designate a "Community Center" from MM 91 to Burton Dr. pursuant to Policy 105.2.15 where Tier III infill and incentives for redevelopment will be encouraged.

Action Item 3.1. 2: Require that any new development or redevelopment approved within the designated US Highway 1 Community Center, meeting the following criteria, be consistent with design standards established pursuant to Action Items 3.2.3 and 3.3.3:
1. Any new or expanded non-residential structures of greater than 2,500 square feet in floor area;
2. Any new or expanded outdoor retail sales;
3. Any new residential structure containing more than three units or redeveloped residential structure containing more than three units that involves a change in floor area, building height or configuration of building footprint;
4. Any new transient residential structure or redeveloped existing transient residential structure that involves a change of floor area, building height, or configuration of building footprint.

Action Item 3.1.3: Prohibit the designation of new commercial land use districts beyond that contained in this Master Plan in order to protect the existing viability of the US 1 Corridor Area and Community Center and to prevent the further sprawl or strip commercial zoning.

Strategy 3.2
Develop and adopt a Commercial Corridor Enhancement Plan for the U.S. 1 Corridor Area between MM 91 and MM 93.5.

Action Item 3.2.3: Develop and adopt design standards and design guidelines for development within the U.S. 1 Corridor Area and the Community Center.

B. The amendment <u>is not</u> consistent with the Principles for Guiding Development for the Florida Keys Area, Section 380.0552(7), Florida Statutes.

For the purposes of reviewing consistency of the adopted plan or any amendments to that plan with the principles for guiding development and any amendments to the principles, the principles shall be construed as a whole and no specific provision shall be construed or applied in isolation from the other provisions.

(a) Strengthening local government capabilities for managing land use and development so that local government is able to achieve these objectives without continuing the area of critical state concern designation.

(b) Protecting shoreline and benthic resources, including mangroves, coral reef formations, seagrass beds, wetlands, fish and wildlife, and their habitat.

(c) Protecting upland resources, tropical biological communities, freshwater wetlands, native tropical vegetation (for example, hardwood hammocks and pinelands), dune ridges and beaches, wildlife, and their habitat.

(d) Ensuring the maximum well-being of the Florida Keys and its citizens through sound economic development.

(e) Limiting the adverse impacts of development on the quality of water throughout the Florida Keys.

(f) Enhancing natural scenic resources, promoting the aesthetic benefits of the natural environment, and ensuring that development is compatible with the unique historic character of the Florida Keys.

(g) Protecting the historical heritage of the Florida Keys.

(h) Protecting the value, efficiency, cost-effectiveness, and amortized life of existing and proposed major public investments, including:

1. The Florida Keys Aqueduct and water supply facilities;
2. Sewage collection, treatment, and disposal facilities;
3. Solid waste treatment, collection, and disposal facilities;
4. Key West Naval Air Station and other military facilities;
5. Transportation facilities;
6. Federal parks, wildlife refuges, and marine sanctuaries;
7. State parks, recreation facilities, aquatic preserves, and other publicly owned properties;
8. City electric service and the Florida Keys Electric Co-op; and
9. Other utilities, as appropriate.

(i) Protecting and improving water quality by providing for the construction, operation, maintenance, and replacement of stormwater management facilities; central sewage collection; treatment and disposal facilities; and the installation and proper operation and maintenance of onsite sewage treatment and disposal systems.

(j) Ensuring the improvement of nearshore water quality by requiring the construction and operation of wastewater management facilities that meet the requirements of ss. 381.0065(4)(l) and 403.086(10), as applicable, and by directing growth to areas served by central wastewater treatment facilities through permit allocation systems.

(k) Limiting the adverse impacts of public investments on the environmental resources of the Florida Keys.

(l) Making available adequate affordable housing for all sectors of the population of the Florida Keys.
(m) Providing adequate alternatives for the protection of public safety and welfare in the event of a natural or manmade disaster and for a post disaster reconstruction plan.
(n) Protecting the public health, safety, and welfare of the citizens of the Florida Keys and maintaining the Florida Keys as a unique Florida resource.

Pursuant to Section 380.0552(7) Florida Statutes, the proposed amendment is not consistent with the Principles for Guiding Development as a whole.

As noted in the analysis in Sections IV and V of this Report, the proposed amendment is inconsistent with the County's Comprehensive Plan. Approval of the proposed amendment would limit the County's ability for managing land use without direct oversight provided by designation as an area of critical state concern.

C. The proposed amendment, <u>is not</u> consistent with the Part II of Chapter 163, Florida Statute (F.S.). Specifically:

163.3161(4), F.S. – It is the intent of this act that local governments have the ability to preserve and enhance present advantages; encourage the most appropriate use of land, water, and resources, consistent with the public interest; overcome present handicaps; and deal effectively with future problems that may result from the use and development of land within their jurisdictions. Through the process of comprehensive planning, it is intended that units of local government can preserve, promote, protect, and improve the public health, safety, comfort, good order, appearance, convenience, law enforcement and fire prevention, and general welfare; facilitate the adequate and efficient provision of transportation, water, sewerage, schools, parks, recreational facilities, housing, and other requirements and services; and conserve, develop, utilize, and protect natural resources within their jurisdictions.

163.3161(6), F.S. – It is the intent of this act that adopted comprehensive plans shall have the legal status set out in this act and that no public or private development shall be permitted except in conformity with comprehensive plans, or elements or portions thereof, prepared and adopted in conformity with this act.

163.3177(1), F.S. – The comprehensive plan shall provide the principles, guidelines, standards, and strategies for the orderly and balanced future economic, social, physical, environmental, and fiscal development of the area that reflects community commitments to implement the plan and its elements. These principles and strategies shall guide future decisions in a consistent manner and shall contain programs and activities to ensure comprehensive plans are implemented. The sections of the comprehensive plan containing the principles and strategies, generally provided as goals, objectives, and policies, shall describe how the local government's programs, activities, and land development regulations will be initiated, modified, or continued to implement the comprehensive plan in a consistent manner. It is not the intent of this part to require the inclusion of implementing regulations in the comprehensive plan but rather to require identification of those programs, activities, and land development regulations that will be part of the strategy for implementing the comprehensive plan and the principles that describe how the programs, activities, and land development regulations will be carried out. The plan shall establish meaningful and predictable standards for the use and development of land and provide meaningful guidelines for the content of more detailed land development and use regulations.

163.3194, F.S. – (1)(a) After a comprehensive plan, or element or portion thereof, has been adopted in conformity with this act, all development undertaken by, and all actions taken in regard to

development orders by, governmental agencies in regard to land covered by such plan or element shall be consistent with such plan or element as adopted.

(b) All land development regulations enacted or amended shall be consistent with the adopted comprehensive plan, or element or portion thereof, and any land development regulations existing at the time of adoption which are not consistent with the adopted comprehensive plan, or element or portion thereof, shall be amended so as to be consistent. If a local government allows an existing land development regulation which is inconsistent with the most recently adopted comprehensive plan, or element or portion thereof, to remain in effect, the local government shall adopt a schedule for bringing the land development regulation into conformity with the provisions of the most recently adopted comprehensive plan, or element or portion thereof. During the interim period when the provisions of the most recently adopted comprehensive plan, or element or portion thereof, and the land development regulations are inconsistent, the provisions of the most recently adopted comprehensive plan, or element or portion thereof, shall govern any action taken in regard to an application for a development order.

163.3201, F.S. – Relationship of comprehensive plan to exercise of land development regulatory authority.—It is the intent of this act that adopted comprehensive plans or elements thereof shall be implemented, in part, by the adoption and enforcement of appropriate local regulations on the development of lands and waters within an area. It is the intent of this act that the adoption and enforcement by a governing body of regulations for the development of land or the adoption and enforcement by a governing body of a land development code for an area shall be based on, be related to, and be a means of implementation for an adopted comprehensive plan as required by this act.

163.3202, F.S. – Land development regulations.—
(1) Within 1 year after submission of its comprehensive plan or revised comprehensive plan for review pursuant to s. 163.3191, each county and each municipality shall adopt or amend and enforce land development regulations that are consistent with and implement their adopted comprehensive plan.
(5) The state land planning agency shall adopt rules for review and schedules for adoption of land development regulations.

VI. PROCESS

Land Development Code Amendments may be proposed by the Board of County Commissioners, the Planning Commission, the Director of Planning, private application, or the owner or other person having a contractual interest in property to be affected by a proposed amendment. The Director of Planning shall review and process applications as they are received and pass them onto the Development Review Committee and the Planning Commission.

The Planning Commission shall hold at least one public hearing. The Planning Commission shall review the application, the reports and recommendations of the Department of Planning & Environmental Resources and the Development Review Committee and the testimony given at the public hearing. The Planning Commission shall submit its recommendations and findings to the Board of County Commissioners (BOCC). The BOCC holds a public hearing to consider the adoption of the proposed amendment, and considers the staff report, staff recommendation, Planning Commission recommendation and the testimony given at the public hearing. The BOCC may adopt the proposed amendment based on one or more of the factors established in LDC Section 102-158(d)(7).

VII. STAFF RECOMMENDATION

The amendment as drafted proposes to relax the development restrictions on the Property without providing adequate data to support such a change nor demonstrating consistency with the Tavernier LCP and existing community character. It is anticipated that the proposed overlay, would result in an adverse change in the character of the Tavernier Community.

As described throughout this Report, the proposed text amendment would allow for development that is specifically noncompliant and inconsistent with the following Land Development Code Sections and Comprehensive Plan Policies [as well as the policies described throughout Section V of this report]:

- Land Development Code Section 130-128(b)
- Comprehensive Plan Policy No. 101.5.6
- Comprehensive Plan No. 101.19.2

Additionally, on September 1, 2023, the Applicants submitted a separate request to amend the Comprehensive Plan to establish a site-specific subarea policy on a portion of the Property in addition to submitting requests to amend the FLUM and LUD on a portion of the Property that is located within the proposed Overlay. These applications were incomplete when submitted and have not yet been processed by the Planning and Environmental Resources Department.

The Applicant's proposed overlay language includes a requirement for a Development Agreement on the site prior to permitting of the proposed uses. No Development Agreement application has been submitted yet as of the date of this staff report.

Staff recommends that the BOCC **CONTINUE** the Applicant's request to amend the Land Development Code establishing Section 130-143, the Tavernier Commercial Overlay, **until such a time that all current requests to amend the Comprehensive Plan, Land Development Code, Future Land Use Map and Land Use District Map, and the proposed Development Agreement, are processed and prepared to be heard at the same BOCC Hearing to ensure consistency of all concurrently proposed amendments relative to this Property.**

In the event that the BOCC elects to vote on this item at the February 15, 2024 public hearing, Staff recommends **DENIAL** of the proposed amendment to the Land Development Code establishing Section 130-143.

VIII. EXHIBITS

1. DRC Resolution No. DRC 13-22
2. PC Resolution No. P16-23
3. Proposed Text with Staff Recommended Edits
4. Draft Ordinance

MONROE COUNTY, FLORIDA
DEVELOPMENT REVIEW COMMITTEE
RESOLUTION NO. DRC 13-22

A RESOLUTION BY THE DEVELOPMENT REVIEW COMMITTEE RECOMMENDING DENIAL OF AN ORDINANCE BY THE MONROE COUNTY BOARD OF COUNTY COMMISSIONERS AMENDING THE MONROE COUNTY LAND DEVELOPMENT CODE TO ESTABLISH SECTION 130-143, CREATING THE TAVERNIER KEY COMMERCIAL OVERLAY (TKCO) DISTRICT; INCLUDING THE PURPOSE AND INTENT, BOUNDARY, APPLICABILITY, NROGO ALLOCATION STANDARDS, AND MAXIMUM NONRESIDENTIAL AND RESIDENTIAL DEVELOPMENT POTENTIAL; FOR PROPERTIES LOCATED AT 92501 OVERSEAS HIGHWAY, KEY LARGO, APPROXIMATELY MILE MARKER 92.5, HAVING PARCEL IDENTIFICATION NUMBERS 00089490-000000 AND 00490250-000000; AS PROPOSED BY CEMEX CONSTRUCTION MATERIALS FLORIDA, LLC F/K/A SINGLETARY CONCRETE PRODUCTS INC.; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL OF CONFLICTING PROVISIONS; PROVIDING FOR TRANSMITTAL TO THE STATE LAND PLANNING AGENCY AND THE SECRETARY OF STATE; PROVIDING FOR INCLUSION IN THE MONROE COUNTY CODE; PROVIDING FOR AN EFFECTIVE DATE. (FILE 2022-053)

WHEREAS, on March 23, 2022, the Planning and Environmental Resources Department received an application from Smith/Hawks, PL (the "Agent") on behalf of Singeletary Concrete Products, Inc. and Cemex Construction Materials Florida, LLC (the "Applicants,") and The Vestcor Companies, Inc. and Blackstone Group – Tavernier 925, LLC (the "Developers") to amend Monroe County Land Development Code to establish the Tavernier Key Commercial Overlay District (the "Overlay") to allow for a nonresidential ROGO allocation of up to 70,000 square feet, which could allow for the development of a 64,080 SF commercial supermarket, including a liquor store, on property located at 92501 Overseas Highway, Key Largo with parcel identification numbers 00089490-000000 and 00490250-000000 (the "Property"); and

WHEREAS, a corresponding Land Use District (Zoning) map amendment for the Property to apply the Overlay was submitted (File 2022-054) and is under review; and

WHEREAS, an amended and restated text amendment application was received on May 19, 2022 (the "Application", File 2022-053); and

WHEREAS, the proposed text was revised and resubmitted to the Planning Department for review on September 22, 2022; and

WHEREAS, the Property is within the boundary of the Tavernier Livable CommuniKeys Master Plan, a Master Plan for Tavernier Creek Bridge to Mile Marker 97, (the "LCP"); and

WHEREAS, the Property is within the Tavernier Creek to Mile Marker 97 U.S. Highway 1 Corridor District Overlay (TC) as identified in the Tavernier Creek to Mile Marker 97 U.S. Highway 1 Corridor Development Standards and Guidelines (the "Corridor Development Guidelines"); and

WHEREAS, the Property is within the Suburban Zone as identified in Corridor Development Guidelines; and

WHEREAS, the Suburban zone is characterized by intermittent occurrences of open space, residential development of diverse densities, and industrial and general commercial uses following a pattern similar to that found in the mainland suburbs; and

WHEREAS, the vision for the corridor allows the individual zones to maintain their distinctive characteristics, yet, encourages a unified image of the corridor as a whole, where landscape and the built environment share common elements; and

WHEREAS, Staff is recommending edits to the Applicant's proposal in an effort to provide for internal consistency of the Land Development Code (LDC), and to further implement goals, strategies and action items of the LCP and the Corridor Development Guidelines, which represent the community's vision for the Tavernier area;

WHEREAS, the Monroe County Development Review Committee (DRC) reviewed and considered the proposed amendment at a regularly scheduled meeting held on October 25, 2022; and

WHEREAS, the professional staff memorandum for the DRC meeting dated October 14, 2022, completed by Cheryl Cioffari, AICP, Assistant Director of Planning, and Devin Tolpin, AICP, CFM, Principal Planner, requests and recommends the Applicant address: (1) consistency with the Tavernier LCP and Mile Marker 97 U.S. Highway 1 Corridor Development Standards and Guidelines ("US1 Guidelines") and (2) consistency with community character.

WHEREAS, based upon the information and documentation submitted, the Development Review Committee Chair found:

1. The proposed amendment is **not** consistent with the Goals, Objectives and Policies of the Monroe County Year 2030 Comprehensive Plan; and
2. The proposed amendment is **not** consistent with the Principles for Guiding Development for the Florida Keys Area of Critical State Concern, Sec. 380.0552(7), F.S.; and
3. The proposed amendment is **not** consistent with Part II of Chapter 163, Florida Statute;

4. The proposed amendment **will** result in an adverse change in community character to the sub-area which a proposed amendment affects or to any area in accordance with the Tavernier Livable CommuniKeys Master Plan pursuant to findings of the BOCC; and
5. The proposed amendment, is **not** necessary due to new issues and recognition of a need for additional detail or comprehensiveness, as required by Section 102-158 of the Monroe County Code.

NOW, THEREFORE, BE IT RESOLVED BY THE DEVELOPMENT REVIEW COMMITTEE OF MONROE COUNTY, FLORIDA that the information provided in the staff report and discussed at the October 25, 2022 meeting supports the Chair's decision to recommend **DENIAL** of the proposed amendment to Land Development Code establishing Section 130-143 to the Planning Commission and Board of County Commissioners.

Date 11/14/22

Emily Schemper, AICP, CFM
Senior Director of Planning & Environmental Resources

I HEREBY CERTIFY that on this day before me, an officer duly authorized in the State aforesaid and in the County aforesaid to take acknowledgments, personally appeared Emily Schemper, to me known to be the person described in and who executed the foregoing instrument and she acknowledged before me that she executed the same.

WITNESS my hand and official seal in the County and State last aforesaid this 14th day of November, 2022.

NOTARY PUBLIC, STATE OF FLORIDA

ALISON J. SMITH
Notary Public - State of Florida
Commission # HH 155590
My Comm. Expires Jul 19, 2025
Bonded through National Notary Assn.

MONROE COUNTY, FLORIDA
MONROE COUNTY PLANNING COMMISSION RESOLUTION NO. P16-23

A RESOLUTION BY THE MONROE COUNTY PLANNING COMMISSION RECOMMENDING THAT THE MONROE COUNTY BOARD OF COUNTY COMMISSIONERS DENY THE REQUEST FOR APPROVAL OF AN ORDINANCE SEEKING TO AMEND THE MONROE COUNTY LAND DEVELOPMENT CODE TO CREATE A NEW TAVERNIER KEY COMMERCIAL OVERLAY DISTRICT ("TKCO") VIA THE NEW CREATION OF CODE SECTION 130-143, INCLUDING AMENDMENTS TO THE MONROE COUNTY LAND DEVELOPMENT CODE THAT WOULD RELATE TO NROGO ALLOCATION STANDARDS, THE PURPOSE AND INTENT, BOUNDARY, AND APPLICABILITY, AND MAXIMUM NON-RESIDENTIAL AND RESIDENTIAL DEVELOPMENT POTENTIAL, ALL RELATING TO PROPERTIES LOCATED AT 92501 OVERSEAS HIGHWAY, KEY LARGO, APPROXIMATE MILE MARKER 92.5, CURRENTLY HAVING PROPERTY IDENTIFICATION NUMBERS 00089490-000000 AND 00490250-000000; AS PROPOSED BY CEMEX CONSTRUCTION MATERIALS FLORIDA, LLC F/K/A SINGLETARY CONCRETE PRODUCTS INC.; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL OF CONFLICTING PROVISIONS; PROVIDING FOR TRANSMITTAL TO THE STATE LAND PLANNING AGENCY AND THE SECRETARY OF STATE; PROVIDING FOR INCLUSION IN THE MONROE COUNTY CODE; PROVIDING FOR AN EFFECTIVE DATE[1].

WHEREAS, on March 23, 2022, the Monroe County Planning and Environmental Resources Department received an application from Smith/Hawks, P.L. (the "Agent"), on behalf of Singletary Concrete Products, Inc. and Cemex Construction Materials Florida, LLC (the "Applicants") and The Vestcor Companies, Inc. and Blackstone Group – Tavernier 925, LLC (the "Developers") seeking to amend to Monroe County Land Development Code to create a new Tavernier Key Commercial Overlay District ("TKCO") via the new creation of Code Section 130-143, including amendments to the Monroe County Land Development Code that would relate to NROGO Allocation Standards, the Purpose and Intent, Boundary, and Applicability, and Maximum Non-Residential and Residential Development Potential, all relating to properties

[1] Monroe County Planning and Environmental Resources Department File No. 2022-053.

located at 92501 Overseas Highway, Key Largo, currently having Property Identification Numbers 00089490-000000 and 00490250-000000 (the "Property"); and

WHEREAS, an application[2] seeking approval of a corresponding Land Use District ("LUD") map amendment for the Property to apply the Overlay has been received from the above-named Agent, Applicants, and/or Developers, and is currently under review; and

WHEREAS, an amended and restated text amendment application was received on May 19, 2022[3]; and

WHEREAS, the proposed text was revised and resubmitted to the Monroe County Planning and Environmental Resources Department for review on September 22, 2022; and

WHEREAS, the Monroe County Development Review Committee ("DRC") considered the proposed text amendment at a regularly scheduled meeting held on the 25th day of October, 2022; and

WHEREAS, on November 14, 2022, the DRC Chair signed Resolution No. DRC 13-22, recommending that the Monroe County Planning Commission and the Monroe County Board of County Commissioners **DENY/ISSUE DENIAL OF** the request seeking to amend the Monroe County Land Development Code in order to create brand-new Code Section 130-143, as referenced above; and

WHEREAS, the Property is within the boundary of the Tavernier Livable CommuniKeys Master Plan, a Master Plan for Tavernier Creek Bridge to Mile Marker 97 (the "LCP"); and

WHEREAS, the Property is within the Tavernier Creek to Mile Marker 97 U.S. Highway 1 Corridor District Overlay ("TC") as identified in the Tavernier Creek to Mile Marker 97 U.S. Highway 1 Corridor Development Standards and Guidelines (the "**Corridor Development Guidelines**"); and

WHEREAS, the Property is within the **Suburban Zone** as identified in **Corridor Development Guidelines**; and

WHEREAS, the **Suburban Zone** is characterized by intermittent occurrences of open space, residential development of diverse densities, and industrial and general commercial uses following a pattern similar to that found in the mainland suburbs; and

WHEREAS, the vision for the corridor allows the individual zones to maintain their distinctive characteristics, yet, encourages a unified image of the corridor as a whole, where landscape and the built environment share common elements; and

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[2] Monroe County Planning and Environmental Resources Department File No. 2022-054.
[3] Monroe County Planning and Environmental Resources Department File No. 2022-053.

WHEREAS, the Monroe County Planning Commission ("Planning Commission") held a public hearing on the 28th day of April, 2023, for review and recommendation on the subject request for approval of a Land Development Code text amendment as described above; and

WHEREAS, the Monroe County Planning and Environmental Resources Department's professional staff report ("memorandum") jointly prepared and completed by Assistant Director of Planning Cheryl Cioffari, A.I.C.P., and Principal Planner Devin Tolpin, A.I.C.P., C.F.M., recommends that the Planning Commission **DENY/ISSUE DENIAL OF** the subject request for approval of a Land Development Code text amendment in order to create Code Section 130-143;

WHEREAS, based upon the information and documentation submitted, the Planning Commission found:

1. The proposed amendment **is not consistent with** the Goals, Objectives and Policies of the Monroe County Year 2030 Comprehensive Plan; and
2. The proposed amendment **is not consistent with** the Principles for Guiding Development for the Florida Keys Area of Critical State Concern, Fla. Stat. § 380.0552(7); and
3. The proposed amendment **is not consistent with** Part II of Chapter 163, Florida Statutes;
4. The proposed amendment **will result in an adverse change in community character to the sub-area which a proposed amendment affects or to any area in accordance with the Tavernier Livable CommuniKeys Master Plan pursuant to findings of the BOCC**; and
5. The proposed amendment **is not a necessary adjustment in light of changed conditions, incorrect assumptions or determinations, or recognition of a need for additional detail or comprehensiveness**, as required to alter the text of the Monroe County Land Development Code in accordance with Code Section 102-158.

WHEREAS, the Planning Commission hereby adopts as an appended exhibit of the public hearing conducted regarding this application the official minutes of this hearing attached as Exhibit "A." hereto; and

WHEREAS, the Planning Commission accepts all of the findings of fact in the Monroe County Planning and Environmental Resources Department's professional staff report, and hereby adopts them as the Planning Commission's own findings of fact; and

WHEREAS, the Planning Commission accepts all of the conclusions of law in the Monroe County Planning and Environmental Resources Department's professional staff report, and hereby adopts them as the Planning Commission's own findings of fact; and

WHEREAS, the Planning Commission has considered the full record before it, including but not limited to all remarks by Agent and all public comment; and

WHEREAS, the Planning Commission accepts all of Principal Planner Devin Tolpin's fact and expert opinion testimony and hereby adopts her fact and expert opinion testimony on all questions/issues of fact as the Planning Commission's own findings of fact; and

WHEREAS, the Planning Commission accepts all of Planning Director Emily Schemper's fact and expert opinion testimony and hereby adopts her fact and expert opinion testimony on all questions/issues of fact as the Planning Commission's own findings of fact; and

NOW THEREFORE, BE IT RESOLVED BY THE PLANNING COMMISSION OF MONROE COUNTY, FLORIDA:

Section 1. **Recitals.** The foregoing recitals, findings of fact, and conclusions of law are true and correct and are hereby incorporated as if fully set forth herein, and the record of this proceeding is hereby incorporated as if fully stated herein.

Section 2. The Monroe County Planning Commission has duly considered the entirety of the record before it.

Section 3. The Monroe County Planning Commission concurs with the detailed recommendation(s), findings and conclusions of fact and law of the Monroe County Planning and Environmental Resources Department's professional staff, including but not limited to the testimonial and documentary findings and conclusions of fact and law of the Department's testifying professional staff and the Department's professional staff report.

Section 4. Following considered review of the full record before it, based upon competent substantial evidence in the record, more particularly referenced above in the foregoing prefatory and operative recitals, prefatory and operative findings of fact, and prefatory and operative conclusions of law, all detailing said evidence, **the Monroe County Planning Commission hereby recommends that the Monroe County BOCC DENY/ISSUE DENIAL OF** the instant request to approve amendment of the County's Land Development Code to create Code Section 130-143 as referenced above.

Section 5. **Construction and Interpretation.** This Resolution and its interpretation shall be liberally construed in favor of the Monroe County Planning Commission and Monroe County Board of County Commissioners ("BOCC") and such interpretation shall be entitled to great weight in adversarial administrative proceedings, at trial, on appeal, and in any/all bankruptcy proceedings. The interpretation of Monroe County Comprehensive Plan provision(s), Florida Building Code, Florida Statutes, and Monroe County Code(s) provision(s) whose interpretation arises out of, relates to, or is interpreted in connection with this Resolution shall be liberally construed and enforced in favor of the Monroe County Planning Commission and BOCC and such interpretation shall be entitled to great weight in adversarial administrative proceedings, at trial, on appeal, and in bankruptcy proceedings.

Section 6. **Inconsistency, Partial Invalidity, Severability, and Survival of Provisions.** If any provision of this Resolution, or any portion thereof, is held to be invalid or unenforceable in or by any administrative hearing officer or court of competent jurisdiction, the invalidity or unenforceability of such provision, or any portion thereof, shall neither limit nor impair the operation, enforceability, or validity of any other provision of this Resolution, or any remaining portion(s) thereof. All other provisions of this Resolution, and remaining portion(s) thereof, shall continue unimpaired in full force and effect.

Section 7. **Captions and Paragraph Headings.** Captions and paragraph headings, where used herein, are inserted for convenience only and are not intended to descriptively limit the scope and intent of the particular paragraph or text to which they refer.

PASSED AND ADOPTED BY THE PLANNING COMMISSION of Monroe County, Florida, at a regular meeting held on the 28th day of April, 2023.

Joe Scarpelli, Chair	YES
Ron Demes, Vice Chair	YES
George Neugent, Commissioner	NO
Rosemary Thomas, Commissioner	YES
David Ritz, Commissioner	NO

PLANNING COMMISSION OF MONROE COUNTY, FLORIDA

By: Joseph Scarpelli
Monroe County Planning Commission Chair Joe Scarpelli

Signed this 23rd day of August, 2023

ILZE AGUILA
Notary Public - State of Florida
Commission # HH 030716
My Comm. Expires Oct 31, 2024
Bonded through National Notary Assn.

NOTARY PUBLIC, STATE OF FLORIDA

Monroe County Planning Commission Counsel
Approved As To Form

John J. Wolfe, Esq.
Date: 8/22/2023

FILED WITH THE

AUG 23 2023

AGENCY CLERK

PLANNING COMMISSION
April 28, 2023

Meeting Minutes

The Planning Commission of Monroe County conducted a hybrid virtual and in-person meeting on **Friday, April 28, 2023,** beginning at 10:00 a.m.

CALL TO ORDER by Chair Scarpelli

PLEDGE OF ALLEGIANCE

ROLL CALL by Ilze Aguila

PLANNING COMMISSION MEMBERS

Joe Scarpelli, Chair	Present
Ron Demes, Vice Chair	Present
George Neugent, Commissioner	Present
David Ritz, Commissioner	Present
Rosemary Thomas, Commissioner	Present
Douglas Pryor, Ex-Officio Member (MCSD)	Absent
Christina Gardner, Ex-Officio Member (NASKW)	Absent

STAFF

Emily Schemper, Senior Director of Planning and Environmental Resources
Cheryl Cioffari, Assistant Director of Planning
Mike Roberts, Assistant Director of Environmental Resources
Brad Stein, Development Review Manager
Devin Tolpin, Principal Planner
Peter Morris, Assistant County Attorney
John Wolfe, Planning Commission Counsel
Ilze Aguila, Planning Commission Supervisor

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. Additional copies of presentations were also received.

SWEARING OF COUNTY STAFF

County staff was sworn in by Mr. John Wolfe, along with all applicants and public participants.

CHANGES TO THE AGENDA

None. Items 1 and 2 read together.

DISCLOSURE OF EX PARTE COMMUNICATIONS

Chair Scarpelli disclosed that he had spoken with Mr. Bart Smith regarding Items 1 and 2, and had received a lot of correspondence concerning Items 1 and 2 via email. This will not affect his decision today.

Commissioner Ritz stated that he'd had numerous discussions with numerous people on both issues. This will not affect his decision today.

Commissioner Neugent stated that he had been to the Cemex site, and spoken with some of the principals involved in Items 1 and 2, and in communication with folks regarding Items 3 and 4. This will not affect his decision today.

Commissioner Thomas stated she had received numerous communications but did not speak with anyone. This will not affect her judgment today.

Commissioner Demes stated that he had only spoken to two County Commissioners and that surely would not affect his judgment today.

APPROVAL OF MINUTES

Not applicable.

Chair Scarpelli announced that public comments would be limited to three minutes to keep things moving along. If a prior speaker has made the same comments that a subsequent speaker wishes to make, it is acceptable to state that you agree with a prior speaker to avoid repetition and keep things moving forward.

MEETING

AGENDA ITEMS

1. **AN ORDINANCE BY THE MONROE COUNTY BOARD OF COUNTY COMMISSIONERS** ESTABLISHING MONROE COUNTY LAND DEVELOPMENT CODE SECTION 130-143 TAVERNIER KEY COMMERCIAL OVERLAY (TKCO) DISTRICT; ESTABLISHING PURPOSE AND INTENT, BOUNDARY, APPLICABILITY, NROGO ALLOCATION STANDARDS, AS-OF-RIGHT AND CONDITIONAL USES, AND MAXIMUM NONRESIDENTIAL AND RESIDENTIAL DEVELOPMENT POTENTIAL; FOR PROPERTIES LOCATED AT 92501 OVERSEAS HIGHWAY, KEY LARGO, APPROXIMATELY MILE MARKER 92.5, HAVING PARCEL IDENTIFICATION NUMBERS 00089490-000000 AND 00490250-000000; AS PROPOSED BY SMITH/HAWKS, PL ON BEHALF OF CEMEX CONSTRUCTION MATERIALS FLORIDA, LLC F/K/A SINGLETARY CONCRETE PRODUCTS INC.; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL OF CONFLICTING PROVISIONS; PROVIDING FOR TRANSMITTAL TO THE STATE LAND PLANNING AGENCY AND THE SECRETARY OF STATE; PROVIDING FOR INCLUSION IN THE MONROE COUNTY CODE; PROVIDING FOR AN EFFECTIVE DATE. (FILE 2022-053)

2. **AN ORDINANCE BY THE MONROE COUNTY BOARD OF COUNTY COMMISSIONERS** AMENDING THE MONROE COUNTY LAND USE DISTRICT (ZONING) MAP TO APPLY THE TAVERNIER KEY COMMERCIAL OVERLAY (TKCO) DISTRICT, TO PROPERTY LOCATED AT 92501 OVERSEAS HIGHWAY, KEY LARGO, APPROXIMATELY MILE MARKER 92.5, CURRENTLY HAVING PARCEL IDENTIFICATION NUMBERS 00089490-000000 AND 00490250-000000 AS PROPOSED BY CEMEX CONSTRUCTION MATERIALS FLORIDA, LLC F/K/A SINGLETARY CONCRETE PRODUCTS INC.; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL OF CONFLICTING PROVISIONS; PROVIDING FOR TRANSMITTAL TO THE STATE LAND PLANNING AGENCY AND THE SECRETARY OF STATE; PROVIDING FOR AMENDMENT TO THE LAND USE DISTRICT (ZONING) MAP; PROVIDING FOR AN EFFECTIVE DATE. (FILE 2022-054)

(10:07 a.m.) Ms. Devin Tolpin, Principal Planner, presented the staff report, having worked on these items with Ms. Cheryl Cioffari, Assistant Director of Planning. This presentation concerns a private request to establish the Tavernier Key Commercial Overlay District. The applicant has applied for a text amendment to the County's Land Development Code to establish the overlay, and an amendment to the Land Use District Map to actually apply the overlay to the subject property. The overlay proposed shall apply to two contiguous properties aggregated to make up one property at Mile Marker 92 in Tavernier. This property is located within the Suburban Commercial zoning district, the Mixed Use Commercial FLUM category, and is also located within the Tavernier Creek to Mile Marker 97 U.S. Highway 1 Corridor District or TC overlay. This property is also subject to the policies and guidelines provided in the Tavernier Livable CommniKeys Plan which is adopted as part of the County's Comp Plan.

The proposed amendment establishes the overlay district with a purpose, intent and a boundary, and requires an amendment to the Land Use District Map to apply the overlay to a new property. The amendment would also allow for NROGO allocations or transfers of up to 70,000 square feet of floor area which could be used for a single structure. The amendment would limit the maximum development potential of the property to 70,000 square feet of non-residential floor area and 86 units of deed restricted affordable housing. There is no reference to limiting market rate units. The full text of the proposed amendment is included on pages four and five of the written staff report. It is important to note that the traffic study submitted with these applications has not yet been approved. The applicant has submitted a request in writing to have this item scheduled before the Planning Commission in accordance with established rules and procedures despite the study not yet being approved as requested by the Planning Director. Additionally, the applicant has submitted written acknowledgement of the County's insufficient balance of affordable ROGO allocations though the text in the overlay does provide for development of up to 86 affordable units on the property.

Ms. Tolpin emphasized that the proposed development would allow for the development of a 70,000 square foot non-residential structure on the property. The applicant has made and is likely to continue to make assertions specific to a certain business. The County Land Development Code and Comp Plan cannot and will not regulate the ownership of a property, only the use. There are no development controls in place that can ensure a specific business such as Publix operates a structure or retains the property and therefore, amendments to the Land

Development Code cannot be reviewed based on a specific business plan by a property owner. It is imperative to consider this request based on the fact that the proposed 70,000 square foot structure that could be allowed within this overlay may be any commercial business.

The principal issue when considering the amendment to create this overlay is the language regarding the NROGO regulations. Currently, the Land Development Code limits the amount of new commercial floor area to be allocated to a site to a maximum of 10,000 square feet per quarter. This amount of square footage allocated quarterly works to slow development to ensure deliberate and consistent development occurs within a given area. The overlay would allow for the allocation of 70,000 square feet at one time. There is a sufficient balance of non-residential floor area in the NROGO bank and this could likely be achieved without issue. More importantly, the amendment would allow for a single structure to receive an allocation of up to 70,000 square feet of commercial floor area. Currently, the code does not allow for an allocation of new non-residential floor area that would expand the structure to more than 10,000 square feet unless that structure is located within the Urban Commercial zoning district, in which case the structure would be limited to a maximum of 50,000 square feet unless that structure is within an overlay established in a community master plan or Chapter 130 specifically allowing a structure over 10,000 square feet. In this case, the proposed amendment would be establishing a new overlay within Chapter 130 that would specifically allow a structure over 10,000 square feet.

There is an adoptive process when reviewing amendments to the land development code and the zoning maps. A concept meeting was held on June 28 where it was determined that these amendments would not have a countywide impact. Two community meetings have been held to discuss this project. These items were presented to the Development Review Community where the chair signed a resolution recommending denial of these amendments. Today the files are being presented to the Planning Commission who will make a recommendation to the BOCC, who then will ultimately adopt or deny these amendments. When reviewing an application for an amendment to the text of the County's Land Development Code and Land Use District Maps, the BOCC must consider the factors included in the written staff report. Staff must review for consistency with the Comp Plan, the Tavernier Livable CommuniKeys Plan and the County's currently adopted code. The code does not allow for an amendment to be approved which would result in an adverse change in community character to the subarea the proposed amendment affects or to any area in accordance with the Livable CommuniKeys Plan. It is for this reason that when reviewing proposed text and map amendments, staff must review for consistency with the community character and for any potential changes to that existing character. This is further reinforced in the purpose of Section 102-158 of the County's Land Development Code. This is the article that provides a means for changing the text of the LDC. It states, "This article is not intended to relieve particular hardships nor to confer special privileges or rights on any person nor to permit an adverse change in community character, but only to make necessary adjustments in light of changed conditions or incorrect assumptions or determinations as determined by the BOCC." Amendments must be reviewed for consistency with the Comp Plan and code. The Tavernier Livable CommuniKeys Plan is adopted and implemented as part of the Comp Plan. In reviewing this CommuniKeys Plan it is evident that the vision was to preserve the heritage and natural setting of the existing community with limited redevelopment of commercial properties. The CommuniKeys Plan goes so far as to include an action item that prohibits the designation of

new commercial land use districts beyond those already contained in the master plan in order to prevent further sprawl and strict commercial zoning.

It is important to note that commercial retail uses could be permitted on this subject property and would be consistent with the underlying Suburban Commercial zoning. However, because the property is also located within the TC overlay district, staff must review for consistency with the Tavernier Creek to Mile Marker 97 U.S. Highway Corridor development standards and guidelines which are adopted as part of Chapter 130 of the Land Development Code. These guidelines include specific building types with the intent of guiding new development so that it continues to define the character of Tavernier and so that the massing scale and materials of new structures are compatible with the existing character. The guidelines provide for the construction of large commercial buildings through the aggregation of smaller buildings. If this proposed amendment is not approved, the property still does have a very high amount of non-residential floor area that could be constructed on the property in a manner that is consistent with these guidelines.

To further guide development within the Tavernier Corridor overlay, these guidelines utilize transect zoning. These transects do not eliminate the standards set by the County's code or zoning laws but are intended to help organize the regulations according to the transect with which the property belongs. This property is located within the suburban transect which is characterized by intermittent occurrences of open space, residential development of diverse densities, and industrial and general commercial uses following a pattern similar to that found in the mainland suburbs. Alternatively, the urban zone is the area where most of the retail and commercial mixed use development are found and it is the area that the community identifies as its center. To aid in the review for consistency of the proposed overlay with the existing Tavernier community character, staff reviewed the size of existing buildings of surrounding properties within both the urban and suburban transect zones. The ability to construct a structure of up to 70,000 square feet would result in one that is much larger than existing structures within the suburban zone and would be inconsistent within the established community character. The existing land development code, when coupled with the Tavernier Corridor Overlay Guidelines and the Tavernier Livable CommuniKeys Plans intentionally limits the maximum size of each structure. Additionally, the proposal is inconsistent with Comp Plan Policy 101.5.6, which states that various types of commercial retail and office uses may be permitted at intensities that are consistent with the community character and the natural environment.

The text amendment, as drafted, proposes to relax the development restrictions on the property without providing adequate data to support such a change nor demonstrate consistency with the Tavernier Livable CommuniKeys Plan and existing community character. It is anticipated that the proposed overlay would result in an adverse effect in the character of the Tavernier community. It is for the reasons described today and throughout the written staff reports that staff recommends denial of the proposed amendment to the Land Development Code to establish Section 130-143, the Tavernier Key Commercial Overlay, and denial of the proposed Land Use District Map Amendment to apply the overlay to the subject property.

Commissioner Ritz wanted to clarify that whether this Commission recommends approval or denial, this still goes before the BOCC. He also wanted to confirm that if approval is

recommended, and assuming the BOCC recommends approval, that nothing would get built until the applicant comes back and actually proposed something, and asked if that something would require a major conditional use. Ms. Tolpin stated that it would be specific on exactly what was being proposed and in this case, yes, it would require a major conditional use permit if the applicant proposed a 70,000 square foot retail building. Commissioner Ritz asked if that would also be true if a 50,000 square foot retail building were proposed, and Ms. Tolpin stated that it would. The applicant has made certain assertions about building a Publix and affordable housing, but they would have to come back and actually show exactly what they were going to do. Commissioner Neugent asked that in light of this, if this were denied today, if this part of the request would still go before the BOCC. Ms. Tolpin stated that it would, unless the applicant amended it, and it would be noted that the Planning Commission recommended denial. Chair Scarpelli then asked to hear from the applicant.

Mr. Bart Smith, representing the applicant, stated that a very specific project is being proposed for a unique parcel not only in the Upper Keys but in the Florida Keys. This is the Cemex parcel which is 20 acres having 15 acres of scarified land, which is 600,000 square feet. There are probably less than five parcels left that are this size that have the zoning of Suburban Commercial; and there's probably only one. The other parcels are Industrial, but he has not found any in Monroe County that meet this size and scope. So 600,000 square feet, based on the current Suburban Commercial zoning, has a potential of 152,000 square feet of commercial and can do up to 216 units of affordable housing. There's a mention about no limitations on market rate. Suburban Commercial only allows for market rate if it's nonconforming and was built before the code. There is no market rate on the parcel. The applicant would be willing to add a provision that no development of market rate could ever happen in the future. The applicants are the Toppino family and the Hurwitz family. Everyone is familiar with the Toppino family and their dedication to this community. They have looked at different sites throughout the Keys to try to bring affordable housing to the community. Most times the land costs are such that it doesn't make sense. Mr. Smith gave prior examples. Also, this is not affordable housing, it is workforce housing where tenants are required to be employed in Monroe County. This parcel's very rectangular size and being situated on U.S. 1 allows the commercial venture to buy down the land to build the 86 unites of workforce housing. The applicant is not here today because a 50,000 square foot building isn't allowed. Regardless of the size of the building, all commercial retail is required to go for a major conditional use. The applicant is here solely requesting an allocation over 10,000 square feet. All other provisions are to limit the use of the property to the greatest extent possible to give the community certainty that this is what is going to occur. Everyone understands the unknown is the most concerning part.

This parcel's potential is 152,000 square feet of commercial retail. This limits it to the store which is a total of 70,000 square feet which is a great reduction. Mr. Smith went into why the store was important to the Florida Keys as a whole. The sole request of the overlay that is of importance is to get a 70,000 square foot allocation. The development of the store will come back before the Commission. The allocation is being requested in one part, and the applicant is agreeing to limitations on the property, as to the amount of total square footage that could ever be built, and limiting to 86 units of workforce housing. This is legislative at this juncture and looks for consistency with the Comp Plan and Principles for Guiding the Development. The Comp Plan in no place prohibits a store on this type of acreage of 70,000 square feet. Then the

Comp Plan adopts the Livable CommuniKeys plan which in the Suburban zone does not prohibit a store of this size. It has the dimension and development criteria in the Urban zone and states that commercial uses should be the same as Suburban on the mainland. Mr. Smith provided documentation of other Publix store sizes throughout the state. The Principles for Guiding Development are supposed to be reviewed as a whole. Management of Land Use has been identified as being inconsistent, but the reality is putting more restrictions on the property provides more management of land uses. And, as many are aware, one of the Principles is for the provision of providing affordable housing. Mr. Smith listed related prior court cases stating that ultimately, the courts decided for affordable housing in every case, so it is consistent with the Principles for Guiding Development. Who owns it can't be limited, but the intensity can be limited. The Livable CommuniKeys limits it to only commercial low or medium intensity which is why that limitation wasn't put into the amendment because it already exists. This creates the Tavernier Key Commercial Overlay District allowing the Publix grocery store and liquor store. The design is not complete but will come before the Commission at a later date. The applicant has provided the purpose, intent, boundary, the NROGO allowance for the allocation, subject to all other land development regulations, and provides maximum limitations which control the land even more. That is consistent with the Principles for Guiding Development. This proposes workforce housing buildings in the back and on the side. The development is consistent with community character.

Alternatively, the applicant could propose an allocation of 50,000 square feet by just doing the LUD which would not be legislative, and because it's under the FLUM, the applicant meets the requirements. The proposed size is related to having additional storage in cases of emergencies and storms, which is being done in other coastal communities. Mr. Smith detailed the sizes of Publix stores in both suburban and rural areas of the state for size comparison. This item is solely to create an overlay that allows the allocation in one allocation and in exchange, limit the amount of square footage of development on the property providing additional land use controls than currently exist and most importantly, providing the workforce housing. Typically, traffic studies are not done at this stage but the applicant has addressed this and identified trips that may need to be mitigated. The applicant's position is that by building this it will actually reduce lengths of trips because people don't have to drive as far, but it is within at least five percent of level of service C. The applicant is willing to do mitigation but that is done at the building permit stage. The traffic study is not necessary at this stage but was required. Mr. Smith asked the Commission recommend approval.

Chair Scarpelli asked for Commission comments or questions. Commissioner Demes clarified that one of the court cases that Mr. Smith had cited from 2003 with a proposal for a development off of Runway 03, which happened to be an accident potential zone, the court had sided with the Navy, so it wasn't every single case. Chair Scarpelli then asked for public comment.

Mr. James Anderson purchased his home in 1982 and is vehemently opposed to the Publix complex and housing. He has enjoyed his peace and quiet and is very concerned about a development destroying property values, increasing crime, and additionally burdening emergency services. He had participated in the Livable CommuniKeys project and it would seem like a waste of time having worked on the LCP. Mr. Anderson stated that the former Commissioner, the Tavernier Historical Group and everyone would be opposed to this and asks

the Commission to deny the Publix as there already is one at Tavernier Town. The traffic study has not been completed yet. He would like to preserve the heritage of Tavernier.

Captain Spenser Bryan, Monroe County Sheriff's Office, stated that on behalf of Sheriff Ramsay and the Sheriff's Office, they support the affordable housing as it has been an issue for a long time. There is a problem keeping deputies because it's too expensive to live down here, so the more affordable housing, the better. It is not just the Sheriff's Department but EMS, teachers, and any other essential personnel. There are three jails in the county and the one in the Middle Keys is not staffed. They have deputies who want to live down here and be part of the community but unfortunately, can't afford to be here. These same issues about Publix were brought up both in Marathon and Islamorada. Understanding the traffic study has not yet been done, the same thing was said about those Publix stores causing traffic issues. He does not believe it will. The light at Burton Drive that has been installed will quell some of the problems in this area. The Publix in Islamorada has caused zero issues as far as traffic which is crazy because everything in Islamorada causes a traffic issue. The Sheriff's Office supports this project and hopes the Commission will consider it.

Mr. Richard Barreto spoke for the Tavernier Community Association and thanked the Commission for agreeing to host the meeting at the Murray Nelson Center. He has reviewed the written public comments from 26 individuals and two community organizations. Additionally, on June 14, 2022, the TCA hosted a meeting where 80 residents of the community attended. There were countless responses in person and by zoom at the DRC meeting and the two community meetings preceding this Commission meeting. Those comments made verbally are not part of the Commission's material, but out of all of those comments there was only one individual that supported the commercial aspect of this development. That is very telling because the applicant will have you believe that this project will bring much needed service to an area with limited options and that it is needed, but the people who live and work here are singing a very different tune. We are telling you that we understand the proposal and have plenty of options. More is not necessarily better. We value our Tavernier community. Please listen to us. The level three traffic study is required where the applicant failed to respond to several outstanding issues, and has elected alternatively to have the Board consider it without the benefit of the approved study. That an approved level three traffic study is required, and given that it has not been submitted to this Commission, that in and of itself should be grounds for denying this proposed amendment. Reading further into the applicant's response to the staff report, it's clear that a lot of these layers we've been going through over the last year the applicant feels is unnecessary and an inconvenience. They would rather you just push this off to the BOCC, let them review it and sift it all out in the context of a major conditional use permit. While that would be convenient, that is not how the system works. The system is designed to protect this community and our environment. Every layer of review, including this one, has a critically important function. This Commission's recommendation has meaning. The proposed commercial overlay district violates the Tavernier LCP and essentially creates a new commercial land use district in direct violation and totally inconsistent with Section 313 of the Tavernier LCP. This section prohibits the designation of new commercial land use districts beyond that contained in the master plan. There is no such Tavernier commercial overlay contained in the current master plan. There's a lot of ado about affordable housing but that is not the priority of this development. The commercial aspect is in phase one and is the priority. It will do nothing

but aggravate workforce housing for quite some time to come with really no guarantees that the affordable housing will ever be built. There will be an adverse community change to Tavernier if the amendment is approved and it defies logic to think otherwise. The only building larger than this is Mariner's Hospital. The fact that Publix has been able to build similar-sized buildings throughout the State of Florida is not justification to build one here in Tavernier. The proposed amendment is not consistent with the Comp Plan. This commercial building does not fit in any way with the community character of Tavernier. He asks the Commission to support the Planning Department's recommendation as they have conducted a detailed review of the applicable provisions of the laws and concluded that the Commission should refuse the approval. He supports that conclusion and thanked the Commission for the opportunity to speak.

Ms. Joan Scholz stated that it is not because of the unknown that she is speaking today, as Mr. Smith referenced in his statements, but it is because of the building overdevelopment, the ecosystem, traffic, fragile environment and the water situation being experienced now with four miles of pipeline being replaced, the three water main breaks, the lack of reserve that we have, and the Aqueduct knows we are over capacity of building. We don't need another Publix which is a mile from Winn Dixie and a few miles from the other Publix. Ms. Scholz thanked the Planning Department for having spent so much time on this. She is in agreement with the Planning Department and asks the Commission to deny this application and give a recommendation of "no" to the BOCC.

Mr. Frank Pla was not available to speak.

Ms. Linda Norman has had a home in the area for over 45 years. Her shopping has improved over those years. In the beginning there was a grocery store called Clara and Doug's which is now Sunrise Market. That was a mile from her home when Winn Dixie opened two miles from her home which offered a wide variety of products. Winn Dixie is a comfortable bike ride if she doesn't want to drive her car. She questions why the developer would want to build a huge Publix store only one mile from the Winn Dixie and less than ten miles from their existing, soon to be expanded store at mile marker 101.5. It doesn't make sense and its existence would be a travesty to the small, quiet town of Tavernier. She read an article about a Publix Supermarket to be built in Gainesville proposed to be 55,000 square foot, smaller than the one proposed in Tavernier, and will anchor a 46,000 square foot shopping center in Gainesville which will become a hub for a population of about 141,000 people. This is a 64,000 square foot store to be supported by the entire islands of the Florida Keys with a population of 83,000. Most of the cars are driving through Tavernier heading to Key West or Miami. Key Largo Fisheries has their main market at mile marker 100, and they opened a smaller location for the residents in Tavernier, and the town could not support that little shop and they have now closed after only two months. What will happen when Publix finds out a Publix of that size cannot be supported in Tavernier. We're going to have a show of a building sitting there. She wholeheartedly objects to this development.

Ms. Sue Miller of Islamorada stated that this does not affect only Tavernier, rather all of the entire Florida Keys. There is too much traffic and not enough water. There is an affordable housing issue but this 70,000 square foot retail space would use more than 86 employees. A store this size is going to increase the demand for affordable housing. She doesn't expect to see

a lot of Sheriff's deputies and firefighters and other employees there. The applicant says they are going to mitigate the traffic. If they have some magic to mitigate traffic we all should hear about it because we already need a lot of traffic mitigation. The fact that the applicant is doing an affordable housing project seems to be the controlling thing here, when in order to do this they're required to have an affordable housing component. It is secondary to them but it shouldn't be secondary to the community. It should be phase one., as she is concerned that as phase two it may never get done. This is not something acceptable to the community character of Tavernier or there wouldn't be this many people here participating. Ms. Miller thanked the Commission for listening.

Mr. Burke Cannon represents the Federation of Homeowners as Dottie Moses is out and could not make it. Mr. Cannon agreed with everything staff recommended. The lawyers have never come up with a statistic that says we have this many people, boat hands, teachers, firefighters, and how much affordable housing do we need. It seems like we should know how many people we have employed here and how many are not living here because of this affordable housing problem. He understands the Sheriff's Office has a problem and they can't afford it, but this is going to be endless. This kind of project won't cover affordable housing for everybody here. The Federation members voted unanimously to object to this application for a map amendment and overlay. Similar neighborhoods live within the Tavernier LCP and the Federation is in full support of their objections to the overlay district. It is obvious the community intended to maintain a small town commercial footprint. The opening vision statement expresses the goal clearly. Mr. Cannon read the goal to the Commission. The existing code prohibits a quarterly allocation of non-residential floor area of more than 10,000 square feet. This proposal is for 70,000, which is a huge difference that rejects the intent of the community's wishes as reflected in the LCP, which expresses a desire to redevelop at a village scale. One of the letters submitted addressed the large amount of planning and input that went into the Tavernier LCP. This was not an overnight thing. What is the point of planning for the future and gathering community input on zoning if each and every development request for expansion is granted? Offering an exception to the rule for this development encourages more requests for spot zoning. Mr. Cannon reiterated that there is no traffic study, and another item in the LCP is the safety aspect and that this cannot cause more dangerous traffic problems. This is an historic district. The applicant, who is not from Tavernier, assumes they know what's best for the Tavernier community even if the Tavernier community does not want what they have to offer. Mr. Burke asked the Commission to allow the Tavernier community's vision to maintain the existing small town community character by limiting the development of commercial properties. This overlay does not fit that vision and the Federation recommends denial.

Mr. Andrew Tobin thanked the Commission for having the hearing in Key Largo as it is important the Commissioners get to know the area. Mr. Tobin came to the Keys in '76, was a prosecutor for three years, was the County's first zoning prosecutor, went through the 1985 Comp Plan efforts, litigated the 1992 Comp Plan, litigated in state and federal court on zoning issues and has read maybe a thousand cases involving zoning and land use. There is no case law or authority that supports this. Doing something bad to get to something good is not part of the criteria the Commission is expected to follow. The proposed Publix good which is the economic engine for affordable housing is not a factor in the Commission's decision whether to create a new zoning category. This is a 700 percent increase in the floor area ratio of a development

within the Tavernier LCP area. The Urban Residential maximum is 50,000, and the developer is asking for 70,000. Mr. Tobin suggests the Commission not overlook the Comp Plan and the slow, small development potential vision. The whole purpose of the allocation system was that one developer would not suck up all of the allocations for a particular area, and with this, that is going out the window. The applicant is asking the Commission to overlook all of the existing laws, the Comp Plan, the LCP and basically saying, we have good intentions. Mr. Tobin represented Publix in Islamorada and it took them six or seven years to finally get development approval because Islamorada also has very restrictive zoning regulations. This is bad precedent and Mr. Tobin urges the Commission to follow staff's recommendation.

Mr. Allan Aldridge, a Tavernier resident for over 30 years, is on the Tavernier Community Association board. He supports his friends and neighbors in the community who have spoken. One of the most critical infrastructure issues today is water and the water pipeline. Currently, an organization called APANA that does commercial and industrial property evaluations for resources, states that a large grocery store uses about 350,000 gallons or more of water per month. Individual residences, on average, use 300 gallons a day, multiplied by 86 housing units is about 774,000 gallons of water a month. Together, this is the development of a property that will use upwards of 1.2 million gallons of water per month, in a pipeline that has already in three locations in this area had significant line breaks, in fact ruptures, of the pipe, one being almost eight feet long. Mr. Aldridge is an engineer and stated this is a big deal. The FKAA Director recently in interviews made it very publicly known that it's going to take over ten years of projects to replace our critical water infrastructure pipeline supplying the Keys and he doesn't know where he's going to get the money to do that. Adding this to all of the other things that will be considered in the next ten years that will add more and more water usage is something the Commission should take into account when reviewing this project and the several others that will come before them.

Ms. Phyllis Mitchell thanked the Commission and asked them to please remember as they're making their decision that they represent the people of the Florida Keys. More development means more traffic. More traffic is a huge safety factor both on an everyday level from people jumping on the highway after waiting too long to get on, to the ability to evacuate the Keys which is now at a very dangerous level. Ms. Mitchell asked the Commission to give this deep thought. Excellent points have been expressed this morning. She is confident the Commission will do a good job.

Ms. Tammy Freitag stated that she was speaking for herself and Mr. Frank Harrington. Please do not destroy the Tavernier Historic District. She lives in her grandparents' home which was purchased in the sixties. It has been a nightmare to get out of her street with the light at Burton now. It will be much more of a nightmare with another light for a Publix. She understands the need for affordable housing but Publix is not necessary. She has no problem going to any grocery store, and there is a liquor store at Tavernier Town and everywhere. Please keep the community as is.

Ms. Lisa Ream stated she had nothing additional to add.

Ms. Lisa Bennett thanked the Commission and the community. When she first came down in 1968 there was only the Shopper and Montey's. She dearly loves those memories of growing up in the Florida Keys. Everything she's heard so far about the infrastructure and what's going on concerns her very much. She hopes and prays the Commission makes the right decision.

Mr. Tom Raffanello of Islamorada represents the Islamorada Community Alliance. There isn't much more he can add as far as context as the others were right on the money. The Trojan horse of affordable housing is a myth. There is nothing affordable about it. The statute needs to go back to Tallahassee and be revised. Right now, a family of three or four making 140 to $150,000 qualifies for affordable housing and that's not where we want to be. He was a fed and a cop and it took him 30 years to make that kind of money. As to Publix, sometimes you have to look at the need for something. If he stood on this roof he could see the other two Publix stores from here. There is no need. Boil it down to a simple thing, where is the need for a 70,000 square foot Publix in a town like this. The traffic and water is out of control. There is no need and it's an easy decision if the Commission really takes a look at it. It is an adverse change in the citizens' lives and he asks the Commission to do the right thing and deny this.

Ms. Karen Rodriguez who has lived here since 2009 stated that everything she has heard sounds good, but one of the underlying things to remember is they want to build 86 affordable housing units behind all of that commercial property. Why not just turn it into a park and have the affordable housing in it. That's it.

Mr. John Howe stated that he has nothing to add that hasn't already been said. He has scanned through the Planning Department's report and was struck by the amount of work and intelligence and training and all of those things that went into producing it, and he thanked the Planning staff. Two things leapt out at him and that was the fairly long list of inconsistencies with the Tavernier LCP, and the Monroe County Comp Plan and a bunch of Florida Statutes. And then, a list of requests and concerns voiced by the Planning Department and community residents about things it needed to learn or didn't understand. After each one of those items there was a comment from the staff saying no response has been received from the applicant. Mr. Howe's main point has more to do with the number of people present today. This is what democracy is all about. Average citizens who live in this community are making their voices heard. About half the people here have referred to the Comp Plan, the Tavernier LCP and the Florida state laws that according to the Planning Department make this application seem to be inappropriate and worthy of denial. These documents have come from hours and hours of work, time and money over the years by people creating a vision for its community. There are maybe a hundred people here but there are many hundreds more who are supporting us who are not here, those who have passed on or moved away, but they are here too in spirit with their thoughts and visions and ideas for how this community should be. Mr. Howe wanted to recognize that many people have led to this moment and he hears their voices saying this is not appropriate. On a more positive note, that piece of property is an opportunity to make something appropriate for this community. He hopes the Planning Commission can spend more time on planning for that piece of property, rather than on legal defense, some way that will benefit the owner and the community.

Ms. Patricia McGrath of Grassy Key stated that her concern, along with those about FKAA is about the stormwater runoff and the sewage that will be created with either one of the

developments. FKAA has stood up against losing local control of their authority. Both affordable and workforce housing are most important. Publix can afford to do the workforce housing first. It seems the citizens are being threatened, watch out or we will do whatever alternative we have. Ms. McGrath thanked the Planning Department for the massive number of hours putting their report together. She would like to see the Commission come forth with zoning and property use regulations that would not even allow someone like Publix to come in and waste all of our taxpayer dollars. Ms. McGrath thanked the Commission.

Mr. John Magill from Richmond, Virginia has lived here 26 years, went to Virginia Commonwealth University and has a master's degree in planning. The biggest disaster of all planning is the saying "build it and they will come." He was a project inspector on a 300,000 square foot auditorium and civic center arena and a 600,000 project, and a carpenter on a civic center town mall, both of which are in the process of being demolished, and those were built only 30 years ago. He hates to see this happen. The whole place should be built with affordable housing. Mr. Magill thanked the Commission for allowing him to speak.

Ms. Sylvia (last name unknown) could not connect via Zoom to speak.

Chair Scarpelli closed public comment. Mr. Wolfe suggested the applicant be allowed to rebut the comments and then allow the Planning staff to wrap up. Ms. Cioffari indicated there were two more hands raised to speak in the Zoom audience. Mr. Robert Hilton and Ms. Lynn Hilton and Ms. Tina (last name unknown) dropped their hands. Public comment was then officially closed.

Mr. Bart Smith reiterated in rebuttal that this is a unique property that is presently an industrial concrete block plant. Commercial uses are permitted. Large buildings are permitted on commercial uses. There is no change in the zoning district. All that is being requested is that an allocation greater than 10,000 square feet be allocated to the property. It does not change the list of permitted uses, the conditional uses or the requirements that this goes back to. What it does change is it allows restrictions above and beyond what the code has to be put on this property. The applicant has agreed that all they can do is get this allocation and that's it, which means no market rate housing. The applicant will come back and satisfy every condition. There is nowhere in the Comp Plan, the LCP or the Land Development Code that prohibits buildings of this nature. In fact, it expressly provides they are allowed. He understands the statements about community character, but that community character is defined by the property and what its allowed uses are in these documents. These uses are allowed. Sometimes the tougher decisions are the ones that need to be made. In this case, like every time, there's something that we want. We want workforce housing, but we have to have an economic engine to drive it. This is what can be done on this property, it is permissible and within the realm of the Commission's ability to recommend approval. The Commission will have another shot to look at every part of this. The traffic study is at the finish line. A traffic study for a land use text amendment that doesn't change anything in the code is not a requirement. The applicant is doing it now to provide the documentation. It is a requirement of the conditional use approval and will be finalized well before that. Mr. Smith asked the Commission to recommend approval to the BOCC. If the Commission wants a stronger condition to parts of the workforce housing, the applicant is

amenable to those. Any statements as to the water supply or levels of service he vehemently disagrees with and they are made solely to say no to anything.

Ms. Emily Schemper, Senior Director of Planning and Environmental Resources, stated that she was not sure if Mr. Smith's was confused about the Land Development Code requirement for the size of the structure or if he was making a separate argument, but he had stated there is nothing in the Land Development Code that would prohibit a building of this size. That is not true. Part of what the applicant is asking for is an NROGO allocation that would go to a building that is larger than 10,000 square feet. If you cannot get the NROGO for a building that's larger than 10,000 square feet, then you cannot build a building that is larger than 10,000 square feet; therefore, it is not allowed by the Land Development Code. It is not written into the zoning category necessarily but it is implemented by the NROGO code. Ms. Tolpin has presented all of this and it's in the staff report but Ms. Schemper wanted to make sure the Commission understood these points.

Another assertion has been that there is no place for the County to be reviewing community character in this process. That is entirely untrue. Section 102-58 of the Land Development Code is specifically about amendments to the Land Development Code, and the purpose states, "This article is not intended to relieve particular hardships, nor to confer special privileges or rights on any person, nor to permit an adverse change in community character." Then further down in the section under the procedures, action by the Board of County Commissioners, "The Board may consider the adoption of an ordinance enacting a map amendment if it meets the following factors." And there are seven factors listed which includes the Principles for Guiding Development, which Mr. Smith has pointed out. But if you continue it also says under that section, "In no event shall an amendment be approved which shall result in an adverse change in community character to the subarea which a proposed amendment affects, or to any area in accordance with a Liveable CommuniKeys Master Plan pursuant to the findings of the BOCC." Again, that's all under amendments. It's not under the conditional use permit review. It's under amendments to the code. So community character is definitely a factor in the Commission's consideration of this.

Going back up to the first part under amendments under the purpose, to paraphrase, this article is not intended to confer special privileges or rights on any person. We've heard a lot about Publix today. You are not actually reviewing specifically for Publix. You are reviewing for a large retail building. And, the way the language is drafted, it doesn't specifically say commercial retail, it says non-residential. So the way this is drafted it would allow a non-residential structure of up to 70,000 square feet on the site, we don't know which retailer, we don't even know if it is retail. It could be light industrial. It could be an Amazon warehouse. It could be whatever, we don't know. The point is you don't actually know who the tenant of that building is going to be or the owner in the future. So when reviewing amendments in particular you need to think about the larger picture and what would be possibly allowed.

That has played into the traffic study as well. Ms. Schemper agreed with Mr. Smith that the traffic study is all but approved so it is not true that they have not submitted a traffic study. Staff has reviewed most of that. It's really come down to mitigation. But, if the Commission reviews this just because this is a Publix, that could be conferring special privilege on an individual

person or entity. Also, regarding Publix, Mr. Smith gave sizes of a number of other Publix stores in Florida, but none of those were island Publix stores, nor the sizes of the other Publix stores in the Keys already. From Ms. Schemper's knowledge, the Islamorada store is about 35,000 square feet, and the other Key Largo Publix getting rebuilt at Trade Winds Plaza is about 60,000 square feet, so that one would be about the same size as the one proposed here. If part of the argument is that this can be some sort of post-hurricane supply chain system, if the other Key Largo Publix is also serving as that, then are both necessary. Again, you are not reviewing just for Publix so there is no guarantee that something like that would be put in place. This has not been designated as some sort of emergency management facility.

Ms. Schemper had been surprised at how strong the argument came across regarding this retailer being the economic engine needed for the affordable housing. The meat of the amendment allows the large non-residential structure. It's really not written to guarantee that any housing is there. The question would be for the applicant, if they would be willing, to write into the amendment something about the affordable units being required where the ROGOs are coming from, what happens if you don't get the ROGO allocations, et cetera.

Mr. Smith responded that they would certainly write in that they were required because if they're required to be CO'd, then the applicant has put themselves in a position that if they don't get them built, then the other part can't occur. Ms. Schemper asked if the owner would then be suing the County because the applicant wasn't given ROGO allocations. Mr. Smith stated it would be up to the applicant to obtain the development rights. They have talked to the Village of Islamorada who is amenable to do an IOA to provide the units because it's in their back yard. So, by any mechanism necessary but the applicant is required to obtain the development rights. Ms. Schemper asked if Islamorada had 86 affordable ROGOs or market rates. Mr. Smith stated they had the 300 July ones. Ms. Schemper stated that currently, those are not allowed to be transferred to Monroe County per the Monroe County ordinance. Mr. Smith stated that that ordinance was not effective yet and was on appeal. Ms. Schemper stated that was the same for Islamorada. Mr. Smith stated that as soon as the hurricane evacuation was addressed, then that's final, whereas Monroe County's was appealed on, on numerous grounds. But the applicant acknowledges they have to be able to get the development rights. Ms. Schemper asked if that would be something the applicant would be willing to write into the amendment. Mr. Smith confirmed that to be correct, it was always the intent on that. The two parts work in unison with the commercial retail buying down the cost of the land to make the affordable housing feasible.

Chair Scarpelli asked if that wouldn't be more appropriately part of a conditional use instead of a land use amendment. Ms. Schemper stated that because the purpose of this land development code amendment and what it's doing is allowing a larger building, and the argument is that the reason for the larger building is to fund the affordable housing, that it's all one big picture. This has been done with other projects, but the full picture of the development plan very often gets written into the actual policy.

Ms. Schemper also wanted to make sure the Commission understood that the way the amendment is currently written, it's actually putting more limits in some ways on the development allowed on that property. Whether that's in terms of number of units, total amount of square footage, whether smaller buildings or larger buildings, the total amount of square

footage right now is written in to be limited. But it is also written to limit which uses. Ms. Schemper wanted the Commission to be aware that other uses that would normally be allowed in Suburban Commercial do include things like office space, restaurant space, commercial recreation, public buildings, parks, public infrastructure, institutional, et cetera. So there are two directions to go. Either it's written that non-residential uses are allowed up to 70,000 square foot building or if they want to be specific that it has to be commercial retail, that's another direction to go, or if they want to list additional uses. She was not actually sure what the intent of the applicant was because right now, the purpose says commercial retail, but the list of requirements says non-residential uses. Mr. Smith stated that the purpose is commercial retail. Ms. Schemper stated that was something to keep in mind, if the Commission wanted it limited to commercial retail or left open to other things that could possibly go there with it such as public buildings, institutional, office, et cetera.

Commissioner Neugent asked if it would be fair to say that if this was denied, something is going to be built on the 20 acres by somebody. Ms. Schemper stated something would probably be built there, yes. It would have to be in smaller buildings. It could be more units, more square footage, but smaller individual buildings. That is where the conflict is between what is being proposed and how the current code is written. The maximum square footage that could go on the site right now is about 120,000 square feet. Ms. Tolpin stated that it ranges based on the intensity, from 91,000 for high intensity up to 212,000 square feet for a low-intensity use. Ms. Schemper added that that would all have to be in individual smaller buildings. It could be developed as a combined development plan, but it would all be smaller individual independent buildings. Commissioner Ritz confirmed that was almost twice the amount of square footage that could be built there if they built it in smaller units. Mr. Smith added that the applicant is committed to the workforce units, that certainly before the CO of the non-residential, that the units would be CO'd, but the final recommendation could includes that language with direction for staff to finalize that language, and he would request approval with that language.

Chair Scarpelli wanted to clarify that it would have be a bunch of smaller stores, but that they would also only be able to be developed one per quarter at 10,000 square feet. Ms. Schemper stated that would be correct, it would be slower. Commissioner Demes asked if large building was defined in the Comp Plan or if that was just subjective. Ms. Schemper responded that it's greater than 10,000 square feet. This limitation is not in the Comp Plan which is why they're able to request this through the Land Development Code only. The Land Development Code can be more restrictive than the Comp Plan, but this does not require a Comp Plan amendment. It's in the NROGO section of the code, "Maximum floor area per structure, a structure shall not receive an allocation," that's the NROGO square footage, "shall not receive an allocation that expands the structure to more than 10,000 square feet of non-residential floor area, excluding a structure in the Urban Commercial land use district," where those can go up to 50,000, "and a structure within an overlay district established in a community master plan in which the maximum shall be governed by the master plan if applicable, or within Chapter 130 specifically allowing such a structure of over 10,000 square feet." That last phrase is exactly what is before the Commission today. It is a proposal for an overlay within Chapter 130 specifically allowing a structure of over 10,000 square feet.

Commissioner Ritz stated that he has lived in Key Largo for over 30 years and knows about half the audience. He is aware that Tavernier is very proud, and rightly so, of the historic nature of Tavernier and wants to protect that. He also knows they are not particularly interested in protecting the historic nature of the cement plant so that would be an exception. He is also a big fan of the CommuniKeys plan and the hard work that people put into it and thinks that's really important to keep community character in the forefront of our minds whether at this step or the next step. The applicant has stated this is a 20-acre site, unique or somewhat unique, and he agrees with that. The applicant should also get credit for proposing about half of the development that he could otherwise propose. Workforce housing is the top priority. He would love to have a park in front and workforce housing in the back. It's a swell idea. If it were his property and he could afford to do it, he would do it. He's looked at building affordable housing and it's tough, and oftentimes you need an economic engine to make it work. He understands what is being proposed. He agrees with Ms. Schemper that if that's the reason, then the applicant's feet must be held to the fire to build the affordable housing first and non-residential second, because we're not considering it just as a Publix, to make sure that we get the workforce housing, if that's one of the reasons we're approving it. Commissioner Ritz goes by the site four or five times a week. In the last several weeks he has assumed that there is some development there and tried to pull into the Cemex Plant from every direction and leaving every direction to try to figure out how this traffic is going to flow. It is going to be tough and he is curious as to what the traffic study says. He believes it can be done but the traffic study is going to be critically important to make sure people can both enter and exit northbound and southbound on that little road. The site is surrounded by residential so buffers should be addressed. There are several Publix stores we can look at. The Publix in Key Largo incidentally has affordable housing behind it. When he first moved here it was hard to find Publix when driving by because it's hidden behind all of the native landscaping. Publix in Islamorada is out in the open and is a rather attractive building. Big buildings like the hospital and the Publix in Islamorada can be built and be attractive with community character, and there can be very unattractive small buildings maybe like a gas station that's not very attractive. Size may not be the defining factor but rather the community character. The architectural style and use is more important to community character than the size. A good point is if this doesn't go there, what does go there. Something is going to go there and it's a big site. So that needs to be kept in mind. Tavernier may be hit with more traffic because it would draw people from north and south, but Islamorada may win both for affordable housing and traffic. Commissioner Ritz is no longer on the FKAA board of directors, but was on there for a long time and there is lots and lots of water in Florida. We have a flooding problem, not a water problem. It's a storage problem. The FKAA has built wells in Miami, has an RO plant in Miami. It would warrant another presentation to this Board from the FKAA to have some assurances, but when he was on the board there was lots of water available to come down this way. Traffic, however, is a problem.

Commissioner Neugent stated that for the 20 years he was on the BOCC he would drive back and forth between Key Largo and Key West, and the time it takes him to get from one place to another today is the same as back then. So FDOT has been doing a good job in clearing up some of the traffic bottlenecks. A lot of traffic problems are self-induced by all the events on weekends when traffic gets backed up for miles from the Stretch to the event. Also, the TDC spends about $76 million a year on advertising for people to come down to the Keys. Commissioner Neugent travels now between Key Largo and Key West once a week now, and

traffic is not his number one issue. Affordable housing is his number one issue. 600 units were just built in the Lower Keys and their occupancy rate is between 95 and 100 percent. One was just finished last week with 280 units and it is fully occupied. There is no question in his mind that we need housing. 5,000 units were lost in unincorporated Monroe County from Hurricane Irma that were either substantially damaged or destroyed. The County has been playing catch-up from a housing standpoint, and adding vacation rentals and second homes which have bought up all of the somewhat affordable housing stock in Monroe County. The housing need cannot be denied. This project is attractive because of the affordable housing element within the Publix grocery store. Publix is very successful and people like Publix. There are some positives in this project and he believes it would take some traffic off the immediate area.

Commissioner Demes stated that he normally starts as an advocate of maximum density and intensity and then takes mitigating factors up and down. When denying an owner the right to develop their property, something should compensate them for it. But, in this case, we try to balance community character, impact to the community versus the right of a person to develop their property economically. He transits the Keys and tries to stop at a different restaurants or retail stores and buy something every time he come through here. He is the chairman of the board of a financial institution that opened an office in Tavernier and enjoys coming up here. He hasn't been as fortunate as Commissioner Neugent with the traffic issues. Commissioner Demes asked Ms. Schemper about the point made by Mr. Smith that the traffic study isn't normally required at this phase of development. Ms. Schemper responded that because this is a significant change in the zoning to what type of development could be allowed on the property it's important to look at all the factors as soon as possible. Imagine approving this amendment and in six months when it comes time for building permits, there's no capacity on the road here. Staff asked that the applicant do the traffic study and they agreed. They went back and forth on the mitigation as part of the applicant's claim was that it may actually reduce trips based on a new type of traffic calculus. Staff stuck with the way the calculation is usually done, not knowing what retailer this could be, and this will require the mitigation. The applicant has agreed they would do that, but haven't yet identified the option for mitigation. Commissioner Demes stated that years ago the actual comment as to traffic came back that you can't make it any worse. I didn't really buy that but I am sensitive to traffic. The comment about this increasing crime, he takes as a neutral comment. As to the additional housing requirement versus what is built, guaranteeing this housing is actually built is definitely a priority. His other concern is caps on the amount of commercial space, for whatever reason, on the site as well as the workforce affordable housing, understanding affordable is a controversial term, but that that is written in there so we don't suddenly see market rate housing popping up like mushrooms.

Commissioner Thomas first thanked all the residents who came to speak on this item, noting that they are trying to protect their community and they should be applauded for that. Everyone was very eloquent in their comments. Commissioner Thomas made a motion to uphold staff recommendation to deny the proposed amendment to the Land Development Code.

Chair Scarpelli commented that both density and intensity should be looked at, along with diversity. The limiting factor of the square footage is a good thing in this amendment, however it's all the same thing, one big box. That has potential issues in itself being so large considering that it's proven that it doesn't have to be that large to be successful in other areas. We have

super large stores that still remain vacant in other municipalities. Chair Scarpelli would be curious to see what is the right square footage, but it surely isn't going to be one store of 150,000 square feet because that is the maximum density for this area, but it also shouldn't be one store at 70,000 square feet. On the other hand, he can see the applicant's point that 10,000 square feet per quarter on a 20-acre site is not conducive, either. Something needs to happen that allows it to meet in the middle somewhere to make it make sense. Chair Scarpelli thanked the public for coming out and sharing their voice today.

Motion: Commissioner Thomas made a motion on Item 1 to deny the application and uphold decision of Planning Director. Commissioner Demes seconded the motion.

Roll Call: Commissioner Demes, Yes; Commissioner Thomas, Yes; Commissioner Neugent, No; Commissioner Ritz, No; Chair Scarpelli, Yes. The motion passed 3 to 2.

Commissioner Ritz asked Chair Scarpelli for clarification. Understanding the Commission is not in a position to negotiate with the applicant at this point, but asked if Chair Scarpelli had been insinuating that if it were 50,000 square feet that he would be in favor of it. Chair Scarpelli responded possibly. The point is we're not talking about a 70,000 square foot Publix, but a 70,000 square foot as a maximum and no configuration whatsoever. And as far as that being developed at one time, he does not think that's correct and that's what is against the Land Development Code as it's currently written. Maybe on the County's side they need to look at that for specifics sites such as this, the zoning being Urban Commercial and that 10,000 square feet is too little of an allocation for a site this size. Commissioner Ritz added that the bottom line is a recommendation is being made to the BOCC, so he was trying to determine where the majority of the Commission actually was.

Mr. Wolfe stated that since the vote was to deny Item 1, the vote on Item 2 was not needed.

(Recess from 12:18 p.m. to 12:30.)

Mr. Wolfe stated that it had been earlier stated that Items 3 and 4 would be read together. However, though the presentations may have some overlap, these items need to be heard individually.

3. **7-ELEVEN (DANIEL BARRY, Jr. & ARCHER BARRY), 98200 OVERSEAS HIGHWAY, KEY LARGO, FL 33037 MILE MARKER 98:** A PUBLIC HEARING CONCERNING A REQUEST FOR A VARIANCE TO ACCESS STANDARDS SET FORTH IN CHAPTER 114, ARTICLE VII OF THE MONROE COUNTY LAND DEVELOPMENT CODE BY AXIS INFRASTRUCTURE, LLC. ON BEHALF OF DANIEL & ARCHER BARRY. APPROVAL WOULD RESULT IN TWO (2) ACCESS DRIVES ON THE SUBJECT PROPERTY THAT ARE SPACED LESS THAN THE REQUIRED DISTANCE OF 245 FEET FROM ADJACENT CURB CUTS. THE VARIANCE IS REQUESTED FOR THE DEVELOPMENT OF A HIGH INTENSITY COMMERCIAL 7-ELEVEN CONVENIENCE STORE WITH 11 FUELING STATIONS, ON PROPERTY DESCRIBED AS LOTS 1 THROUGH 6, BLOCK 1, ROCK HARBOR ESTATES, ACCORDING TO THE PLAT THEREOF, AS RECORDED IN PLAT BOOK 3, AT PAGE 187, OF THE PUBLIC RECORDS

OF MONROE COUNTY, FLORIDA, HAVING PARCEL ID NUMBER 00519590-000000. (FILE 2022-206)

(12:31 p.m.) Ms. Devin Tolpin, Principal Planner, presented the staff report. This is a request for a variance to access standards to Chapter 114, Article VII to the Land Development Code for a proposed high-intensity commercial retail use. This property is approximately 1.09 acres located in the Suburban Commercial zoning district designated as Mixed Use Commercial on the County's Future Land Use Map. The property is currently operated by a commercial retail store. The applicant is proposing to completely redevelop the subject property with a 4,730 square foot commercial retail convenience store with five double-sided fueling stations, and one additional Rec 90 fueling station. Ms. Tolpin presented the proposed site plan. The land development code requires that when a property substantially improves that it must come into full compliance with the access standards. There is a 245-foot minimum distance between curb cuts onto U.S. 1 for properties such as this. This site plan includes two access drives onto U.S. 1, one on either side, each being two-way, that do meet the 245-foot curb cut requirement from the Grand Street intersection, but they do not meet that distance requirement from the access drives of the property to the north. One driveway is about 43 feet, and the other is about 45 feet from the curb cuts of the driveways to the north which is the reason for the variance. When reviewing for a variance, the applicant must demonstrate that they meet all eight of the required criteria and must demonstrate a showing of good and sufficient cause that failure to grant the variance would result in an exceptional hardship, that the variance is the minimum necessary to provide relief, among the other criteria contained in the staff report and presented on the screen. Staff has found that the applicant has met all eight of those required criteria, and staff recommends approval of this requested variance with the conditions that were included in the staff report and on the screen. These are general conditions.

Commissioner Demes asked if someone came in and built exactly what is there today, if they would also require a variance. Ms. Tolpin responded that, yes, in order to substantially improve, redevelop a new use or expand an existing use they would have to comply with the same standards. Commissioner Ritz asked if the applicant could simply move the ingress or egress the correct number of feet, or would they then be in trouble with the other side. Ms. Tolpin responded that because of the length of the property there is not sufficient area to be 245 feet from both the driveways to the north and the Grand Street intersection. Chair Scarpelli wanted to clarify that the existing curb cut on that end of property was roughly in the same location as it is presently. Ms. Tolpin responded that that was correct, more or less. It may be moving a little bit but not by much. There were no further questions or comments from the Commission. Chair Scarpelli asked to hear from the applicant.

Ty Harris, attorney for the applicant, stated that he had the same team present as the last time they were before the Planning Commission; Jason from Axis Hutton and Ian Rairden of Kimley Horn as the traffic consultant. At the last meeting the applicant had met five of the eight criteria. After a lot of public input and discussion with staff, the access was reworked and staff has now determined that all eight criteria have been met. As just stated, to rebuild the Anthony's that is there now, they would be here asking for the same thing because there is not enough room for anything over 2,500 square feet to meet the access driveway requirements. Mr. Harris stated that having given their presentation at the prior meeting, he would be available to answer questions

and reserve some time for rebuttal if needed. There were no Commission questions of the applicant at this time.

Chair Scarpelli then asked for public comment, emphasizing that this item is regarding the variance. Mr. Wolfe also clarified that the speakers should limit their comments to anything about the variance. If the variance is approved, then they would have another shot on the major conditional use to discuss the concerns regarding the proposed development.

Ms. Ann Helmers, a resident of Grand Street, spoke on behalf of the Federation of Homeowners for Ms. Dottie Moses was unable to attend. The Federation represents 2,500 people who live in this community. They had held two community meetings with almost 140 people in attendance. Of those people, there were only two people who spoke in favor of this. One was the broker for the real estate deal and the other was a consultant. In regards to the variance the issue is safety. The community is not averse to having a business there, but not this business. This is simply out of complete adherence with any reasonable expectations of this property. Specifically to the variance request, the applicants came before the Commission several months ago to request a variance and that request was tabled. They have now come back and, in their generous munificence, they have told the community we heard you loud and clear, you don't want Grand Street access, so what we're going to do is move it to the other side of the property where it's 40 feet from an entrance to a second gas station. Back-to-back gas stations, one of which will be a 24-hour operation with a convenience store that includes Rec 90 fuel and eleven pumps next to one where people and entering and exiting. It's simply something that is going to cause a dangerous situation every day, not only for those of us who live in the area, although that's primarily who the Commission will be hearing from, but indeed everyone. If you are in a lane in which people are going to suddenly need to make turns or in which there is a boat being pulled in and out, that is going to be a problem. Issues such as congestion and cuing at this site, fuel deliveries, the store inventory deliveries, trash processing, will all affect traffic. This is already a dangerous area of the highway for accidents and fatalities and will be more so. Deceleration and slowing distances are simple matters of physics but they are also life and death issues. Finally, as to community character, while it is not strictly a residential area in the median it certainly is not amenable to what basically will become a truck stop. We appreciate that in Monroe County we have a Planning staff that has been nothing but helpful and cooperative, and we also have a layer above the Panning staff. County staff makes the recommendations and analyses based on the statutory requirements of the code. The Planning Commission is here to listen to residents and to make decisions encompassing everything, including the code, but also including what it is like for those who live here, work here, raise children here, go to school and business here and go to dinner here. The Commission has the authority to make this decision and just because you can, doesn't mean you should with this variance, and we hope you'll decide you won't.

Mr. JD Carballo, a resident of Rock Harbor Estates for over 43 years, representing the Rock Harbor Property Owners Association, stated at that at the last Planning Commission meeting the Commission had been concerned about the traffic movement within and around the entry and exit from the site and asked the developer to provide some information regarding the circulation around the site and access and it has still not been provided. In the latest plan submitted about two weeks ago, they removed the Rec 90 labels from the fuel pumps. Before, the Rec 90 was the boat fueling station and the two pumps on the end of each island which lined up with the two old

driveways. That made good sense. The pump labels have disappeared so now no one is sure where those are going to be. Mr. Carballo presented photographs of how cars park at the 7-11 to get gas. They line the fuel tank up at the hose. They don't stop on the pad normally where the car stops so they take up more room on the site. Mr. Carballo presented photos taken at the Tom Thumb at mile marker 97 showing a big boat and a pickup taking up all three pumps, along with the congestion of people pulling in and out in all directions. Mr. Carballo presented photos of a traffic backup at mile marker 97 onto U.S. 1. He then presented photos of the Anthony's driveway with an outboard sticking out from the Marathon station to the Anthony's curb cut. Commissioner Demes asked Mr. Carballo to go back to a prior photo, which he did. Trailers with boats, RVs and delivery trucks cannot circulate the property. Mr. Carballo presented diagrams of the site plan with various traffic patterns depicted, while explaining required turnarounds for traffic. Mr. Carballo presented various examples of diagrams generated from site conflict software showing huge crisscross traffic conflicts.

Mr. Bill Wrublevski lives across from Anthony's on Rose Street on the ocean side. He has a commercial driver's license and part of his business is driving heavy trucks. What was proposed on the initial plan at the first meeting in Marathon was for a WD50 fuel truck, which is a standard fuel truck seen everywhere. This new redesign is for a WB40 fuel delivery truck because they can't get it in with this new design being so close to the other driveway. He took a survey on April 20 from Key Largo to Palm Beach to see how many of the smaller fuel trucks were out there, and they couldn't find one out of the 50 trucks that they saw. All were the larger fuel trucks. His concern is the that community is being told that just for this one 7-11 they're going to have a special truck just to deliver fuel to get into this entrance because a bigger truck cannot get into this entrance. Mr. Wrublevski presented diagrams showing the size differences between the fuel delivery trucks. Imagine two fuel delivery trucks trying to get into two stations at the same time or being backed up in traffic. A big truck needs to use two lanes of traffic, and the FDOT classifies this zone as a high accident area. The applicant's own plans show these trucks will have to make six turns to deliver fuel. This is a major concern. Mr. Wrublevski hopes this is not approved. It is going to cause undue harm and a safety concern for the community.

Ms. Jeanne Brennan has a bachelor's and master's degree in geophysics and has been visiting or living in the Keys for 30 years. Ms. Brennan presented crash data for the Keys using data from local jurisdictions. Ms. Brennan presented a display from E-Com from the TMP study showing the Key Largo area where the proposed 7-11 is has a number of high crash list segments within that area. Ms. Brennan then presented a diagram from FDOT data showing fatalities in this area from 2014 to 2018. The proposed 7-11 does pose a threat to public safety because it is in an area that is already high crash. Ms. Brennan then presented a diagram including the years 2018 to 2022 and there were 459 crashes in that area during that time span. Ms. Brennan then presented a diagram for the Tom Thumb which is a 24-hour gas station located in an area without a lot of curb cuts adjacent to it and no residential properties in the area, yet there is a high cluster of accidents around the Tom Thumb. This is what would be expected to happen at this proposed 7-11 location. It's reasonable to assume that curb cuts and intersections lead to more accidents. It's an observation everyone has form driving the highways. In this area there are the curb cuts, there's Almay Street, Grand Street and Largo Landings, so there are a lot of residences. Not so at the Tom Thumb. Ms. Brennan then showed the data on the injuries from the accidents in the

area. The variance should not be approved because it does not meet all of the requirements that the risks of public safety will not be increased. There is an increased risk of public safety if this variance is granted.

Ms. Jody Koblenzer stated her family has lived on Rose Street for 43 years. This proposed gas station directly impacts the traffic safety of this community and for visitors to the Keys. U.S. 1 can be dangerous and this will make it worse. The Commission's decision today can save lives. The signs tell slower traffic to keep right. That means the faster traffic is going to be in the left-hand lane. Each vehicle entering and exiting the gas station will be slowing down in the fast lane. With the gas station in the median, the deceleration of a moving vehicle is at least 200 feet, and longer than a football field if the vehicle is towing a boat. The neighbors see and hear vehicles screeching their brakes because the vehicle ahead of them is making a quick left-hand turn from the fast lane. She witnessed this just this past week. Adding another gas station of any size will multiply the dangers. Her traffic engineer confirms that this is a high-generation facility in close proximity to Grand Street and the existing Marathon gas station and will create numerous conflicts with traffic and hazardous conditions likely resulting in additional accidents.

Mr. Matt Koblenzer is a retired Naval aviator and airline captain having 60 years of flying experience, over 20,000 hours of cockpit time, and had the privilege of transporting thousands of people safely throughout the globe. To do that, he has to be annually trained, consisting of demonstrating equipment and system abilities and knowledge, maneuvering in many tight spots on aircraft carriers and spent years weaving a Triple Seven around taxiways and into tight terminal gates. He has driven a 16,000 pound rig that supports and transports his 33-foot sailboat that he has taken to regattas and other events. He has experience with stopping distances and turning radius requirements on land, sea and air. With his experience operating this heaving equipment he can state that the planned development being looked at will lead to accidents. He has been taught to analyze closure rates, stopping distances and turning radiuses. He is acutely aware of the startled reaction of operator behaviours, especially when they face unexpected situations which have just been presented. People do not react well to that. It is his opinion that traffic will not be able to navigate this gas station in this location as presented. Mr. Koblenzer hopes the Commission will protect the traveling public in their consideration of this matter as he has in his charge.

Ms. Lisa Gahagen has lived in Rock Harbor Estates in a house built by her grandpa for the last 54 years. It's the only place she's lived in the Keys. She enlisted eight volunteers to study five gas stations in Key Largo in the one block of Grand Street that lies in the median. These volunteers have spent weeks studying traffic flow, noise, congestion and pollution at their location. We all have been at our stations at various times during daytime and night time hours and their observations have been surprising. Ms. Gahagen focused on Grand Street, 155 feet long, bordered on the north by Anthony's and the proposed 7-11 and on the south by a boat dealership. Ms. Gahagen presented photographs showing cars parked on both sides of the street, dumpsters located along the street meaning garbage pickup stops traffic on Grand, and truck stops to unload parts to the boat dealership. It is not uncommon to have to go around these trucks to cross over the northbound lane to enter her neighbourhood. When encountering this situation, cars turning left off of northbound U.S. 1 run the hazard of missing the Grand Street median turn, turning into a car going around an unloading truck, or pulling into Anthony's

parking lot to go back south. She has been involved in these situations many times. The line of vision to the south of U.S. 1 going east is obstructed by signs, utility poles and wires. Unsafe conditions already exist at this corner. Combined with the possible thousands extra 7-11 traffic and this is truly an accident waiting to happen. In the County's Land Use Development Code Section 103 to 187 regarding obtaining a variance, requirement number three states, in part, "The applicant must demonstrate the variance will not create a threat to public health and safety or create a public nuisance." The proposed 7-11 will in fact create a threat to public safety every time the residents of Rock Harbor Estates enter their neighbourhood, and it will also affect all the drivers on north and southbound U.S. 1 at this location. A few months ago she wrote an email to the Commissioners about her concerns which talked about a member of her family being killed in this area. She does not want her family or anyone else's to have a death in theirs. Do not approve this variance.

Ms. Nancy Truesdale is a recovering attorney having spent 15 years practicing law and teaching high school for 16 years. She has owned property and lived around mile marker 98 since 2001. Over the last 20-some years of living on both sides of U.S. 1 she has gained a great deal of experience with the traffic and general driving conditions in this area. In preparation for this hearing she was one of the two volunteers recruited by Ms. Lisa Gahagen to observe traffic at the Tom Thumb, her husband took those Tom Thumb pictures, and also those at Anthony's over the several weeks getting ready for today. Ms. Gahagen referenced the Land Development Code that regulates and guides this Board in decisions. The applicant wants you to grant its request for a variance and in order for you to do so you must determine that all eight of the standards of Section 102-187(d) one through eight have been met. She does not believe that one, two, three and eight have been met. One is good and sufficient cause. Their cause is because they want to put an 11-pump gas station at this location. Last time when this item was looked at in Marathon the Commission asked the applicant to go back and re-evaluate their application and make some changes as you weren't certain because of the unique characteristics of this property. Not many properties in Monroe County are in the median of U.S. 1, and even fewer have cross streets like Grand Street, and even fewer have these nonconforming driveways. There is a lot going on with this property. By their own filing they stated egress from Grand Street would, quote, "result in a queuing past any reasonably spaced driveway connection on Grand Street, even if Overseas Highway ingresses and egresses were maintained." Just because access from Grand Street can't be safely designed for this proposed use doesn't mean that creating single driveways within 46 feet of the neighboring Marathon gas station and across the street from Almay is somehow safer. It's not. There is no safe driveway for this 11-pump gas station and, consequently, the applicant has failed to show good and sufficient cause. Two, failure to grant the variance would result in exceptional hardship to the applicant. The applicant states that if you don't grant the variance for this compromised driveway back to back with the Marathon station and across from Almay that they would have to use Grand Street. That's faulty analysis because by their own documents they state that Grand Street would be unsafe. Their application reveals there is no safe driveway for the proposal and, as a result, that does not mean you have to grant this. And, eight, the variance is the minimum necessary. This isn't the minimum, this is the maximum.

Mr. Andrew Tobin, read into the record the conclusion reached by Mr. Moss who is a traffic safety expert witness for crashes and negligence cases. The report is in the Commission's packet. "Considering the large number of daily trips expected to occur at this station, the existing

hazardous conditions that will be exacerbated and the numerous conflicts that will occur as a result of the development, based upon on my background, experience and training, it is my opinion within a reasonable degree of engineering probability and certainty that this high-generation facility in close proximity to Grand Street and the existing Marathon gas station will create numerous conflicts with traffic and hazardous conditions that are likely to result in accidents." That is the public health safety issue. A lot more time could be spent going over the various traffic issues. Grand Street is a problem. It's got a blind corner. Every time you cross into Rock Harbor Estates you have to pull almost into U.S. 1 to cross. Mr. Tobin had prepared a memorandum of law for the Commission that was in their packet. The law on exceptional hardships is that it has to be a legal hardship. Legal hardship is defined in about a hundred cases as, "It is impossible to use the property for the purpose for which it is zoned to qualify it for a legal hardship." As staff correctly points out, this is a commercial retail use. The use is primarily for the sale of consumer goods, products, merchandise or services. Substantial improvement is defined that you can have any type of commercial use at the existing store, you can repair it up to 50 percent of pre-destruction value, so there is no hardship here. A legal hardship is not, we can't do what we want to do. There has to be criteria. There was a recent case of a variance where his clients were protesting a house next to their house and the court reversed the Planning Commission's decision because not all of the criteria had been met. So, yes, you can have a smaller house; yes, you can have a smaller gas station; yes, you can have something other than a high traffic generating facility in a high crash area. Mr. Tobin has represented a lot of property owners and is in favour of property rights, but the standards have to be met, you have to meet all of them, and the other standard is the minimum necessary. Mr. Tobin believes that staff, who does a great job and spent a lot of time on this, looked at this in a linear fashion and didn't contemplate the law which is you have to be denied, you can't use your property at all in order to qualify for a variance, it has to be impossible. There's one case that talked about the Florida law and that was Herrera vs. City of Miami where the court rejected a variance based on the failure to show that the project could not be reduced in size or the project might not qualify for federal financing. So just because you can't use it for the highest use, and this is squeezing every square inch, does not mean it's a legal hardship. So they do not qualify under the law for a legal hardship. Based upon the traffic safety, and a lot of time could be spent on this, the Moss report is good and has a lot of exhibits and photographs in it.

Mr. Shannon Donnelly is a chef that has been here 30 years, is a father and a business owner. He is a supporter of the community and the Keys, and in all the places he has traveled and cooked in five-star restaurants in Canada, the U.S. and Europe, the number one thing that he always looks for is what comes first. It's common sense. $5,000 does not need to be spent on a safety expert to cite all of the things people have brought up here. The number one thing that comes first is safety. This area is designated as a high-crash, high-fatality area. Fatality means your wife, your child, or your grandmother is not coming home. There are a couple of options. You can light a fire or dig a hole because somebody is dead. If you allow this to go in we are going to have more deaths. His kids have been here since they were born and have driven by the bodies. It just happened to his son the other day. You saw point blank all of the accidents that circle this area. This is going to magnify 10 times what we already have as a problem. We've got ten pounds of Slurpees in a five-pound bag that is bursting at the seams. This is going to be the catalyst for more people to die. The applicant does not meet the criteria. Safety is going to be adversely affected as well as this being a nuisance. Nuisance is his last concern. His wife and children

coming home from crossing the street are his main concern. His family alone has been involved with four accidents. When they cite this 559 crashes, there are even more fender benders and near misses. He waited at Grand Street for 15 minutes the other day and he calls it the roulette corner. The Commission is here to represent us, to keep us, your constituents and our children safe. At Grand Street your physical body has to be six feet beyond where the white line is where your car is supposed to stop in order to be able to see what is coming from the northbound lane. People cannot make that turn when you're that far out. This proposal takes away the safety net that is there. Anthony's has two turns coming in on the left-hand side as you're driving north. When you can't make that turn, you have to try to back up, so you back into somebody that's behind you. Anthony's is the safety zone for them to go around that person that's sticking out or the garbage truck that's there. Coming in with somebody on your tail doing 60 miles an hour, you don't have a great deal of time to brake or see. It's a blind corner. If this goes in, this super high-density grotesque monstrosity operating 24-7, we're going to have so many more traffic problems there or so many more people stopping or trying to stop and that safety net is going to be gone. You won't have the opportunity to swing a little bit wider and miss that person. Mr. Donnelly's concern is safety and it's the Commission's job to keep their constituents safe.

Rosemary Donnelly stated she is married to Mr. Safety and is the person who had the front of her minivan ripped off by someone trying to make the corner, pulling a trailer in a really tight, narrow congested area. She is against giving the variance to the 7-11 for the common sense reason that it is a high-intensity gas station in an area that is already overstressed with the amount of traffic in that area, including bikers, walkers, people freaked out that they're taking their animals to the vet, and walkers to the convenience store that's already there. Please take into consideration not only those living in the Upper Keys but those that live in the Rock Harbor neighbourhood.

Ms. Susan Cashin was called upon to speak, at which time an unidentified, unintelligible speaker spoke from the audience and did not use the microphone.

Ms. Kathleen Ludke (phonetic) was not available to speak.

Mr. Grant Rollin was not available to speak.

Ms. Phyllis Mitchell of Islamorada came here today for the silliest of reasons. She loves Anthony's. There are very few places for LOLs to find clothes in the Keys. An LOL is little old ladies. Her daughters think Anthony's is for little old ladies, though she disagrees. She has never seen a community as well put together making a point for the safety of their area as those present today and she is proud of them. She believes they've made the point.

Ms. Leslie Bennett was not available to speak.

Ms. Joyce Bennett stated that she has heard so many worries about the community and safety. She used to own the two-story building across the street from Anthony's which at that time was a dance studio and she observed quite a few accidents then and knows it's even worse now. But the reason she's here is she really loves the Keys and she doesn't want to see more gas stations

and more liquor stores. She would like to see more Anthony's as well because she's one of those ladies. Please leave Anthony's alone.

Mr. Tony Davenport is President of Landings of Largo right cross the street from the proposed 7-11 and a fourth-generation Conch, really from Key West, and he has seen a lot of growth up and down the Keys, both good and bad. Putting three gas stations within 250 yards from each other makes no sense and it really is a residential safety concern. The major concern is the safety issue that the 7-11 would bring. No one has mentioned the heavily-utilized sidewalk with runners, walkers, bikers, people pushing babies in strollers and people walking dogs. People focused on entering and exiting the 7-11 will not be paying attention to the sidewalk. He also has witnessed many vehicles exiting and going the wrong way. There have been over five fatalities in the last three years in that two-mile stretch, two right in front of Landings of Largo. There are many residents in the area with children and there's the school buses coming by. On behalf of Landings of Largo, Mr. Davenport requests the Commission vote no. Something commercial is going to go there but there's got to be something a lot less density prone traffic wise like Anthony's or maybe a Bass Pro Shop.

Ms. Joan Scholz of Islamorada believes the residents in the area have made their point. She passes through this area every single day. In addition to the school buses there is the JBT transportation system that stops and as many know, someone just got killed getting off of the bus, walking in front and getting killed. Safety should be number one for this variance and we don't need another gas station.

Ms. Shirley Abraham stated that she had not planned to speak. She thought she was signing something to say she was here. She has been coming to the Keys since the 70s to visit her parents and bought a retirement home in '94. Ms. Abraham has seen a lot of changes. She loves the Keys. Her children now come and one is thinking about buying so it's in her history. She has seen a lot of change that have not been to the good, horrible traffic and places going out of business at times. It's truly a paradise but she's afraid we're going to ask too much ecologically and environmentally. Her brother was an environmental lawyer and has done work in Marathon with the shallow wells so the waters are at issue, too. We need to concentrate on what is important here and not make it go down the tubes. Anymore traffic and she may be going north.

Mr. John Abraham was not available to speak.

Ms. Joy Martin was not available to speak.

Mr. John Kocol owns the building he bought from Ms. Joyce Bennett twelve years ago. It's the Island Hammock Pet Hospital today. He also owns a few properties in the subdivision that he rents to the local workforce. In this time he has seen numerous accidents here. He is a free market capitalist that believes anybody should be able to develop their property within the boundaries of the law as long as it doesn't sacrifice public safety, and this I an obvious case where it does. The only thing that makes sense to him to try and work out a solution would be to put in deceleration lanes, and he has proposed this at every opportunity. The comments being received today are what you would expect from a community trying to preserve its quality of life. Safety is a core value to all of us. We elect public officials to uphold our core values and

every time those core values are not honoured a small piece of our community dies with it. Please don't let that happen in this case. The land development regulations are written and enforced for good and sound reasoning and should not be circumvented when it comes to public safety. Please reject the variance request and require deceleration lanes as a condition if you are to approve this project.

Ms. Susan Holler was waiting to speak on the next item. Chair Scarpelli asked for anyone wanting to speak on Item 3.

Mr. Enrique Rodriguez, Vice President of Pirates Cove Association was not planning to speak today but listening to the distance of the curb cuts and the size of the fuel delivery vehicles that need to be reduced to make the turn in, as he was listening to this he recalled that he was the driver engineer instructor for the City of Miami and his job was to teach the firefighters how to maneuver those large vehicles. In thinking about this, the curb cuts are 43 to 45 feet from the existing curb cuts going into the Marathon gas station. Another gentleman pointed out that they had to reduce the size of the fuel delivery trucks to be able to make the turn into the gas station. That raised a red flag because those fuel delivery trucks have a pivot point very close to the cab, so they can make much tighter corners than a boat on a trailer. Now we have an 18-foot pickup truck towing a 30-foot boat, which is very common, and then you have to add five feet of trailer. Now we're at 53 feet of vehicle. They were talking about the large fuel delivery trucks being 50 feet. Now we're at 53 feet with a pivot point that is much further back on the rig. If they can't make a turn with a vehicle where the pivot point is way further forward, you can't possibly expect to make the turn with a boat and trailer pivoting much further back unless you take up two lanes. If a person tries to turn in through two lanes, they may not have a good field of view of what's inside the gas station, so they start making a turn and there's another vehicle there or they can't quite make the turn. Now what do you do. You've got to back up on the highway. He sees this as an issue creating potential accidents.

Ms. Mimi Bentolila, the President of Pirates Cove, wanted to say that Pirates Cove is very concerned with this as well, not just Rock Harbor and Landings of Largo. She agrees with everything everyone has said. Two weeks ago she was heading home from north and had just passed the CVS, was in the left-hand lane, and someone in the right-hand lane slowed down to turn so everyone had to stop super quick, and one of the people in the cars turned left into the left-hand lane and almost wiped her out. This is what people do. They come down from Miami and don't realize it's only 45 miles an hour. They're going 60 miles an hour. When you have all these businesses that you have to slow down for in order to turn into and this is why there's so many accidents. Please don't grant the variance.

Mr. Don Bower of Grand Street commented on the Commissioner who said there was not much traffic and he has to go back to Marathon. He invited Commissioner Neugent to meet him by Grand Street to look at the community and cross the street and all of the traffic conditions would be seen right then and there. Chair Scarpelli asked what he was serving. Mr. Bower stated he would greet him as a neighbour and he could put his order in. It would take them a few minutes to get across the highway but he would wait for them and keep the lights on.

Ms. Tina (last name unknown) had attempted to speak on earlier items 1 & 2 but could not get connected. She stated the solution to the problem with Cemex was for Monroe County to buy it and leave it a green space. Mr. John Wolfe stated that this public comment has to be on Item 3.

Mr. Ignacio Urbieta spoke on behalf of the Marathon gas station just north of the property. He works for the company that owns that gas station. Previous to 2021, his family had been the owner of that property for many years. Of course he has a conflict here but in all sincerity, there's a serious potential for hazards for the customers and employees. The existing nearby driveway is already close to his current driveway but to add a very high-traffic business next door that would also have heavy trucks and boat trailers entering and exiting, he would like to confirm everything that's been said before, that this is certain to create a bit of competition and additional traffic and hazards on Overseas Highway. He is familiar with the technique to justify circulation inside of a development to suggest that you're going to use a tank wagon or bobtail short truck. That's not realistic in this business. Delivering from Port Everglades where the fuel is coming from all the way to Monroe County in a truck with half of the capacity, especially to a site so far south from the nearest terminal and especially to a site that's projected to have such high volume is not realistic. Any circulation studies should be analyzed with the realities in mind that it's going to be heavy tanker trailers entering and exiting, and they may have to do some special maneuvering to drop fuel. Having two driveways with trucks potentially doing the same thing at the same time is almost certain to create a hazard and definitely create additional traffic. The traffic study did not support the version that there would be overflow onto Grand Street and Overseas Highway, and that needs to be substantiated before they have any chance of really proving that they have an exceptional circumstance or the other standards required under the code.

Ms. Janice Lindsay-Hartz has lived in Pirates Cove for 36 years, and wants to add to everyone's safety issues with a human-eye view of what happens on a daily basis here. She encourages the Commission to go to Grand Street and come to Pirates Cove. When she leaves Pirates Cove from Gasparillo Drive to head north, she cannot cross two lanes of traffic coming bumper-to-bumper at 45 to 50 miles per hour, so she turns right, gets up to 45, tries to get in the left lane but traffic is going fast and it's hard to get in. Then she's looking for Grand Street where she can go across and go north and have the same problems everyone has described. Traffic is tailgating her, they swerve around, give you the finger, sometimes swerve right in front to make a statement that she shouldn't be in this lane, and then she is slowing down to make the left turn. This is very frightening and scary and is on a daily basis. Adding this high-intensity gas station to what everyone has said is already a high accident area is going to make it impossible. She will need to go even further south to turn around to go north. She lives here because of the small town community character, but this is turning it into this speedway, a dangerous area, and she asks the Commission to please consider this when looking at this project.

Ms. Ronnie Harris lives at Rock Harbor Estates. A public safety issue she has not yet heard addressed is whether it's safe to live near a gas station. In an article by Fossil Fuel their conclusion is with due diligence a homeowner can reduce long-term risk by avoiding homes located in close proximity to gas stations. There is an abundance of scientific research regarding the health hazards of living near a gas station. Columbia University found many of the nation's gas stations are leaking hazardous vapors into the surrounding environment and despite the array

of modern safety and health guidelines, these gas stations often emit ten times the amount of emissions used to determine setback regulations. A study of U.S. gas stations found that benzene emissions from gas station storage tank vents were high enough to constitute a health concern at a distance of up to 524 feet. The EPA recommends screening school sites within 1,000 feet of a gas station. A joint Bloomberg School of Health and John Hopkins University analysis on the health implications of living near a gas station concluded that particularly impacted are residents living near gas stations who spend significant amounts of time at home and children who live and play nearby. The National Institute of Health has published countless research reports on the dangers of repeated exposure to liquid and vaporized gasoline. Long brain and kidney damage are frequently cited as the most pressing health concerns. According to the World Health Organization there is no safe level for benzene. Ms. Lindsay-Hartz stated she could go on and on with examples of headaches, low birth rate, childhood leukemia and benzene seeping into nearby homes. Denying the request to add 11 fuel pump stations making a total of 20 fuel pump stations sandwiched between three densely populated residential neighbourhoods is the only thing to do and is justified by following the guidelines in the Land Development Code Section 110-65 and 67. An additional gas station is not appropriate within the context of the surrounding neighborhoods, is not consistent with the community character, will have an adverse effect on the value of the surrounding homes and properties, and is a significant threat to the health and well being of those living nearby. For these and the many reasons that the very zealous neighbors has already discussed, she implores the Commission to deny this variance.

Mr. John Wolfe pointed out that a fair amount of that information was not relevant to the variance which is obviously the portion was about all of the studies which are hearsay. The Commission can listen to it and do what they want with it but he needed to point that out. Chair Scarpelli then closed public comment.

Commissioner Demes asked Mr. Wolfe to further explain his latest comments. Mr. Wolfe explained that this hearing is only about the variance and there were a lot of extremely germane comments about the dangers and safeties about that. The portion about gas stations themselves being inherently dangerous because of fumes has nothing to do with this part of the variance. That's all he was saying. Chair Scarpelli asked if the applicant wanted to speak.

Mr. Ty Harris stated the he appreciates the comments from the public speakers. He will have Jason Green and Ian Rairden speak to some of the issues that are germane to the variance request. This is a quasi-judicial proceeding and when someone purports to be an expert in something, they have to be qualified. To the extent that a report was introduced into the record that he hasn't seen and did not get a chance to cross-examine that person, that evidence does not constitute substantial competent evidence for purposes of overturning the staff recommendation. Staff recommended approval and the presumption is that all eight criteria have been met. To overcome that it must be shown that the applicant has not met that.

Mr. Jason Green stated that most of the testimony, in his opinion, was based on the use and this application is about the access. Staff has already stated that a variance would be needed for any driveway for any use on this site for anyone redeveloping this site. It is incorrect to state that the variance is needed to get a smaller truck in and all of these other comments related to that. Large trucks, full-size fire trucks can all make the turn to get into this site. A variance is not needed

because of that. The variance is needed because of the separation from Grand Street and nearby driveways. It is unfortunate to try to tie the use to accidents. Gas stations do not inherently cause accidents and death and those are not fair statements. Most of the examples given were about older, nonconforming, too small sites for the uses that were shown. There may be backups and boat trailers hanging out into the roadway on other sites. Unfortunately, some of the comments would lead him to believe there is not a single way you could ever design a gas station here. These standards, the driveways, the radii that come into the driveways all have to meet FDOT and County regulations which were put in place because of safety factors. As far as backups, one of the things done when the site was changed was to make sure there was enough room between the fuel delivery area and the end of the gas pumps. There is 30 feet between a vehicle parked at the end and a fuel tanker if one is parked there. The assumption that it is going to back vehicles up and you can't get around vehicles fails. He is confused having heard testimony that both more and less driveways are better. Today it's four full driveways and this is cutting that in half. The driveways are 35 feet wide, which is much larger than the typical standard commercial driveway of 24 feet. They have run numerous truck turns with different vehicles and a fire truck can circulate through the entire site. This is a very well designed site to accommodate a lot of the what-ifs. The applicant is also going to restore and match the pathway that is there on the west side of the site for the southbound side to enhance and improve pedestrian circulation. The Commission needs to look at where else a commercial development would put the driveways.

Chair Scarpelli noted that the applicant had mentioned using the Grand Street access and there were major issues with utilizing Grand Street, including the nightmare that it would create on Grand Street. The public comment was they did not want the access on Grand Street. Mr. Ian Rairden of Kimley Horn added that the applicant has offered to put that in if the County wants that. The applicant can't fix bad drivers and other streets with poor visibility. Those issues that are there are not being added to or created by the applicant. The original traffic study was done based on the four driveways. It was reviewed, met all county guidelines and was approved. Subsequent to the prior meeting it was updated to show the two driveways, and that study was also approved and meets level of service standards.

Commissioner Demes stated with Grand Street getting a lot of local traffic crossing U.S. 1, it would be a disaster to have the traffic going in and out of a gas station there. He assumes new cuts require FDOT permits, and asked where the FDOT concurrence is with the plan right now. Mr. Green responded that FDOT was fine with the four driveway option because they weren't four full driveways, so under their rules they treat that as one driveway. This plan has been submitted to FDOT and is under review as it is required to be resubmitted. He hasn't gotten their comments yet but he believes it will not be an issue for them because they were fine with the four drive layout. The next step is the engineering within the right-of-way but the access is being reviewed currently. Any work done in the right-of-way requires FDOT approval. Mr. Green understands the public's concern but in his professional opinion, this meets the criteria and he agrees with staff's recommendation.

Though Ms. Devin Tolpin had nothing to add, Mr. Peter Morris qualified her as an expert in the fields of Planning and Floodplain Management, and she listing her degrees, licensures and work

experience. The Commission accepted her as an expert. Ms. Tolpin then read the eight required standards for a variance into the record.

Commissioner Demes stated that after listening to the passionate input from the community, he wanted to clarify that this variance decision has nothing to do with the use of the property and that the use would be reviewed through the conditional use. Commissioner Ritz also noted that having sat through lots of public hearings, this community had spoken eloquently and knowledgeably and he is proud to be one of their neighbors. He is viewing this as simply an access issue and he does not see the exceptional hardship, but does see a threat to public safety, so he will vote against this variance based on public safety. Chair Scarpelli asked Ms. Tolpin about the criteria for public health and safety and asked what it would be reviewed against. Ms. Tolpin responded that it is reviewed based on the documentation available at the time the application is submitted. Peter Morris added that the Commission needs to be very analytically circumspect and not hypothesize too far afield from what's in the file. In other words, don't get too adventurous theorizing. The longer the analytical chain of what could potentially result in a danger, the longer that is, the more tenuous the reasoning is. It's a matter of managing liability exposure on appeal. Chair Scarpelli stated that there has been some very interesting and compelling testimony today about health and safety as far as traffic concerns go. Unfortunately, that's due to the nature of where we live and the highway we live off of as a one lifeblood kind of road scenario. He does not know that that should affect people developing their property. Commissioner Demes echoed Commissioner Ritz on the community input and presentations, stating that in his time on the Commission he hasn't seen such good community input as seen in this meeting and he applauds their efforts.

Motion: Commissioner Ritz made a motion to deny based on there not being enough evidence for an exceptional hardship and the variance increasing the risk to public safety. Commissioner Neugent seconded the motion.

Roll Call: Commissioner Demes, No; Commissioner Thomas, No; Commissioner Neugent, Yes; Commissioner Ritz, Yes; Chair Scarpelli, No. The motion failed 3 to 2.

Mr. Wolfe clarified that this means the Commission is agreeing to allow the variance and uphold the staff report. Mr. Morris thought that to make sure the record is abundantly clear, they should have another vote on a motion to approve consistent with the staff's recommendations.

Motion: Commissioner Thomas made a motion to uphold the staff report and recommendations to approve the variance. Commissioner Demes seconded the motion.

Roll Call: Commissioner Demes, Yes; Commissioner Thomas, Yes; Commissioner Neugent, No; Commissioner Ritz, No; Chair Scarpelli, Yes. The motion passed 3 to 2.

4. <u>7-ELEVEN (DANIEL BARRY, Jr. & ARCHER BARRY), 98200 OVERSEAS HIGHWAY, KEY LARGO, FL 33037 MILE MARKER 98:</u> A PUBLIC MEETING CONCERNING A REQUEST FOR A MAJOR CONDITIONAL USE PERMIT BY AXIS INFRASTRUCTURE, LLC. ON BEHALF OF DANIEL & ARCHER BARRY, FOR THE CONSTRUCTION OF A HIGH INTENSITY COMMERCIAL 7-ELEVEN CONVENIENCE

STORE WITH 11 FUELING STATIONS, ON PROPERTY DESCRIBED AS LOTS 1 THROUGH 6, BLOCK 1, ROCK HARBOR ESTATES, ACCORDING TO THE PLAT THEREOF, AS RECORDED IN PLAT BOOK 3, AT PAGE 187, OF THE PUBLIC RECORDS OF MONROE COUNTY, FLORIDA, CURRENTLY HAVING PARCEL ID NUMBER 00519590-000000. (FILE 2022-021)

(2:05 p.m.) Ms. Devin Tolpin, Principal Planner, presented the staff report. This application is for the major conditional use to develop the 4,730 square foot high-intensity commercial retail store on the property. This includes five double-sided fueling stations plus one Rec 90 fueling pump. This property is located in the Suburban Commercial zoning district which does allow for high-intensity commercial retail uses as a major conditional use. The site plan with approval of that variance has demonstrated compliance with all required rules and restrictions of the Land Development Code, including parking, open space, buffer yards, stormwater and landscaping requirements. Staff reviewed this application for consistency with the standards presented and in the staff report. Staff recommends approval. Of note, the site plan did include a sidewalk in the County-owned right-of-way adjacent to Grand Street. This sidewalk is not required. It wasn't treated favorably by the engineering department, but they did not say that it could not be done. If the Commission does recommend approval of this application and wants that sidewalk there, it would need to be added as a condition of approval as it is not required, it is additional. Also of note, the County has received written protests by more than 20 percent of the surrounding property owners which requires a supermajority of the Planning Commission to approve this major conditional use permit, meaning four members must vote to approve as opposed to the usual three.

Ms. Schemper then addressed the sidewalk. She had spoken with engineering yesterday about this to clarify whether this could possibly be permitted or if it was an absolute no. It could possibly be done, but the concern is the sidewalk does lead to the multiuse path on the southbound side of median property, so it is connecting people on the ocean side through the median to the path. However, engineering stated that if you put the sidewalk in, it would likely require the curb cut and pedestrian apron towards U.S. 1 in the northbound lanes, and that then becomes an indicator to pedestrians that this is a good place to cross the highway. So the concern is more people may be encouraged to cross there without any sort of crosswalk just by putting the sidewalk there along Grand Street. People are already crossing there. One idea was to have a sidewalk area for crossing through the gas station property itself within the parcel boundary so that no one is walking through cars backing in and out of parking. She is explaining this in the event the Commission decides they want that sidewalk as a condition as she would not want a condition added that would be impossible to meet. Chair Scarpelli did not think the apron was required. Ms. Schemper responded that she was not fully aware of the rules. Chair Scarpelli thought it would prevent people from parking on that side of the road. Commissioner Ritz noted that there was a bus stop right across the street. Chair Scarpelli then asked if the applicant wished to speak.

Mr. Ty Harris stated that as far as the sidewalk goes it could be put in or not, but staff has stated that the they meet all criteria for the major conditional use. The burden now shifts by those opposed to prove by competent substantial evidence that the applicant somehow doesn't meet that burden. The applicant will listen to opposition and respond to each issue as needed. There

were no further Commission questions or comments. Chair Scarpelli then asked for public comment.

Mr. Tobin commented that it had been stated that the burden has now shifted to the opponents and he had a point of order. Mr. Morris explained to Mr. Tobin that he was speaking out of turn.

Ms. Susan Cashin lives at mile marker 98.2 which is right in the bull's eye. Almost everyone in the state is having a problem with homeowner insurance. Many companies have left the state and homeowner insurance has been hard to get or find. The company she was with for over 10 years notified her in February of non-renewal as the carrier was reducing exposure. Her agent, whom had been with for over 20 years, found her a new company in March with Florida Family. After completing an application and paying, she was then notified in April that she was ineligible due to the proximity of a gas station, which is the Marathon gas station. She cannot be the only person having this problem but she believes this is only the tip of the iceberg and is concerned about what will happen if the larger 7-11 development is allowed to be built. She, along with everyone that she knows, does not want or need a gas station or convenience store at this location. There is one already on the next property. She is concerned for her health, safety and property values. Accidents already occur regularly. Ms. Cashin presented an aerial that her insurance company had sent her indicating she was too close to a gas station, and asked the Commission to please vote no.

Ms. Susan Holler, a realtor with Location Real Estate for 17 years in sales and living in Pirates Cove for 25 years, realizes there is no mathematical data to prove that back-to-back gas stations can hurt property values in nearby neighborhoods, but in her experience and opinion this mega gas station will negatively impact property values in the neighboring subdivisions. She knows what buyers look for in a property. A large majority of them come from big cities and all tend to be looking for an escape from the congested bustling cities and for quiet, safe neighborhoods. This proposed gas station is going to have motorbikes, cars, trucks, boats, semis all maneuvering to get on and off the highway and trying to use the cross street to get from one side of the highway to another. Grand Street is already difficult to traverse with the boat business on that street. It is a short street with a blind spot. There is also the veterinary business. Buyers want to live in the Keys because they don't want the noise and light pollution. That won't be possible with a 24-7 lighted mega station, not to mention the effects of all that light on the local wildlife. Buyers will say no to a property for a little highway noise, let alone noise from a mega gas station. In her opinion, surrounding property values will show deterioration in price and sales if this development is allowed, but by the time that can be proven it will be too late.

Mr. Andrew Tobin lives on Grand Street and regarding this development, which is really a truck stop, wanted to get a point of order clarified. A Planning Commissioner said that the approval of the variance has nothing to do with the use of the property, and he asked if he had understood that correctly. Commissioner Demes stated that that had been his question. Mr. Tobin stated that if that is the ruling, then this major conditional use becomes very, very important. Everyone agrees that going from four driveways to two driveways is a reduction, in theory, but if it's going from four to two for the highest intensity use that we know of in the Keys then they did not qualify for a legal hardship, so he is glad the variance does not have anything to do with the use. Mr. Tobin submitted two prior Planning Commission Resolutions from the late 80s, one in Silver

Shores for a 2,500 square foot convenience store with two pumps and four stations, similar to the one in Key Largo next to the elementary school, a very small station. The Planning Director at the time, Don Craig, approved those and the Planning Commission overturned staff's recommendation. That was at Silver Shores and Woods Avenue on Plantation Key. The purpose of submitting the resolutions is to emphasize that one of the sections not covered in the report is 110-65, authorized conditional uses. "A Planning Commission is empowered within their review of minor or major conditional use applications respectively to approve, or approve with conditions, or to deny any application that may not be appropriate within any particular area in the context of surrounding properties and neighborhoods." That was section (c). Section (a) says, "The designation of a use in a land use zoning district as a conditional use does not constitute an authorization or assurance that such use will be approved." He knows that some of the Planning Commissioners are not familiar with Grand Street, the Upper Keys, and the residential areas on Almay Street that are going to look directly into this gas station. He appeared before the BOCC last month and they are going to hopefully have a moratorium on gas stations because unlike Collier County which has nine pages specifically directed to gas stations, lighting pollution, and all the other things that are important, one of the things that is very common is to have a setback between gas stations, because gas stations are magnets for traffic. He would ask for all of the evidence that was provided for the variance to be considered in the context of this major conditional use. There are many jurisdictions that have setbacks from residential areas. Monroe County does not have specific regulations on that, but under 110-65, the Planning Commission has the authority as the final arbiter or judges that decides. Monroe County does not have specific regulations so it's more difficult to figure out how to protect the health, safety and welfare of the community. This is not one gas station being approved, but basically two gas stations. One has 5,000 square feet of convenience store, the other one has 3,000. This one has 11 pumps, the other one has nine pumps. This is what is at stake here is the neighborhood is going to be changed. The applicant is not entitled to any particular use or the highest and best use of property. That is a zoning concept that everyone is familiar with. No property owner is entitled to the highest and best use, especially with traffic safety issues, with benzene issues, with school bus issues. That segment of Monroe County is a dangerous segment and is surrounded by a residential area, a stable residential area. All of the evidence that you heard on traffic safety was not made up. The County's own traffic report that the BOCC adopted shows this as a high crash area. With all due respect to the applicant, yes, a gas station doesn't necessarily create accidents, but it is a magnet. Cars go in, cars go out at all hours of the night, they're pulling boats, there are trucks, and they're backing up on the highway. Those are the things that should be considered in a major conditional use approval. The applicant is not entitled to the highest and best use of the property. There is precedent from Commissioners in the past, Grace Manillo, John Scharch, Ron Miller. They were concerned with over development. In the recent years the County has had ROGO and slower growth and allocations. That's great, but there's still a role for the Planning Commissioners to decide what is an appropriate use, and under the major conditional use criteria, just because you meet the technical requirements and just because staff recommends approval under those requirements is not a substitute for your judgment. Everyone in this room is very passionate about having back-to-back gas stations. It is a precedent that you do not want to set because gas stations have unlimited resources and he does not believe they care much about the local residents. Please don't set the precedent.

Commissioner Thomas asked for a copy of Mr. Tobin's paperwork, which he provided. Commissioner Ritz thought Mr. Tobin had raised a good point about all of the testimony from Item 3 and whether it would be okay to consider all of that testimony or if the folks needed to come up and repeat everything they had said for Item 3. Mr. Wolfe stated that the items can't be totally separated and there were a lot of points made that are directly relevant to the major conditional use and the Commission can definitely consider those. The community does not have to get up and repeat everything. Commissioner Ritz wanted the audience to be made aware that they do not need to repeat all of the prior comments made for Item 3.

Ms. Joy Martin thanked the Commissioners for their time and all of the neighbors and residents for their comments. She has lived in the Rock Harbor area for over 30 years and is familiar with the different traffic flow. Although this may not generate more traffic, it will generate the congestion and issues resulting with the use of the property as a 7-11 and a multi-pump gas station. This development brings pollution via air and light. Anyone can Google what it means to live by a 24-hour convenience store and gas station and can see the responses in the studies. It doesn't only show increased crime, traffic congestion, risk for pedestrians and accidents. It's just the nature of the beast with that type of development. Couple that with the fact that it's next to another gas station. Ms. Martin is concerned with the emissions in the immediate area with so many pumps and big tankers filling those pumps. This is an issue for anyone having breathing concerns and just our quality of life. These reasons are some of the reasons why insurance companies are rating residences near a gas station ineligible for coverage. If homeowner coverage cannot be obtained then property owners are going to be in default of their mortgages. If it can be obtained elsewhere there will be a premium increase with more risk. Ms. Cashin shared her cancelation for ineligibility and she's the tip of the iceberg. That is an adverse impact on the residents and the neighborhood. This will also affect Landings of Largo. She had reached out to a local insurance company and she asked them to contact the Florida Family group about insurance for homeowner with regard to a gas station and the reply from the underwriter was, "We would not be interested in any property near a gas station." If the traffic condition that already exists in the area worsens as we predict with this use, this area will be a greater hub for fender benders and worse, accidents with injuries or fatalities. This will adversely impact all Keys residents to include all that use the bike way and the highway. The bike path there is used regularly, and people cross the street there to get on the JBT bus. Insurance has always been an issue though homeowner insurance hasn't, but now it will be, for all of these residents, with this high-impact use. This is the adverse impact on property values that the staff had referenced in their report that they were not aware of any adverse impacts at this time. She is now putting staff on notice of this adverse impact.

Ms. Ann Helmers referenced Chair Scarpelli's comment regarding the scope concerning safety and the argument made by the applicant that the curb cuts would simply be needed in any event even were there to be another business such as Anthony's put into that location. By the applicant's own traffic study, there is an increase of trips per day at this site from around 60 to 673. So there is no way not to understand and acknowledge that this will be an enormous increase of traffic stopping, turning, coming in and out. That said, it is interesting and not an extrapolation to say that we as residents have presented FDOT data showing specifically that this is a high impact, high traffic, high fatality, high accident area. It is not a stretch of imagination to say that. If you take the data that exists today and multiply by ten times the number of cars

making stops and trying to get in and out of a specific area that already has a gas station 40 feet away, it's going to be a problem. This is exactly why we have a Planning Commission because you all are charged with making those decisions above and beyond what the statutory requirement may say. It is interesting that the attorney has acknowledged that the applicant has not yet completed the process of obtaining a final opinion from FDOT. That is the state agency authorized to evaluate safety and make decisions. It can't be justified that if one agency says something is okay, then it must be okay.

Ms. Jody Koblenzer reminded the Commission that Ms. Ronnie Harris had made a presentation and may not have been aware that Items 3 and 4 had been separated, and asked them to please recall the fact that she does have studies that she found on the benzene. A high-intensity business at this site would severely damage the community character. A 24-hour business is inappropriate. The light pollution would be particularly intrusive to the garden units of Landings of Largo. Truck deliveries at night would be disturbing during the time of day that residents need to renew their spirits and energies. Residents of the Keys have chosen to live here for the quality of life. Please consider the impact on their lives today.

Mr. Joe Wrobleski of Rose Street pointed out how much more traffic will be going through this area. He sat at the Tom Thumb for hours counting cars and on average, in an hour, there's approximately 80 cars going through the Tom Thumb. He spent several hours at Anthony's and there's approximately 30 cars that went through Anthony's, and out of the 30, the number that went into the store were five so most of those people were just driving through there. This will be a hundred-and-some percent increase in the amount of traffic in this area which is a major safety concern. He Googled safety concerns on convenience stores and on the FBI report in 2021 and these stores are number four under violent crimes. Number seven is a gas station. Both of the top ten will be in his back yard. He has not heard one person speak for this development and he hopes the Commission takes that into consideration.

Mr. JD Carbello disclosed that he spent 35 years working for Marathon Oil, which was part of Speedway which is now owned by 7-11. It's already been shown that this is a high-crash location from marker 96 to 99, and the reason is simple. The light turns green at the CVS, everyone has been backed up there for a mile or two so when the light turns green and they get out of that downtown Key Largo area, they're cooking to point south. Conversely, coming up from Tavernier, you may or may not get trapped at the Harry Harris light, but you're in that 50 mile-per-hour zoning coming north. By Keys standards, you're in the wide open spaces. That's a 50 mph zone coming north with all the people blasting out of the traffic light at 101, and this is a perfect storm of convergence right at mile marker 98. Mr. Carbello presented photographs of what it looks like to pull out from Grand Street. Mr. Carbello mentioned that he looked for 24-hour businesses in this neighborhood. Tom Thumb is one, and you have to go all the way to the Speedway for the next one that 7-11 owns. There are no other 24-hour businesses in this stretch of highway. It's dark, quiet and peaceful. The Marathon station closes at 10:00 and Anthony's at 5:30. This would plunk one right in the middle of these three subdivisions and would be a great detriment to the quality of life. The community character would change significantly in that one strip of highway. This shrinkage of the tanker truck and how they're going to get this in and out, he has the turning software and has run all of the turning diagrams, and it doesn't work. The WB50 doesn't work. Coca-Cola and Frito Lay use WB40, and he could give an hour talk on

boats, RVs, ambulances, fire trucks, he's looked at all of them. It looks great when there are no cars in the place. You put one boat, car or RV in there and you can't swing any of them through there. Then with the 44,000 gallons, you do not fill that up with a teaspoon of a truck. That will need every bit of five to eight tankers to supply those 11 pumps. The character will significantly change. It's the fact of taking a very low-impact, quiet, nice neighborhood store and turning it into high intensity.

Ms. Jeanne Brennan who had presented the crash slides earlier stated that if this conditional use permit is approved crashes will be added on top of what is already there. Some people live only 50 feet away from this proposed site. Any time you enter and exit you're going to have to slow down so all of those slow-downs will increase the possibility for traffic conflicts, and then exiting the property you have to accelerate. The community character is going to be adversely impacted by the approval of this application. The character right now is quiet. The lighting would be 24-7. This area is quiet, dark and peaceful. Traffic counts, while the studies show it's in the 600 range, her estimates are that it's much higher, closer to 3,000. The trip counts and volume of traffic estimated by the applicant is grossly underestimated in her professional opinion from information publicly available. She believes it's the burden of the applicant to show that these large trucks in and out will work in this area. The gentleman that taught people how to navigate fire trucks says it's not going to work. The neighbor next door at the Marathon station says it's not going to work with the tanker truck conflicts. Take judicial notice of the Collier County regulations that require a minimum of a 50-foot setback, the purpose being to ensure that facilities with fuel pumps do not adversely impact adjacent land uses, especially residential land uses. The high levels of traffic, glare and intensity of use associated with facilities with fuel pumps, particularly those open 24 hours, may be incompatible with surrounding uses, especially residential uses. There is precedence in Florida for denying these 24-7 gas station operations that conflict with community character. She requests the Commission deny this application.

Mr. Shannon Donnelly stated that the Commission has been presented with an influx of input from the community and there has been over 60 letters written in opposition to this. He hopes they have read all of those letters because to his knowledge, there has been no one in support of this. A compounding fact is this issue with insurance. He is still paying on his house and if he were denied, he would not be able to carry his mortgage, so that would cost him his home. We know this is going to be detrimental to our environment, value in our own lives and our safety. All of the things that are going on in the Keys and the amount of change we've seen, much of which has not been positive, a lot of it has been out of our control. Mr. Donnelly believes the Commission has been presented with enough evidence and with examples that they would be justified in saying we do not want this because we are representing our local communities for their best interests and their safety. He believes the Commission has the obligation to do this. Just because you can do something because it's legal does not mean it's the right thing to do. Mr. Donnelly, also speaking for his wife, Ms. Rosemary Donnelly, is begging the Commission to not let this be approved. It is going to cost people their lives.

Ms. Nancy Truesdale clarified that the Collier County regulations that were put into the record say that separation from adjacent pump facilities should be 500 feet, and not 50. Allowing this would certainly adversely affect the character of this neighborhood. Back-to-back gas stations is unprecedented in the Keys, it doesn't exist. To have something like this on a property as unique

as this one is because of the Grand Street cut is compounded. Photos were shown of the other high-use station, the Tom Thumb. On either side of that Tom Thumb there is no residential neighborhood on either side. There is a single house on the southbound side and that's it. The Tom Thumb was appropriately placed in an area that does not affect the quality of life of local residents. That is not true for this Anthony's property. Ms. Truesdale asked the Commission to please vote no.

Ms. Lisa Gahagen asked if the Commission ever went on field trips. She is afraid the Commission is not going to realize the impact of what this will do to the neighborhood until they see what the residents see every day when they try to get out of their neighborhood at 5:00 o'clock when the cars are backed up at the light in Key Largo, or trying to get across the street to go southbound. Adding 7-11 in the median is going to be a nightmare. Ms. Gahagen asked the Commission to please vote no for this.

Mr. Steve Hartz stated that he is a retired lawyer and he wants to adopt everything that the residents have said. They have been very eloquent. He cannot add too much, but noted that it was first stated that FDOT was on board with this idea. Mr. Ramon Sierra of FDOT who is the traffic services program engineer for this area told the Federation homeowners in a public meeting that they don't render any opinion until after the County's decision, so that should never be considered that FDOT has made the decision. That comment by the applicant should be stricken and not used in connection with this or any other application. Also, on page six of the staff report on the conditional use approval, it says that no evidence has been submitted to support or disprove the applicant's financial and technical capacity to complete the development. The burden of proof under the Commission's rules is on the applicant. The absence of evidence is a basis for an adverse inference on a fundamental issue. So they haven't really met their burden and this application has to be denied on that point. It sounds like just a lawyer's point but it's actually pretty important. This isn't 7-11 applying, these are the Archers. He has no idea if they have the ability to create the development outlined.

There was no further public comment. Public comment was closed.

Mr. Ty Harris stated that he has been in the position that staff has when there is so much pressure to recommend denial, yet staff has recommended approval because they have met the criteria for this major conditional use. If things are just ruled by the number of people that want or don't want something we probably wouldn't even have a high school in Islamorada. Going through the Tom Thumb data, no one said there was some extra level of criminal activity happening at the 24-hour Tom Thumb. Looking at the classification of gas stations and 24-hour stores may be a relevant feature but the one closest to this has no mention of an elevated crime rate. The traffic crash data was over a seven-year period, which is a long time. As far as community character, he is not asking for a rezoning or anything that's not already allowed in the zoning classification. If this was a 2,500 square foot store they wouldn't even be here. Anything over 4,500 square feet will get kicked up to the Planning Commission because it's considered high intensity. Mr. Harris doesn't believe the opponents have met their burden of overcoming the competent substantial evidence from the staff report as to any of these elements. He would be hard pressed to go through the testimony and find some to that degree. This project is under contract with 7-11 so the ability to complete the project is not an issue. Mr. Jason Green confirmed that to be

correct adding that Axis Hutton is very financially capable of completing this project. They have done 60 to 80 commercial properties per year over a 25-year period and are very able and financially successful with their projects throughout the U.S. He echoed the comments about the compatibility component. There are multiple examples up and down U.S. 1 where gas stations are in the middle of the two directions and there is the Marathon gas station here. Looking at the community character requirements in the plan, it talks about similar to adjacent uses. That means this corridor is ripe for a gas station. There is one there, and he disagrees with some of the public comments about a gas station that is five feet away from the site not being a problem for residents but this one is. He does not see how that can be differentiated. All of the County's and FDOT's criteria is based on safety and compatibility with the community. Lighting standards in the code has to be met, landscaping, et cetera. There are a lot of permitting requirements at the state and federal level that must be met for underground gas tanks. There are also monitoring levels and other safety features that are put into place. A lot of what has been discussed have been older stations and nonconforming sites that have issues that need to be corrected. He disagrees with the adjacent property owner saying we will cause them problems with their fueling. The applicant's site plan shows they can get their trucks off the street, fuel efficiently, and provide access to everyone else using the site. There is no conflict between these sites. The Marathon is able to successfully be refueled, so how is a larger, better designed site not going to be able to be refueled. This is an appropriate location, the zoning allows the use, and the job is to make sure the criteria are met, which they have. It will be the best looking thing that's up and down this corridor right now. He is proud of the landscaping and willing to do more. The applicant is willing to offer anything that would help create safety and improve lives and be part of the community. This use does not cause traffic accidents. Any successful business that is drawing trips on the roadway is going to have those issues so it's not a gas station. Mr. Green hopes the Commission can get past this gas station component as the location is appropriate.

Chair Scarpelli asked about the site plan and some of the evidence provided showing a boat trailer at the end of the row of pumps and asked if that was a Rec 90 pump. Mr. Green believed that it could be a Rec 90 pump but he would have to check. Chair Scarpelli asked if diesel was being provided at this station. Mr. Green did not know the answer to that. As to the spacing, there is about 30 feet between the parked vehicle at the end fuel station and the turning path of a truck where they refill the fuel. Chair Scarpelli stated that the photo was kind of compelling and that's why he was asking. Mr. Green stated that he was confident in the site circulation. Mr. Ian Rairden added that the traffic study was based on methodology agreed to with the County. They looked at both weekday and weekend, and morning and afternoon for the peak hour traffic to accommodate the highest volume of traffic on the road. Gas stations inherently draw traffic that is already on the roadway. The study looks at new trips and pass-by trips and shows that they have met the standards based on the County's guidelines, and staff agreed.

Commissioner Ritz stated that one of the comments from the public had been that drivers turn left from the fast lane as opposed to turning right from the slow lane, and asked what accommodations have been made for turning left from the fast lane. Mr. Rairden stated that there is no deceleration lane designed or provided at this driveway. They had looked at what the FDOT requirements are for right and left turn lanes and there is not a guideline for providing a deceleration lane into a site like this, so they did not provide one. Generally, the way FDOT

looks at the turn lanes in general is when there are multiple lanes of traffic going in one direction there is an opportunity for a car to move over to the adjacent lane to continue their flow, so it's a little less stringent on what's required. Commissioner Ritz asked if there were DOT standards for a four-lane divided highway where you're turning left into an establishment. Mr. Rairden responded that they were not able to find that in the guidelines.

There were no further Commission questions for applicant. Ms. Tolpin had no further comments. Mr. Green wanted to make a closing statement saying that he gets the emotional outpouring and concern. He has worked on both sides in the public and private sector and has a lot of respect for the Commission's job, but asked them to please understand the context of this and rely on the standards of the County.

Mr. John Wolfe explained that there have been a couple of different references on the Commission's scope of authority and effectively the role of the Planning Commission. The Commission is not bound by staff's recommendation, as, they know. However, if the Commission decides to not go with the staff and deny this, they need to state which conditions aren't met because the law must be applied. Mr. Peter Morris added that this decision is being made within a containment field and what it's interfaced with are the criteria that are enumerated in the code which are laid out in the staff report. The criteria is where the Commission decides where to ultimately land, and not a popularity contest or anything extrinsic to what's in the code.

Commissioner Demes complimented staff, recognizing that they work really hard with this having a lot of community input. He appreciates owners' rights. This is a very difficult decision. Technically, the criterion for approval has been met for the Land Development Code, but he just got realigned by the attorneys. Before Mr. Wolfe and Mr. Morris spoke, he was 51 percent against and 49 percent for. But now he finds it difficult to find solid criteria put together by the staff to deny this request and it's unfortunate because he has to sleep at night. He thinks the right thing to do is to deny it. Being charged with what the attorneys just stated, he is going to have to vote against this. Mr. Wolfe stated that he was not trying to suggest that the Commission is bound by the staff report, but that a denial must be stated as being based on not meeting one of the criteria.

Commissioner Ritz commented on Commissioner Demes' 51 percent, and added that community character and public safety is a criteria. If it's not appropriate for the area, then the Commission is allowed to make that determination. As he had been driving through Marathon this week he appreciated the architecture of all of the new construction with the metal roofs, broad porches, and thought that Marathon is really turning around and becoming a very attractive part of the Florida Keys. Then you see the 7-11 and Speedway and it's like a turd in a punchbowl. There's all of these beautiful new buildings, and then these very corporate entities that look exactly the same anywhere in the country, and are not Keysee in any way, shape or fashion. They do not meet the community character of Marathon and certainly do not fit the community character of Key Largo, particularly when there is one gas station right next door. Commissioner Ritz does not recall the audience saying the Marathon station was okay and therefore they should not have another one. He heard that it was not okay and they didn't want to exacerbate the situation, and expanding the footprint of the gas station there would be making those problems worse. Commissioner Ritz was particularly compelled by Ms. Cashin's testimony with the insurance.

He is not sure staff was aware of that point, that being that close to a gas station you could lose your homeowners insurance. That is quite shocking and the neighbors that will be abutting the new gas station, if it goes in will, also be shocked by that. So that's new information that staff didn't have. He does not believe staff was aware of the JBT bus station across the street so he's not sure of the impacts of that. So new things were learned today, but based on the real estate values, the community character and public safety, he is going to vote against this.

Commissioner Neugent added that it could not be articulated any better than Commissioner Ritz had done, and having listened to the people that have made their presentation and expressed their opposition to both the community character and the safety issue, he will not vote for this either.

Commissioner Thomas stated she lives in Marathon and she has seen what they have done to her area and it's been a disaster. Commissioner Demes asked which criteria the insurance issue would come under. Commissioner Ritz responded that it would be under real estate values. Commissioner Demes stated that that had also caught his attention. Chair Scarpelli stated that this is one of those where you find yourself in a difficult position as to what is the right thing. Clearly, staff was very diligent with going through the whole process, and the applicant as well in doing their due diligence and everybody meeting the criteria. But then, you start to get into some of these things such as where the community brought up very interesting turning radius graphics that seem to be concerning. They aren't the professional on the job doing the study but their information is still very useful in making these decisions. You would think that a property in between two roadways heavily traveled would be an ideal location for a gas station rather than it being actually adjacent to a residential neighborhood because it is like that in other parts of the Florida Keys. The public right-of-way is 65 feet on either side of this gas station and that's quite the buffer. The landscaping on this project is really well done and you won't even see the parking lot from the road. Chair Scarpelli then asked for a motion.

Commissioner Ritz made a motion to deny the request based on this not being appropriate for the area, it does not meet the community character standards, it has a negative impact on the real estate values due to the insurance issues, and there is a public safety issue with the traffic. Commissioner Thomas seconded the motion.

Motion: Commissioner Ritz made a motion to deny as articulated. Commissioner Thomas seconded the motion.

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

BOARD DISCUSSION

None.

GROWTH MANAGEMENT COMMENTS

None.

ADJOURNMENT

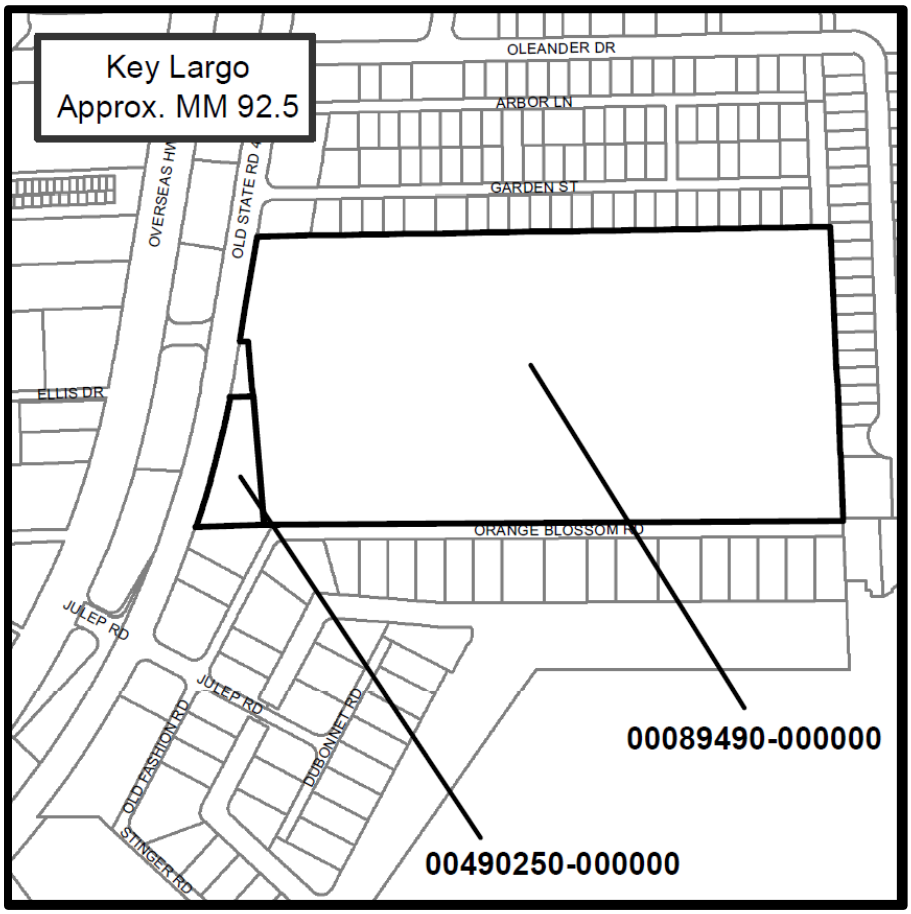
The Monroe County Planning Commission meeting was adjourned at 3:40 p.m.

The Applicant's proposed text as submitted on January 19, 2024, is shown as follows: additions are in blue underline. Staff edits are shown as follows: additions are in red underline and deletions are ~~red strikethrough~~.

Section 130-143. Tavernier Commercial Overlay District

(a) Purpose and Intent. The purpose of the Tavernier Commercial Overlay District is to implement applicable goals, objectives, and policies of the Comprehensive Plan and to allow larger-scale nonresidential development in a scarified area of the Upper Keys that primarily serves the needs of permanent residents of the Upper Keys. The intent is to provide accessible nonresidential uses to permanent residents of the Upper Keys, while maintaining the character of Tavernier.

(b) Boundary. The Tavernier Commercial Overlay District shall be shown as an overlay district on the Official Land Use District map. The Tavernier Commercial Overlay District shall be shown as the boundary of the parcels with Monroe County Parcel ID numbers 00490250-000000 and 00089490-000000, and depicted in the map below:



(c) Applicability. Development within the Tavernier Commercial Overlay District shall be subject to the following standards:

1. An amendment to the Official Land Use District Map is required and such overlay shall be shown on the Official Land Use District Map.
2. The development of a single nonresidential structure that contains more than 10,000 square feet within the Overlay District shall be subject to the terms and conditions of an approved Development Agreement as defined in sections 110-132, 110-133, and must include:
    a. Provisions for the development of 86 workforce housing dwelling units; and
    b. Preferred leasing standards for essential workers of the workforce units; and
    c. An approved site plan that includes the following in addition to all site requirements in accordance with the Land Development Code:
        i. A pedestrian walkway connecting the nonresidential parking area to the right of way known as Orange Blossom Road. Required lighting for the pedestrian walkway must be in compliance with Chapter 114, Article VI.
        ii. If outdoor lighting is proposed, in addition to all requirements of Chapter 114, Article VI, such lighting shall be designed and located such that the maximum illumination measured in footcandles at any exterior property line adjacent to residential uses, not included in this overlay, shall not exceed zero (0) for cutoff and noncutoff lights, with the exception of the pedestrian walkway or any lighting required for life safety, as provided by Monroe County.
3. All property lines adjacent to U.S. 1 shall provide a Class E Scenic Corridor Buffer.
4. All development shall be permitted in accordance with the permitted and conditional use requirements of Chapter 130, Article III, Permitted and Conditional Uses.
5. Industrial uses are not permitted within the Overlay. ~~Notwithstanding the preceding sentence, lawfully nonconforming industrial uses within the Overlay are permitted to remain, and operate, until such time as a building permit is issued for the nonresidential structure more than 10,000 square feet.~~

(d) Maximum Development Potential.

1. There shall be no allocated or maximum net density standard available for residential market-rate or transient dwelling units.
2. The Tavernier Commercial Overlay District shall be limited to a maximum total development potential of:
    a. 49,900 square feet of nonresidential floor area; and
    b. (86) deed restricted workforce housing dwelling units; and
    c. accessory uses and structures.

(e) NROGO Allocations. Notwithstanding Section 138-51, the Tavernier Commercial Overlay District shall have the following NROGO allocation standards provided that the criteria set forth in subsections (f), (g) and (h) are satisfied:

1. Maximum allocation of nonresidential floor area. The amount of nonresidential floor area to be allocated or transferred to the Tavernier Commercial Overlay District shall be limited to a maximum of 49,900 square feet.
2. Maximum floor area per structure. A single nonresidential principal structure within the Tavernier Commercial Overlay District shall be permitted to receive an allocation

that expands the structure to more than 10,000 square feet, but not to exceed a maximum of 49,900 square feet of nonresidential floor area.

(f) Notwithstanding LDC Sections 139-1(f), 139-1(g) and 139-1(h), 86 workforce housing units must be provided on-site consisting of 24% (21 units) very low income, 24% (21 units) low income, 26% (22 units) median income and 26% (22 units) moderate income. No building permit shall be issued for a structure receiving an NROGO Allocation or transfer that would expand a nonresidential structure within the Overlay to more than 10,000 square feet unless and until building permits for all 86 workforce housing units have been issued~~, which permits shall not be unreasonably withheld~~.

(g) All new residential units developed within the ~~o~~Overlay ~~district~~ shall be subject to the ROGO permit allocation system or transfer of ROGO exemptions of existing lawfully established permanent market rate or affordable dwelling units that have less than five years remaining on the required deed restriction pursuant to Section 138-22(b)(4)b.

(h) Prior to the issuance of a Certificate of Occupancy for a nonresidential structure that is more than 10,000 square feet:

1. At least 50% (43) of the required 86 workforce housing units must have received a ~~Temporary~~ Certificate of Occupancy; and
2. ~~At least 50% (43) of the~~ All required 86 workforce housing units must have received approved foundation inspections.

(i) All other provisions of the Comprehensive Plan, Tavernier Livable Communikeys Plan, the Tavernier Creek to Mile Marker 97 US Highway Corridor Development Standards and Guidelines and the Land Development Code apply unless expressly exempted herein.

MONROE COUNTY, FLORIDA
MONROE COUNTY BOARD OF COUNTY COMMISSIONERS

ORDINANCE NO. -2024

AN ORDINANCE APPROVING A TEXT AMENDMENT TO THE MONROE COUNTY LAND DEVELOPMENT CODE TO NEWLY CREATE SECTION 130-143 TO CREATE A "TAVERNIER KEY COMMERCIAL OVERLAY DISTRICT"; INCLUDING THE PURPOSE AND INTENT, BOUNDARY, APPLICABILITY, NROGO ALLOCATION STANDARDS, AND MAXIMUM NONRESIDENTIAL AND RESIDENTIAL DEVELOPMENT POTENTIAL; FOR PARCELS LOCATED AT 92501 OVERSEAS HIGHWAY, KEY LARGO, CURRENTLY HAVING PROPERTY IDENTIFICATION NUMBERS 00089490-000000 AND 00490250-000000, APPROXIMATELY LOCATED AT MILE MARKER 92.5; AS PROPOSED BY CEMEX CONSTRUCTION MATERIALS FLORIDA, LLC, F/K/A SINGLETARY CONCRETE PRODUCTS, INC.; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL OF CONFLICTING PROVISIONS; PROVIDING FOR TRANSMITTAL TO THE STATE LAND PLANNING AGENCY AND THE SECRETARY OF STATE; PROVIDING FOR INCLUSION IN THE MONROE COUNTY CODE; PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, on or about March 23, 2022, the Monroe County Planning and Environmental Resources Department received an initial application from Singletary Concrete Products Inc. and Cemex Construction Materials LLC ("Applicants") via their retained agent Smith/Hawks P.L. and from The Vestcor Companies Inc. and Blackstone Group - Tavernier 925 LLC ("Developers"), seeking for the Monroe County Board of County Commissioners ("BOCC", "Monroe County", "Board", or the "County") to approve the creation of a Tavernier Key Commercial Overlay District ("Commercial Overlay", "Tavernier Commercial Overlay", or "Commercial Overlay District") by approving the creation of Land Development Code ("LDC") Section 130-143, including the purpose and intent, boundary, applicability, NROGO allocation standards, and maximum nonresidential and residential development potential for two (2) parcels of land located at 92501 Overseas Highway, Key Largo, currently bearing property identification numbers 00089490-000000 and 00490250-000000 ("subject property" or the "property"); and

WHEREAS, a corresponding land use district map amendment for the property to apply said Commercial Overlay District was submitted[1] and is currently being reviewed by the Monroe County Planning and Environmental Resources Department ("Department"); and

WHEREAS, the proposed text previously received, reviewed and considered was changed (revised) by the Applicant by resubmittal by the Applicant on or about January 19, 2024; and

[1] Monroe County Planning and Environmental Resources Department File No. 2022-054.

WHEREAS, an amended and restated text amendment application was received on November 20, 2023 (the "amended application" or "application")[2]; and

WHEREAS, the subject property is located within the boundary of the Tavernier Livable CommuniKeys Master Plan, a Master Plan for Tavernier Creek Bridge to Mile Marker 97, (the "Monroe County LCP" or "LCP"); and

WHEREAS, the subject property is located within the Tavernier Creek to Mile Marker 97 U.S. Highway 1 Corridor District Overlay ("TC") as identified in the adopted Tavernier Creek to Mile Marker 97 U.S. Highway 1 Corridor Development Standards and Guidelines ("Monroe County Corridor Development Guidelines" or "Corridor Development Guidelines"); and

WHEREAS, the adopted Monroe County Corridor Development Guidelines establish that this property is located in the "Suburban Zone" of the adopted Corridor Development Guidelines; and

WHEREAS, the "Suburban Zone" of the established Corridor Development Guidelines is characterized by intermittent occurrences of open space, residential development of diverse densities, and industrial and general commercial uses following a pattern similar to that found in the mainland suburbs; and

WHEREAS, the vision for this established corridor allows the individual zones to maintain their distinctive characteristics, yet, encourages a unified image of the corridor as a whole, where landscape and the built environment share common elements; and

WHEREAS, the Monroe County Development Review Committee ("DRC") considered the proposed text amendment at a regularly scheduled meeting held on October 25, 2022; and

WHEREAS, on November 14th, 2022, the Chair of the DRC signed Development Review Committee Resolution No. DRC 13-22 recommending that the Monroe County Planning Commission and Monroe County Board of County Commissioners **DENY** said amendment to the Monroe County Land Development Code to create this Commercial Overlay District by newly creating Land Development Code Section 130-143; and

WHEREAS, the Monroe County Planning and Environmental Resources Department's professional staff report prepared for the Monroe County Planning Commission hearing dated April 13, 2023, completed by Assistant Director of Planning Cheryl Cioffari, A.I.C.P., and Principal Planner Devin Tolpin, A.I.C.P., C.F.M., likewise recommends **DENIAL** of said amendment; and

WHEREAS, the Monroe County Planning Commission ("Planning Commission") held a public hearing on April 28, 2023, to review and consider said amendment; and

WHEREAS, on April 28, 2023, the Monroe County Planning Commission issued Planning Commission Resolution No. P16-23 recommending that the Monroe County Board of County Commissioners **DENY** said amendment; and

[2] Monroe County Planning and Environmental Resources Department File No. 2022-053.

WHEREAS, following the public meeting of the Monroe County Development Review Committee, following the public hearing of the Monroe County Planning Commission, and following the DRC's and the Planning Commission's recommendations that the Monroe County Board of County Commissioners **DENY** the proposed amendment, the Applicant then submitted a revised proposed text amendment to the Planning and Environmental Resources Department on or about January 19th, 2024, for the Board of County Commissioners to consider; and

WHEREAS, the Monroe County Planning and Environmental Resources Department's professional staff report dated January 23, 2024, prepared for the Monroe County BOCC's special public hearing dated February 15, 2024, completed by Assistant Director of Planning Cheryl Cioffari, A.I.C.P., and Planning and Development Review Manager Devin Tolpin, A.I.C.P., C.F.M., recommends that the Monroe County BOCC **DENY** this proposed text amendment to the Monroe County Land Development Code to create this Commercial Overlay District by newly creating Code Section 130-143; and

WHEREAS, at a duly noticed special public hearing dated February 15, 2024, the Monroe County Board of County Commissioners considered the foregoing and the Department's most recent professional staff report recommending that the Monroe County BOCC **DENY** this proposed text amendment to the Monroe County Land Development Code to create this Commercial Overlay District by newly creating Code Section 130-143, and provided for public comment and public participation in accordance with the requirements of state and local law; and

WHEREAS, based upon the documentation submitted and information provided, including but not limited to the documentation and information furnished in the foregoing Monroe County Planning and Environmental Resources Department's professional staff reports, the Monroe County Board of County Commissioners hereby enters the following findings of fact and conclusions of law:

1. The proposed amendment is consistent with the Goals, Objectives and Policies of the Monroe County Year 2030 Comprehensive Plan; and
2. The proposed amendment is consistent with the Principles for Guiding Development for the Florida Keys Area of Critical State Concern, Section 380.0552(7), Florida Statutes; and
3. The proposed amendment is consistent with Part II of Chapter 163, Florida Statutes; and
4. The subject proposed amendment will not result in an adverse change in community character to the sub-area which a proposed amendment affects or to any area in accordance with the Tavernier Livable CommuniKeys Master Plan pursuant to findings of the BOCC; and
5. The proposed amendment is a necessary adjustment in light of recognition of a need for additional detail or comprehensiveness, incorrect determinations or assumptions or changed conditions as required to approve a change to the text of the Monroe County Land Development Code in accordance with Monroe County Land Development Code Section 102-158.

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF MONROE COUNTY, FLORIDA:

Section 1. **Recitals and Legislative Intent.** The foregoing recitals and determinations, including but not limited this Ordinance's title, are true and correct, and are hereby incorporated as if fully stated herein.

Section 2. The above Monroe County Planning and Environmental Resources Department professional staff reports prepared by Assistant Director of Planning Cheryl Cioffari, A.I.C.P., and Planning and Development Review Manager/Principal Planner Devin Tolpin, A.I.C.P., C.F.M., are hereby incorporated as if fully stated herein and their analysis and determinations of fact and law to the extent not plainly inconsistent with this Ordinance are hereby accepted and adopted as if fully stated herein.

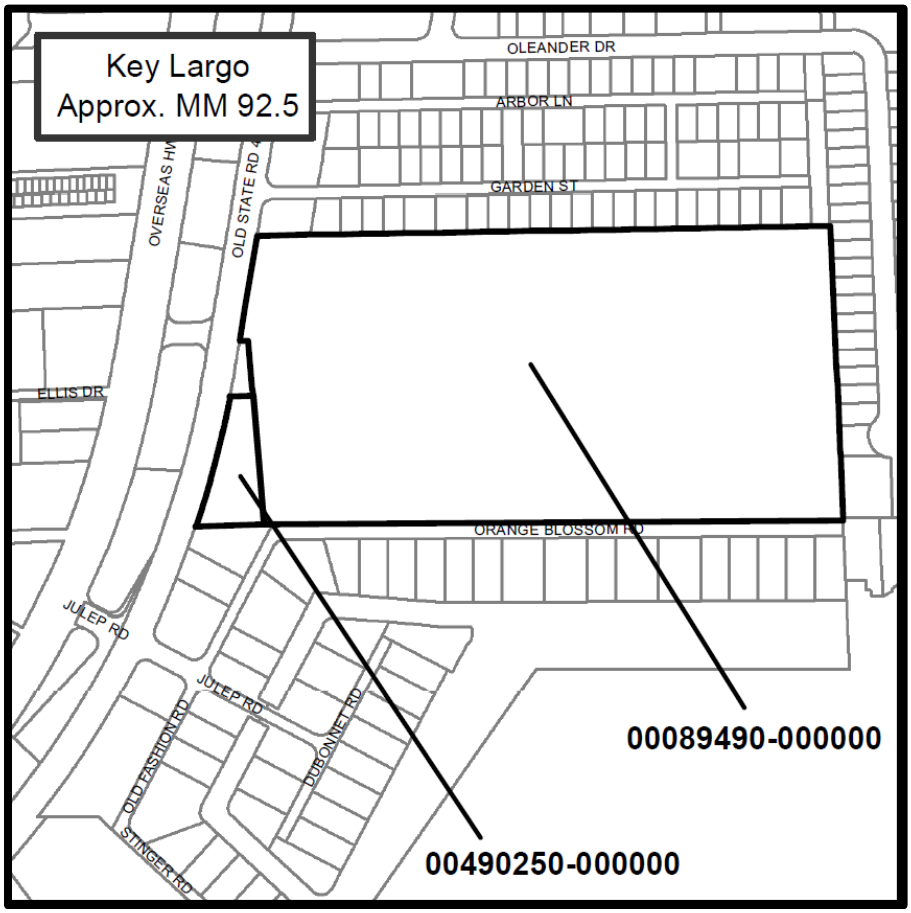
Section 3. The text of the Monroe County Land Development Code is hereby amended as follows (changes (additions) are shown below via the below underlined text):

*****

Section 130-143. Tavernier Commercial Overlay District

(a) Purpose and Intent. The purpose of the Tavernier Commercial Overlay District is to implement applicable goals, objectives, and policies of the Comprehensive Plan and to allow larger-scale nonresidential development in a scarified area of the Upper Keys that primarily serves the needs of permanent residents of the Upper Keys. The intent is to provide accessible nonresidential uses to permanent residents of the Upper Keys, while maintaining the character of Tavernier.

(b) Boundary. The Tavernier Commercial Overlay District shall be shown as an overlay district on the Official Land Use District map. The Tavernier Commercial Overlay District shall be shown as the boundary of the parcels with Monroe County Parcel ID numbers 00490250-000000 and 00089490-000000, and depicted in the map below:



(c) Applicability. Development within the Tavernier Commercial Overlay District shall be subject to the following standards:

1. An amendment to the Official Land Use District Map is required and such overlay shall be shown on the Official Land Use District Map.
2. The development of a single nonresidential structure that contains more than 10,000 square feet within the Overlay District shall be subject to the terms and conditions of an approved Development Agreement as defined in sections 110-132, 110-133, and must include:
   a. Provisions for the development of 86 workforce housing dwelling units; and
   b. Preferred leasing standards for essential workers of the workforce units; and
   c. An approved site plan that includes the following in addition to all site requirements in accordance with the Land Development Code:
      i. A pedestrian walkway connecting the nonresidential parking area to the right of way known as Orange Blossom Road. Required lighting for the pedestrian walkway must be in compliance with Chapter 114, Article VI.
      ii. If outdoor lighting is proposed, in addition to all requirements of Chapter 114, Article VI, such lighting shall be designed and located such that the maximum illumination measured in footcandles at any exterior property line adjacent to residential uses, not included in this overlay, shall not exceed zero (0) for cutoff and noncutoff lights, with the exception of the pedestrian walkway or any lighting required for life safety, as provided by Monroe County.
3. All property lines adjacent to U.S. 1 shall provide a Class E Scenic Corridor Buffer.
4. All development shall be permitted in accordance with the permitted and conditional use requirements of Chapter 130, Article III, Permitted and Conditional Uses.

5. Industrial uses are not permitted within the Overlay.

(d) Maximum Development Potential.

1. There shall be no allocated or maximum net density standard available for residential market-rate or transient dwelling units.
2. The Tavernier Commercial Overlay District shall be limited to a maximum total development potential of:
   a. 49,900 square feet of nonresidential floor area; and
   b. (86) deed restricted workforce housing dwelling units; and
   c. accessory uses and structures.

(e) NROGO Allocations. Notwithstanding Section 138-51, the Tavernier Commercial Overlay District shall have the following NROGO allocation standards provided that the criteria set forth in subsections (f), (g) and (h) are satisfied:

1. Maximum allocation of nonresidential floor area. The amount of nonresidential floor area to be allocated or transferred to the Tavernier Commercial Overlay District shall be limited to a maximum of 49,900 square feet.
2. Maximum floor area per structure. A single nonresidential principal structure within the Tavernier Commercial Overlay District shall be permitted to receive an allocation that expands the structure to more than 10,000 square feet, but not to exceed a maximum of 49,900 square feet of nonresidential floor area.

(f) Notwithstanding LDC Sections 139-1(f), 139-1(g) and 139-1(h), 86 workforce housing units must be provided on-site consisting of 24% (21 units) very low income, 24% (21 units) low income, 26% (22 units) median income and 26% (22 units) moderate income. No building permit shall be issued for a structure receiving an NROGO Allocation or transfer that would expand a nonresidential structure within the Overlay to more than 10,000 square feet unless and until building permits for all 86 workforce housing units have been issued.

(g) All new residential units developed within the Overlay shall be subject to the ROGO permit allocation system or transfer of ROGO exemptions of existing lawfully established permanent market rate or affordable dwelling units that have less than five years remaining on the required deed restriction pursuant to Section 138-22(b)(4)b.

(h) Prior to the issuance of a Certificate of Occupancy for a nonresidential structure that is more than 10,000 square feet:

1. At least 50% (43) of the required 86 workforce housing units must have received a Certificate of Occupancy; and
2. All required 86 workforce housing units must have received approved foundation inspections.

(i) All other provisions of the Comprehensive Plan, Tavernier Livable Communikeys Plan, the Tavernier Creek to Mile Marker 97 US Highway Corridor Development Standards and Guidelines and the Land Development Code apply unless expressly exempted herein.

*****

Section 4. **Interpretation and Construction.** On the basis that laws, decisions, and determinations issued and/or approved pursuant to or made in accordance with Florida Statutes Chapter 163 and Chapter 380 and the Monroe County Land Development Code and Comprehensive Plan are not in derogation of the common law, the ordinance approved herewith shall not be interpreted or construed by any administrative tribunal or court of competent jurisdiction as in derogation of the common law.

Section 5. **Non-Reliance by Third-Parties / Non-Reliance by Third-Parties to Enforce Third-Party Claims or Benefits.** No third-party natural or legal person(s) shall be entitled to rely upon or utilize any term or provision of this Ordinance to enforce or to attempt to enforce any third-party claim(s) or entitlement(s) to or benefit(s) from any provision of this Ordinance.

Section 6. **Severability.** If any provision of this Ordinance, or any part or portion thereof, is held to be invalid or unenforceable by any administrative hearing officer or court of competent jurisdiction, the invalidity or unenforceability of such provision, or any part or portion thereof, shall neither limit nor impair the operation, enforceability, or validity of any other provision of this Ordinance, or any remaining part(s) or portion(s) thereof. All other provisions of this Ordinance, and remaining part(s) or portion(s) thereof, shall continue unimpaired in full force and effect.

Section 7. **Repeal of Inconsistent Provisions.** All ordinances in conflict with this Ordinance are hereby repealed to the extent of said conflict. The repeal of an ordinance herein shall not repeal the repealing clause of such ordinance or revive any ordinance which has been repealed thereby.

Section 8. **Transmittal.** This Ordinance shall be transmitted to the Florida state land planning agency pursuant to Chapters 163 and 380, Florida Statutes.

Section 9. **Filing and Effective Date.** This Ordinance shall be filed in the Office of the Secretary of State of Florida, but shall not become effective until a notice is issued by the Florida state land planning agency ("Florida Commerce") or Administration Commission finding the amendment in compliance with Chapter 163, Florida Statutes, and if challenged until such challenge is resolved.

Section 10. **Effective Date.** This Ordinance shall become effective as provided by law and stated above.

PASSED AND ADOPTED by the Board of County Commissioners of Monroe County, Florida, at a special public meeting held on the _____day of_____, 2024.

Mayor Holly Merrill Raschein	___
Mayor Pro Tem James K. Scholl	___
Commissioner Craig Cates	___
Commissioner Michelle Lincoln	___
Commissioner David Rice	___

BOARD OF COUNTY COMMISSIONERS
OF MONROE COUNTY, FLORIDA

By: _____
MAYOR HOLLY MERRILL RASCHEIN

(SEAL)
ATTEST: KEVIN MADOK, CLERK

By: _____
AS DEPUTY CLERK

MONROE COUNTY ATTORNEY
APPROVED AS TO FORM
Date: 2/12/24