Summary Minutes of the:
ISLAMORADA, VILLAGE OF ISLANDS
(Hybrid) REGULAR VILLAGE COUNCIL MEETING

Founders Park Community Center
Islamorada, FL
Thursday, March 18, 2021
5:30 PM

Hybrid Meeting to Occur Utilizing Communications Media Technology (CMT)
Pursuant to the Centers for Disease Control (CDC), social distancing guidelines established to contain the spread of the COVID-19 virus, the Regular Village Council Meeting was conducted utilizing Communication Media Technology (CMT) via a Zoom video conferencing application.

Coronavirus-related Precaution: Due to the size and configuration of the Founders Park Community Center, which serves as the Council Chambers, and in keeping with CDC and Florida Department of Health guidelines, capacity of the Community Center for Village Council meetings was limited indefinitely due to the coronavirus pandemic. Only Council Members and essential staff members required to conduct the meetings were in physical attendance due to the limited capacity. The general public was able to virtually attend and otherwise participate in Council meetings utilizing the existing Zoom meeting infrastructure. The Village expanded its Internet bandwidth and Zoom meeting participant level to facilitate participation and comment by the public remotely. Additional information regarding options for viewing the meeting and participation through public comment were included on the last page of this agenda. If assistance was needed, the agenda directed the public to contact the Village Clerk's Office at 305-664-6413 no later than 24 hours prior to the meeting.

CALL TO ORDER / ROLL CALL

Mayor Pinder called the meeting to order at 5:33 p.m. Village Clerk Kelly Toth called the roll with the following Councilmembers being present on roll call: Mayor Buddy Pinder, Vice Mayor Pete Bacheler, Councilman Mark Gregg, Councilman David Webb and Councilman Henry Rosenthal. Village Clerk Kelly Toth and Deputy Clerk Stephanie Conde were present. Village Attorney Roget Bryan and Acting Village Manager Maria Bassett, along with other pertinent staff appeared virtually.

PLEDGE OF ALLEGIANCE AND INVOCATION

Councilman David Webb led the Pledge of Allegiance.

Retired Airforce Colonel Brian Neel provided a prayer and blessings for the meeting.

VIRTUAL MEETING PROCEDURES

Village Attorney Roget Bryan provided the virtual meeting procedures.

REPORTS, PRESENTATIONS AND ANNOUNCEMENTS

FIRM Update on Flood and Windstorm Insurance

Fair Insurance Rates in Monroe (FIRM) President Mel Montagne reported on the new FEMA flood insurance maps and the appeal process; noted that property owners with a FEMA Letter of Map Revision (LOMR) would need to obtain a new LOMR after the new maps became effective; the Community Ratings System (CRS) progress in Monroe County; Citizens Insurance Company had filed a rate increase of approximately 10% with the Office of Insurance Regulation; FIRM had testified that they were opposed to any rate increases for Monroe County; that over a 17-year period (2003-2020), Citizens had gross profits of over $44 million from Monroe County policies; six counties represent total losses of over a half a billion dollars during the 17-year period; and noted that information about the Keys-wide home elevation project could be found on FIRM's website.

Mayor Pinder opened public comment; no comment was offered.

TAB 1: Informational Presentation Regarding Protocols for Genetically Modified Organisms
This item was heard at 5:48 p.m. Councilman Webb explained the purpose of the presentation was to have subject matter experts provide another perspective to the GMO issue. Jennifer Kuzma, PhD, Professor and Co-Director of the Genetic Engineering and Society Center at North Carolina State University, introduced each of the speakers.

Fred Gould, PhD, presented on the OX5034 engineered mosquito strain. He explained the reproduction outcome when the engineered mosquito mated with a wild mosquito when there was tetracycline in the diet; a utility of the tetracycline was to suppress the transgene; and noted that if the tetracycline was removed the larvae with the transgene would die during development. He commented about the studies done on an engineered mosquito and the outdoor field cage studies conducted in Mexico; noted that the engineered mosquitos were not as strong as the wild mosquitos in the wild environment and had about 3% of the matings; that the trials indicate that the mosquitos were not that fit; that in the lab environment, when the OX5034 male mated with a wild female mosquito, the females produced 1/3 fewer eggs; and noted the males lived half as long as the wild male mosquitos. Dr. Gould explained the mating and population size over time noting that the Mexican strain of the mosquito would be pushed into the Florida strain and after a year of releases there would be approximately 90% Mexican mosquitos in Florida unless the genes were detrimental.

Dr. Kuzma reported about the risk assessment and decision-making process. She stated she was part of the U.S. National Academy of Sciences panel that recommended that when genetic technologies were less familiar or more complex, that a higher level of oversight should be deployed. She opined about the problems she identified with the Oxitec 5034 strain for which no published peer-reviewed studies were available on the OX5034 mosquito prior to the decision, no external independent scientific advisory panel was convened, and the EPA published risk assessment documents after the public comment period was over and after announcing the permit was granted. Dr. Kuzma explained the importance of independent, external reviews and mitigating biases. She stated that the background genetics of the OX5034 strain was likely to introgress into the wild population over time and that the assessment did not ask for specific, new laboratory data on GM-wild mosquito hybrids and their disease-carrying (vector) capacity. She suggested that to address this one could generate and then test the OX5034-wild hybrids in laboratory caged trials for disease-carrying capacity to address uncertainty expressed in EPA assessment. Dr. Kuzma stated that due to the presence of tetracycline, some tetracycline concentrations in some environments may be enough to support some female emergence and suggested due diligence would be to test tetracycline concentrations in areas of release prior to open field releases. She stated that due to mutations in the Tet-operon/female-killing system there could be mutations that develop and suggested studying the female emergence in a stepwise fashion prior to full environmental release. She noted that the World Health Organization recommended a phased testing for genetically modified mosquitoes.

Holly Tuten, PhD, reported on her entomology doctorate “Leveraging Zoos as Experiments to Study Mosquito Behavior & Ecology”; and her post-doctoral positions: “Control of container-inhabiting Aedes species mosquitoes”; and her research fellowship and federal hire with the USDA-APHIS Risk Assessment of Imported Fruits and Vegetables noting she learned a risk-analysis platform that was developed to account for the unintended consequences of ecological overlap in competition among species that share similar habitats Dr. Tuten commented that the EPA did respond to public comment regarding the potential for ecological overlap and competitive displacement with OX5034 mosquito and Aedes aegypti and Aedes albopictus mosquitoes, they did not formally analyze the potential risks of mosquito species specific suppression as part of their experimental use permit (EUP) risk assessment using independent literature review of existing evidence. She commented regarding overlap and co-occurrences in Florida and the Florida Keys. She stated that the current structure of the EPA EUP risk assessment did not provide room to anticipate or discuss the potential effects of newly invasive species or ecological competitors occurring or increasing during species specific suppression campaigns. Nor did it account for how it would be known that these non-targeted effects were happening, and what responses would be needed.

Natalie Kofler, PhD, identified items that would be monitored by Oxitec per the EUP and suggested additional items that could be monitored such as tetracycline levels in local water, invasion potential of Aedes albopictus, level of introgression and ecological impacts. She identified ways to safeguard the technology and the mosquito releases which included: data transparency, data assessment by independent experts, citizen scientist initiatives and comparison to alternative mosquito control strategies. Dr. Kofler noted the importance of data transparency and suggested establishing a data dashboard allowing public access to monitoring in real time as collection and testing was occurring; stated assessments by independent experts were critical in eliminating biases; and noted the value of citizen science contributions.

Council discussion ensued regarding preference for alternatives to chemical spraying; an opinion about the need for technology to be driven toward multi-species control; that mosquito spraying would continue with the release of genetically modified mosquitoes (GMMs); following critical protocols to avoid unintended consequences; Council obtaining expert, nonbiased points of view and making fact-based decisions; the potential impacts on the economy with the release of GMMs; the majority support for the release of GMMs in the 2016 referendum; an opinion that Council’s role was to follow-up with the Mosquito Control Board as there were additional levels of safety and oversight that could be added to make the project more creditable and successful going forward.

Dr. Stan Zuba, Florida Keys Mosquito Control District Commissioner, opined that the four scientists that presented had biases; identified the various diseases transmitted by the Aedes Aegypti mosquito; the Aedes Aegypti’s resistance to certain chemicals and the importance of alternative control methods; the Oxitec GMMs were being tested in other countries and were being found to be successful with no unintended consequences; and noted that the Mosquito Control District was also pursuing other new sterile insect technologies. He summarized the major points addressed during the presentation: Islamorada voted in support of the project in 2016; Oxitec's project has been independently and exhaustively evaluated noting that it was evaluated by the U.S Environmental Protection Agency, the U.S. Centers for Disease Control (CDC) and eight Florida state regulatory agencies; explained that project oversight would be provided by these agencies and noted the results would be independently evaluated by the CDC. Dr. Zuba reported that more than 100 peer review studies had been published relating to Oxitec's technology; the Mosquito Control Board's (MCB) public engagement efforts that, among other things, included eleven public educational webinars in the last six months that included a live question and answer session following the presentation; 31 out of 33 precincts in Monroe County voted in favor of the 2016 referendum item; they have had such a good response from the public noting more people have requested more boxes than they have available for distribution; the OX5034 mosquito does not allow for female survival; per the EPA guidelines, if one OX5034 female was released, the project would cease; that the eggs would be delivered tetracycline free, that there would be no tetracycline in Monroe County or in the State of Florida; and that there was no risk of tetracycline resistance developing due to the project. Dr. Zuba requested the Council allow Dr. Nathan Rose to address the issue.

Dr. Nathan Rose, Head of Regulatory Affairs for Oxitec, reported that the EPA review of the project application was so stringent that it took 14 months which was twice as long as a review would normally take; the EPA published the full details of the review online for the public; and the review included the EPA listening to over 30,000 public comments and responding to the comments. He explained that the EPA scientists that reviewed the project were the same scientists that reviewed and approved the Wolbachia technology and that these experienced professionals understood how to evaluate safety and effectiveness; and that the EPA did an exceptionally thorough job of assessing the safety to humans, animals and to the environment in the Florida Keys. He stated the EPA had already addressed the questions raised by Congressman Gimenez in his recent letter and proceeded to provide the following questions and answers:

1. Whether or not any genetically modified female mosquitoes would be released under the EUP. Answer: The EPA's assessed data demonstrates that this will definitely not happen
2. Would there be any adverse effects from the mosquitoes on the ecosystem throughout the Florida Keys, specifically on threatened or endangered species. Answer: The EPA evaluated a wide range of species and concluded no adverse effects.
3. Whether or not the mosquitoes would have any adverse impacts on the local food chain, particularly on local consumable marine life. Answer: The mosquito was a freshwater mosquito, and it was highly unlikely that the mosquito would ever encounter marine life. If it did it would be exactly the same as if it encountered a non-GMO mosquito.

Dr. Rose stated the EPA and CDC assessed the ability of the mosquitoes after the project whether they would be more or less likely to transmit diseases like Dengue and concluded that there was no risk of making the local mosquitoes more able to transmit diseases. He noted that there was a question as to whether elimination of one mosquito species would lead to other mosquitoes moving in to replace it in the environment. This was assessed by the EPA and other agencies as well as Oxitec in Panama and Brazil and demonstrated that this was not something that occurs. He stated that the Aedes Aegypti was overwhelmingly the major vector for Dengue, Zika, Yellow Fever and other diseases worldwide and noted that it was a far more dangerous mosquito than most of the others that were able to transmit the diseases. Dr. Rose stated Oxitec had released over one billion mosquitoes worldwide and had not seen any adverse effects; the technology that would be demonstrated in the Florida Keys was technology that had already been demonstrated to work outside the U.S.; and opined that the bigger threat to tourism was the transmission of diseases.

Councilman Webb inquired about genetically modified mosquitoes (GMMs) encountering tetracycline in the wild and whether it would upset the controls of the project. Dr. Rose stated that if a GMM was to encounter tetracycline in the wild in a breeding container full of mosquitoes then you could have some survival of the female mosquitoes. He stated this was why the EPA put restrictions on where the mosquitoes could be released within a certain vicinity of citrus orchards or sewer treatment plants. The restriction was 500 meters. He noted the mosquito typically only flew about 50 meters in their lifetime. Dr. Rose stated that if any females survived the project would be stopped which was a condition of the EPA.

Mayor Pinder opened public comment.

Dr. Douglas Mader, Veterinarian, commented about the transmission of disease from mosquitoes to pets in the Florida Keys; and noted the importance of prevention.

Megan Hull Morrison, Sugarloaf Key resident, commented in opposition to the release of GMMs noting that international news had indicated failed trials in other nations; opined that Oxitec was misrepresenting their product to the public; expressed support for the Wolbachia technology; and asked the Council to consider a resolution opposing the technology.

Kim Sikora asked if there were any independent peer reviewed studies on the effects on pregnant women, the elderly, children and immunocompromised individuals that could be bitten by a female mosquito or by the offspring of GMMs and asked where the research could be found. She expressed concern for releasing the mosquitoes during a pandemic; noted the difficulty she had in attending the informational webinars; and felt that there was a lack of transparency.

Barry Wray, Executive Director of the Florida Keys Environmental Coalition, commented about Congressman Gimenez's letter of inquiry; noted the questions posed by the City of Key West; opined that the EPA process was not very transparent; referenced some of the previous comments; no independent objective science had occurred; stated that they had lied about their results in the Caymans; and asked the Council to open a discussion to discuss the documents.

John Fernandez opined that the presentation should have been a workshop; stated he was offended by comments made about Dr. Zuba; and noted that he has the Mosquito Control staff come by once a month to check his property.

Maggie Mistal stated that if the questions were answered, then she did not understand why they were still being asked; and expressed her appreciation for having the discussion.

Mara Daly expressed opposition to the project; opined that Oxitec lied about trials, releasing females, the success of trials and using lobbyists; commented about section 2.3 of the Oxitec contract with the Mosquito Control District (MCD); noted that the MCD was planning on posting no trespassing signs near the mosquito boxes; and suggested that if a neighbor was uncomfortable with the mosquito box being placed on a property next door they could use a mosquito fogger to address the issue.

Craig Zabransky commented about the fragile environment of the Florida Keys, tourism and the pandemic and suggested that it was not the right time for a mosquito release.

Joan Scholz commented about the lack of documentation available to the public from Oxitec; expressed concern regarding the impacts on the ecosystem; and that the last webinar she attended indicated that the locations of the boxes would not be made known to the public and suggested the locations should be transparent.

Ed Davidson, Chairman of the Florida Keys Citizens' Coalition, commented about his experience with the EPA and how it has changed; expressed concern regarding the effects of the single-species modification, specifically other species filling in the gap when a percentage of one species has been reduced; and noted that the use of pesticides would kill a percentage of GMMs which would cost more money to replace.

Ed Russo, President of the Florida Keys Environmental Coalition, commented that he had studied the issue for ten years; noted that they had not found any independent collaborated studies and asked that they be shown the actual collaborated documents that prove everything Oxitec has been saying.

Mayor Pinder closed public comment.

AGENDA: Requests for Deletion / Emergency Additions

The Village Clerk noted that Tab 10 was pulled from the agenda and that the agenda on the website was updated accordingly.

PUBLIC COMMENT

Mayor Pinder opened public comment.

Ross Margolies commented about the stormwater intrusion issues in front of his home located on Lower Matecumbe. He stated he spoke with FDOT project staff who informed him that the project to raise the Overseas Highway, which would begin in the fall, would increase the stormwater runoff; FDOT added a drainage system on their side of the road, but could not do anything on the Village owned right-of-way; and expressed safety concerns pertaining to the accumulated water.

John Fernandez commented regarding a paragraph in the Village Manager recruitment brochure that addressed the reasons past Village Managers left employment with the Village. Mr. Fernandez commented that some of the turnover was due to decisions made by reelected Councilmembers and was not due to a two-year term limit.

John Kocol opined about Village government transparency; and thanked Councilman Webb for the GMM presentation.

Mayor Pinder closed public comment.

Councilman Gregg requested a brief discussion at the end of the agenda regarding Mr. Margolies situation.

CITIZENS' ADVISORY COMMITTEE UPDATES

Local Planning Agency Update

This item was heard at 7:41 p.m. Local Planning Agency Chair Lesley Rhyne reported the committee recently discussed a zoning map amendment application for the Boy Scouts of America for property located at mile marker 73.8. They requested a zoning change from Residential Single Family to Residential Duplex to allow for employee housing at the Sea Base; there was no adverse impact to density; and the LPA followed staff's recommendation to approve the change. Ms. Rhyne reported that Scarlett Hammon, consulting planner with the Corradino Group, advised the LPA that the South Florida Water Management District had requested the Village revise the water conservation regulations to conform with certain model language. The LPA requested staff bring forth language that would be appropriate for future discussion.

CONSENT AGENDA

TAB 2: Minutes for the February 25, 2021 Village Council Workshop and the February 25, 2021 Regular Village Council Meeting.

TAB 3: Resolution Amending Resolution No. 20-04-26 Updating Rules for Public Meetings During a Declared Emergency

A RESOLUTION OF THE VILLAGE COUNCIL OF ISLAMORADA, VILLAGE OF ISLANDS, FLORIDA, AMENDING RESOLUTION NO. 20-04-26; UPDATING AND RATIFYING EMERGENCY RULES FOR USE OF COMMUNICATIONS MEDIA TECHNOLOGY FOR PUBLIC MEETINGS DURING A DECLARED EMERGENCY; AND PROVIDING FOR AN EFFECTIVE DATE

This item was pulled from the consent agenda for discussion and was heard at 7:48 p.m. Village Attorney Roget Bryan read the title of the resolution and presented the staff report. He explained that section 2, subsection 2 of the Temporary Rules for Use of Communications Technology During Declared Emergencies addressed technical issues that arose during a Communications Media Technology meeting that prevented all interested persons from attending and would allow for the meeting to be terminated until the problem(s) were corrected. Termination of the meeting would not be required if at least one means of audio communication remained available. He commented that there were technical issues on an agenda item during a July 2020 meeting; and noted the policy had been consistent since last year. Councilman Rosenthal stated that he was trying to say that something should be in the document that says if communications totally failed which led to public input that the meeting should be redone. The Village Attorney stated that the first sentence of the subsection addressed that concern. Councilman Rosenthal stated his concern was in the event the technology issue was not corrected that the meeting should be virtually over. Councilman Webb pointed out that the paragraph addressed that concern. Councilman Gregg asked for clarification specifically if Councilman Rosenthal was saying that the business that had been conducted up until the failure was good or, was he suggesting to cancel the entire meeting and start all over. Councilman Rosenthal stated he was protecting the public's input. The Village Attorney pointed out the portion of the subsection that stated the meeting would terminate until the problem was corrected. Councilman Webb stated he understood that if there was zero means of providing for public input through audio communications then the meeting would terminate. The Village Attorney confirmed Councilman Webb's statement. Councilman Rosenthal conceded.

Councilman David Webb made a motion to approve. Councilman Mark Gregg seconded the motion. Council voted and the motion passed 5-0.

TAB 4: Resolution Approving Change Order No. 1 to the Construction Agreement between Island Villa Construction, LLC and Islamorada, Village of Islands Related to the Key Tree Cactus Preserve Boardwalk Project

A RESOLUTION OF THE VILLAGE COUNCIL OF ISLAMORADA, VILLAGE OF ISLANDS, FLORIDA, APPROVING CHANGE ORDER NO. 1 TO THE AGREEMENT BETWEEN ISLAMORADA, VILLAGE OF ISLANDS AND ISLAND VILLA CONSTRUCTION, LLC. RELATED TO THE KEY TREE CACTUS PRESERVE BOARDWALK PROJECT; AUTHORIZING THE VILLAGE OFFICIALS TO IMPLEMENT THE TERMS AND CONDITIONS OF CHANGE ORDER NO. 1; AUTHORIZING THE VILLAGE MANAGER TO EXPEND BUDGETED FUNDS AND PROVIDING FOR AN EFFECTIVE DATE

This item was heard at 7:53 p.m. Village Attorney Roget Bryan read the title of the resolution. Councilman Rosenthal inquired about the purpose of the injection well. Public Works Director A.J. Engelmeyer stated the injection well served as an overflow for the swale. It was determined after the design was completed that it was not necessary and was removed from the project. Mayor Pinder asked if it was a deductive change order that was before them. Mr. Engelmeyer stated that the injection well portion was deductive and that there were additional items on the changer order resulting in a net change of $1,394.72 to close out the project. Councilman Rosenthal stated his questions were answered and expressed his support for the change order.

Councilman David Webb made a motion to approve. Councilman Mark Gregg seconded the motion. Council voted and the motion passed 5-0.

TAB 5: Resolution Opposing CS/HB 267 and SB 426 and Urging the Florida Legislature to Support Home Rule for Local Municipalities and Counties

A RESOLUTION OF THE VILLAGE COUNCIL OF ISLAMORADA, VILLAGE OF ISLANDS, FLORIDA, OPPOSING SB 426 & HB 267 AND URGING THE FLORIDA LEGISLATURE TO SUPPORT HOME RULE FOR LOCAL MUNICIPALITIES AND COUNTIES; PROVIDING FOR TRANSMITTAL AND PROVIDING FOR AN EFFECTIVE DATE

Councilman Rosenthal stated that a few people had suggested to him that the way the Council deals with the consent agenda was not explicit to what the Council was voting on. He stated he understood that the public could access the website to view the agenda items but noted that not everyone did that. He stated that he had comments for tabs 3 and 4 and began to suggest some changes to tab 3 section 2 number 2 of the exhibit pertaining to public participation. Village Clerk Kelly Toth advised the Mayor that the tabs that would be discussed or changed needed to be pulled from consent and officially opened which allowed the Village Attorney to read the titles of the items and allowed for staff to present the staff report. She confirmed with Councilman Rosenthal that he wanted to pull tabs 3 and 4 for discussion; explained that tab 2 and tab 5 would remain on consent; and asked for a motion and second for the consent agenda. Mayor Buddy Pinder made a motion to approve the consent agenda (tabs 2 and 5). Councilman David Webb seconded the motion. Council voted all in favor. The motion passed 5-0.

Acting Village Manager Maria Bassett asked Councilman Rosenthal if he was suggesting that staff not place items on the consent agenda. Councilman Rosenthal stated the consent agenda was fine as long as the public understood the items being placed on the consent agenda. Ms. Bassett asked if the Council preferred that the consent agenda was eliminated. The Council majority expressed that they did not want to eliminate the consent agenda. Mayor Pinder stated that if there was a question it could be answered. Ms. Bassett stated the consent agenda was not created to avoid transparency. Councilman Gregg stated the agenda was available before the meeting and could be read which was transparent. The Village Clerk, for the benefit of the public, provided the Village web address, the location of the agenda items, and offered to assist the public if they had difficulty navigating the website. She stated that if an individual had a question about the agenda item to call her at 305-664-6412 and she would put them in touch with the person that wrote the staff report so that their question(s) could be answered. Councilman Mark Gregg inquired about the Village's website notification option. The Village Clerk explained that individuals could sign up for alerts/news through the Village website. She explained that when the agenda is published, the Village Public Information Officer sends out a news blast to subscribers telling them the agenda has been published and it provides a link to the agenda webpage. Mayor Pinder stated that the public also had the option to bring up the item during general public comment. The Village Clerk stated that a member of the public could also ask the Council, during general public, that the item be pulled from consent. Councilman Rosenthal stated he was only asking that the consent agenda be read to the public. Councilman Gregg stated that defeated the purpose of the consent agenda. Councilman Webb stated he was not in favor of Councilman Rosenthal's suggestion.

QUASI-JUDICIAL

Village Attorney Roget Bryan read the quasi-judicial statement and explained that individuals that were not sworn in would be providing public comment rather than sworn testimony. Village Clerk Kelly Toth noted that prior to the meeting and in an abundance of caution, she swore-in the following individuals: Paul Savage, Jim Lupino, Ernesto Machado, Susan Raffanello, Linda Giardano, Bill Gautier, Jr., and Bill Gautier, Sr. Ms. Toth stated that during the hearing, individuals speaking to the matter that had video would be provided the opportunity to use their video while they spoke if they chose to do so. She proceeded to swear-in the remaining witnesses.

TAB 6: Second Reading: Ordinance of Islamorada, Village of Islands, Florida Considering the Request of James S. Lupino, Esquire, with Hershoff, Lupino and Yagel, LLP and Overseas Center, LLC to Amend the Village's Future Land Use Map from Residential Medium (RM) to Mixed Use (MU) for Property with Real Estate Number 00418050-000000

AN ORDINANCE OF ISLAMORADA, VILLAGE OF ISLANDS, FLORIDA, CONSIDERING THE REQUEST OF PDB ENTERPRISES, INC. AND OVERSEAS CENTER LLC., TO AMEND THE VILLAGE'S FUTURE LAND USE MAP FROM RESIDENTIAL MEDIUM (RM) TO MIXED USE (MU) FOR PROPERTY WITH REAL ESTATE NUMBER 00418050-000000, AS LEGALLY DESCRIBED HEREIN; PROVIDING FOR THE TRANSMITTAL OF THIS ORDINANCE TO THE STATE DEPARTMENT OF ECONOMIC OPPORTUNITY; AND PROVIDING FOR AN EFFECTIVE DATE UPON THE APPROVAL OF THIS ORDINANCE BY THE STATE DEPARTMENT OF ECONOMIC OPPORTUNITY

This item was heard at 8:02 p.m. Village Attorney Roget Bryan read the title of the ordinance and asked the Council to disclose ex parte communications. Councilman Webb disclosed that he had spoken with Paul Savage and Jim Lupino, that he gave them no indication of his position on the item and that the declaration of restrictive covenants was mentioned. Councilman Rosenthal stated he had spoken with Jim Lupino and that it was an informative discussion. Mayor Pinder stated he had spoken with Jim Lupino and was informed about the habitat analysis and that the property owner had willingly relinquished some of his property rights. Councilman Mark Gregg stated he had spoken with Jim Lupino who mentioned the declaration of restrictive covenants and habitat analysis. Vice Mayor Pete Bacheler stated the applicant was a former client and that he would be abstaining pursuant to Florida Statute 286.12 to avoid the appearance of a conflict of interest. Vice Mayor Bacheler left the dais and moved to the back of the room until the agenda item was finished.

Senior Planner Craig Southern presented the staff report noting that the Local Planning Agency recommended approval with a 3-0 vote; The Village Council unanimously approved the item on first reading at the August 20, 2020 Village Council meeting; that the most recent Declaration of Restrictive Covenants proffered by the applicant was updated on February 23, 2021 and included with the agenda item; the Department of Economic Opportunity (DEO) reviewed the item and found no objections and provided no comments; and that the habitat analysis was provided and it was determined to have low quality habitat. He explained that if approved, a submittal of a minor conditional use application and site plan application would be required, and staff would be able to condition any proposed development and identified different items staff would review when considering a site plan submittal. Mr. Southern stated the FLUM amendment request was in compliance with the Village's Comprehensive Plan; and that the applicant had voluntarily decided to limit certain types of allowable uses on the property through the Declaration of Restrictive Covenants.

Attorney for the applicant, Jim Lupino, stated his presentation was the same for Tab 6 and Tab 7; that the vacant parcel fronted the US-1 Highway; the lots was bordered by vacant lots; across the highway the properties were zoned commercial and identified various businesses; a canal was on the west side of the property; that the request was consistent with US-1 frontage and other properties within the vicinity; that in 1990 Monroe County granted approval of a major conditional use to construct an office building with marina, boat ramp, dry storage and parking; his client intended to build self-storage and office space; his client submitted a Declaration of Restrictive Covenants (DRC) limiting the use of the property and a habitat analysis; the FLUM and zoning amendments passed on first reading; the staff reports recommending approval were the same as the first hearing except that his client had agreed to restricting the use of the property through the DRC; all requirements were complied with and were consistent with the Comprehensive Plan, land use approvals, DEO, and the procedural requirements of the ordinance and public policy determinations, hence the Council should approve the request for the FLUM and later the request for the zoning amendment.

Mr. Lupino stated for the Council to deny the request it would require something of substantial competence such as a change in code requirements or a departure from the current code; there was nothing that complied with that requirement; there was no substantial competent evidence to the contrary; the staff report and first reading found that the applications for FLUM and zoning were consistent with the Comprehensive Plan goals, policies and objectives. He stated the staff report had taken into consideration analysis of the Comprehensive Plan, all public policy considerations, and community input and was determined that the amendments should be approved. Mr. Lupino stated his client had met all of the requirements and had exceeded both by submitting the DRC restricting the uses of the property and identified some of the restrictions. He asked the Council to approve the item noting there had been no changes since the first approval and that there were no legal justifications to deny the request.

Mayor Pinder opened public comment to those in favor or opposed.

Don Horton commented in favor of the item and opined that the current zoning was an error noting his 31 years of building and zoning experience; and noted that the property was commercially zoned until shortly after the Village's incorporation.

Paul Savage, representing Keys Basin LLC the property owner to the north of the subject property, noted the residential property designations near the subject property. He began to screen-share the staff report and needs analysis. Jim Lupino noted that Mr. Savage's objection to any evidence that was submitted less than two days in advance as required. The Village Attorney confirmed that Mr. Savage was going to ask questions about the staff report and needs analysis that were included with the agenda item. Mr. Savage asked Senior Planner Craig Southern to confirm section 1 on page 14 of the staff report and asked him about the types of uses permitted in a Mixed-Use designation. Mr. Southern noted the open space requirements, confirmed that there was no evidence of data errors, noted the additional details and analysis that was required during the site plan and minor conditional use approval process before development could occur and noted the public noticing requirements associated with development approval. Mr. Southern stated that it met all the requirements for future land use designation. Mr. Savage screen-shared the applicants needs and analysis document and asked if the FLUM amendment limited the use of the property to storage units. Mr. Southern explained that it only provided for mixed use which would allow for commercial uses; that the specifics would be dealt with in the zoning district, the DRC, and the conditions placed by staff during the minor conditional use and site plan approval processes. Mr. Savage noted the applicant's intent to construct offices and dry storage units and confirmed that the FLUM did not require the applicant to build offices or dry storage. Mr. Southern confirmed Mr. Savage's understanding. Mr. Savage commented regarding the findings and substantial competent evidence required for the FLUM, that leaving the future land use alone did not constitute a public purpose; that the Code requires a finding by the Council and that the Council would be making a determination that substantial competent evidence exists in the record that satisfies each of the code-based factors. He opined that there was no analysis that something had changed nor were there any facts that required a land use map amendment; suggested that the Council had to have a good reason to change the existing designation; surrounding properties on that side of the highway were residential; noted that the first reading and second reading were essentially one hearing; and noted the DEO report that referenced a 180-day deadline and the possibility of an extension for a second hearing. He requested the Council deny the amendment citing substantial competent evidence required by the Code had not been established; and requested that they continue the item if they were not going to deny it.

William Gautier Jr., speaking in opposition, experienced brief difficulty sharing his video but was ultimately successful in doing so. He stated his family owned the apartment buildings on Monroe Drive on the south side of the canal; provided historical information regarding his knowledge and use of the area; opined that the area was a residential paradise; opined about the applicant's reason for purchasing the property; commented about the hammock providing a buffer between the residential area and US-1; stated that competent substantial evidence had not been submitted to suggest that maintaining the current zoning did not accomplish the legitimate public purpose; opined that residential use was a legitimate public purpose; noted that there were 585 properties zoned highway commercial noting 15.79% were not occupied; suggested affordable housing would provide for a legitimate public purpose; stated that the applicant agreed not to do certain things with the property through the DRC and noted that the applicant could have agreed to do only one thing with the property; commented regarding neighboring vacant residential properties. He commented about Comprehensive Plan policy 1-2.4.1 regarding encroachment and 1-2.1.14 regarding adverse community change and urged the Council to deny the request.

Susan Raffanello, speaking in opposition, commented regarding the meaning of property owners rights; the creation and vision of the Comprehensive Plan and the residential gateways; that the FLUM amendment request was an erosion of their property rights; that an amendment to the Comprehensive Plan that changed the character of the property was not a right; opined that the needs analysis and requirements set forth in FS 163.3177 was not met; noted the requirement to provide substantial evidence; opined that the last Council voted in favor of the amendment because of the submittal of the DRC and noted due to the late submittal of the documents some Council members did not have the opportunity to review the document in depth; opined that the staff reviewed the request based on what the applicant stated his intended use was noting the applicant did not limit the use to only two uses; opined that the DRC did not have an agreement that would run with the land and had recitals that the owner agreed to; the "Now therefore" section of the DRC did not incorporate the recitals and did not contain any of the same restrictions; the residents number one concern was protection of the canal; that there was no restriction in the DRC for the launching of boats; and noted that in addition to the storage and office space use, other allowable uses excluded from the DRC included boat sales and service, dive shops, commercial recreational facility, electronics stores, tackle and fish shop, lock smiths, outdoor storage and display which provided the necessary components for launching in and out of boats. Ms. Raffanello stated the needs analysis needed to be for additional Mixed-Use properties not for a particular use, noted no traffic or growth pattern studies were conducted and referenced the requirements of Comprehensive Plan section 1-2.1.13. She requested the Council deny the applicant's request.

Captain Ed Davidson requested the Village Clerk swear him in. She noted that he was personally known to her and swore him in. He commented in opposition, noted his experience on the Monroe County Zoning Board and the Comprehensive Plan drafting committee after area of critical concern designation; noted that allegations, promises and intentions by an intended developer were not legally binding; suggested the past Council's decision was an error; and commented that there was a provision in the Code that prohibited the establishment of new marinas. Councilman Gregg asked what year Mr. Davidson served on the county's zoning board. Mr. Davidson stated he served on the zoning board in the mid 1970's. Councilman Gregg asked if he served after 1986. Mr. Davidson stated he was in the cabinet room when the area of critical state concern was adopted. Councilman Gregg stated in 1986 Monroe County designated the zoning on the property as Suburban Commercial and was curious as to why it was changed to residential. Mr. Davidson stated his comments were directed at the procedural issues and not zoning.

Joan Scholz, expressed her opposition to the change and referenced Susan Raffanello and William Gautier's comments.

John Kocol stated he was calling on behalf of the Islamorada Community Alliance and expressed opposition to the proposed changes to the FLUM and zoning map amendment. Mr. Kocol noted the applicant purchased residential property and opined about the associated rights; suggested what occurred in 1993 was immaterial; suggested he public should weigh-in on macro planning issues in a more comprehensive manner rather than allowing one person to make determinations; commented regarding the lack of a track study by the applicant and the current Level of Service and existing traffic issues; and asked that the Council not make the same decision as the previous Council.

Linda Giordino, speaking in opposition on behalf of herself and her immediate family, stated she had lived on the canal for over 20 years; commented about the beautiful habitat in the canal; opined that if a person purchased a water lot then they expected to use the water access; expressed concern for potential increased traffic in the area; suggested the beauty of the Keys was getting ruined year after year with over development; encouraged the Council to visit her neighborhood to experience the beauty of the area; cited Comprehensive Plan section 1-2.4.1 regarding preventing negative impacts on fragile coastal ecosystems; and referenced the comments made by Susan Raffanello. Mayor Pinder asked if Ms. Giordino was Joe's sister and asked how long she had lived there. She said she was Joe's sister and had lived in the neighborhood for over 20 years. Ms. Giordino noted the difference in appearance between Key Largo and Islamorada.

Mayor Pinder closed public comment.

Mr. Lupino expressed disagreement regarding comments made by others pertaining to the law. He cited a Florida Supreme Court Case, Board of County Commissioners of Brevard County v. Snyder which found that when a landowner was seeking such an application once it established the proposal was consistent with the Comprehensive Plan and complied with the procedural requirements the legal burden shifted to the other side, or the Council in the current situation, had the duty to show, by substantial competent evidence, that there was an overriding legitimate public purpose. He stated it was also important for the Council to consider that the DEO approved the amendment, the LPA reviewed and approved the amendment, the Village staff had recommended approval after thorough investigation and the prior Council approved the amendment. He stated the DRC was a covenant that ran with the land and the document stated the restrictions would run in perpetuity with the land. Mr. Lupino stated that if the property owner met the requirements of the law then he had the right to change the FLUM and zoning and noted all the prior approvals. He stated in 1990 Monroe County approved 90 parking spaces and that the parking had nothing to do with the current application. He noted the requirements for site plan approvals by the Village and asked the Council to approve the amendment.

Councilman Gregg referenced the DRC restrictions and limitations on the use of the canal. He noted comments made about concerns of boat launching being allowed. He asked if his client, Mr. Machado, would agree to no boat launching. Mr. Lupino stated Mr. Savage had asked him the same question the day prior and Mr. Machado agreed to no boat launching from the site, the site has no ramp and agreed that that was a condition. Councilman Gregg suggested item number one of the DRC could be fixed to remove the word rentals after the word boat and add an ‘s’ to the word boat. He asked Mr. Lupino if the Council were to approve the item would he and his client be willing to proffer the suggested changes so to satisfy the concerns of the property owners about boat launching. Mr. Lupino stated he believed the answer was yes as he could not turn to his client and ask. Mayor Pinder asked if the applicant was going to run a dive shop from the property. Mr. Lupino stated his client intended to build self-storage and office space which is what the application stated; the speakers were correct in that any of the remaining uses allowed could be done in the future but that was not his client’s intent noting his client gave up 33 other uses. Councilman Gregg inquired as to what could be done to protect the canal; noted five boats were docked at the end of the canal which was already established; and noted the apartments and that he had counted 27 boats in the canal. The Village Attorney reminded the Council that procedurally they were considering the land use map amendment which was seeking a change from Residential Medium to Mixed Use. He stated that he understood Councilman Gregg’s question which was whether there was something the applicant could proffer, within the allowable context of the Mixed Use FLUM designation, that may be able to address the concerns raised. Councilman Gregg confirmed the Village Attorney’s statement.

Councilman Webb suggested tabling the item until the issues could be memorialized; commented about the Comprehensive Plan preamble and conflicts with the aesthetic intent; and requested clarification from staff regarding the legal applicability of the words of the preamble in the Comprehensive Plan.

At 9:58 p.m. Councilman Gregg made a motion to extend the meeting to 10:30 p.m. Councilman Webb seconded the motion. Council voted all in favor.

Councilman Gregg commented regarding his experience with the item while he served on LPA, noted that the parties involved could not come to an agreement about the item; and that it was unfair to the applicant to delay the item. Mayor Pinder commented about his experiences fishing in the canal over the years and the pristine nature of the canal.

Senior Planner Craig Southern stated the item before the Council was for a future land use designation only and explained what that meant. Mayor Pinder asked what would happen to the lots to the north and south of the subject parcel regarding whether those owners would request a change in designation. Mr. Southern stated there was an application that was suspended asking for the exact same thing. Village Attorney Roget Bryan commented that there has been a lot of opinion testimony about the law and that he wanted to be sure the Council understood the standard for what they were reviewing. He stated that with regard to the question posed earlier by Councilman Gregg, he did not want there to be any appearance that the Council was trying to condition the approval upon some additional concession from the property owner which would be illegal. Mr. Bryan stated the conversations this evening had touched on site plan approvals, zoning, conditional use, traffic and habitat analysis and explained that the Council was here solely on a FLUM change from Residential Medium to Mixed Use. He stated the standards set forth in the Comprehensive Plan section 1-2.1.14 which encompassed the majority of the staff report which served as the basis for competent substantial evidence for the Council to make their decision.

Councilman Rosenthal stated he wanted to call the question. The Village Attorney explained that procedurally they were not done with the quasi-judicial format. Councilman Rosenthal conceded.

Councilman Gregg explained that the Council could impose a condition that would protect the canal which is where his discussion was going. He stated it was not his intent to negotiate when he inquired earlier in the meeting and noted he was trying to find a middle ground that would work for everyone. He stated he would terminate his question unless Mr. Lupino wished to respond.

Mr. Lupino stated that his client texted him and agreed to no launching of boats from the property; noted the numerous boats in the canal; the property owner’s right to use their dock space for a boat and to use the boat in the canal; they had agreed to not launch boats or personal watercrafts; that his client was limited to what he could dock on the canal side of the property; and that his client has shown his willingness to give concessions. Mr. Lupino stated his client was under a time limitation with the DEO and continuing the item would not meet the time standards. Mayor Pinder agreed that the property owner had the right to use the dock space for boat(s). Village Attorney Roget Bryan asked Mr. Lupino if his client had agreed to amend the proffered DRC to include the revised language Councilman Gregg asked about regarding no launching of boats from the property. Mr. Lupino responded yes. Mr. Bryan stated that if the FLUM was approved the DRC would be updated with the revised language. Councilman Gregg asked the Village Attorney if a motion for approval could be conditioned upon the proffered updated language to the DRC. The Village Attorney provided confirmation.

The Village Attorney stated the standard was the Comprehensive Plan policy that he previously mentioned which set forth the criteria for the map amendment and was referenced in the staff report; and explained that the substantial competent evidence that staff presented in support of their recommendation was the entire file inclusive of the agenda packet, the applicant’s file as well as the Village’s Code and Comprehensive Plan. He stated he was asked about the relevance of the Comprehensive Plan preamble and stated that the specific criteria for the future land use map amendment was their guiding principle for approval of the item before them. He stated staff had reviewed the item and found in compliance with the requisite Comprehensive Plan policies which was reviewed by DEO and found no objections and provided no comments to the proposed amendment.

Mr. Bryan restated a procedural objection he had made to the submittal of evidence from Mr. Savage based on Code Section 30-257 only for the use of documentary evidence. He stated that Mr. Savage requested his submittal be part of the official record file which has been done.

Village Clerk Kelly Toth commented that public comment had not been officially closed and that Mr. William Gautier Sr. wished to speak. Deputy Clerk Stephanie Conde promoted Mr. Gautier to a panelist. Village Clerk Kelly Toth stated that Mr. Gautier's microphone was unmuted and asked if he could hear her. Mr. Gautier lost his connection.

Mayor Pinder closed public comment.

Councilman Gregg stated that he watched the August Council meeting and was comfortable some of the problems that arose during the meeting were resolved such as the DRC and habitat analysis. He said his interest was the amount of development that would occur with or without a zoning change; that the proposed development was low intensity; the residential impact was larger than thought and could be developed into four affordable houses and noted that if the property was divided four more affordable houses could be constructed; there was potentially 33,000 square feet of residential development opportunity on the property under the current zoning as there were no open space requirements; noted the open space ratio for commercial property was .25 which reduced the maximum development potential of the property; noted the habitat clustering and buffering requirements for commercial property; and explained that by changing the zoning to commercial it would reduce the amount of development potential on the property by about 75%. He noted that further protections could be imposed during the site plan and conditional use phases of proposed development. He suggested the Council could move forward with the FLUM change with the condition that the DRC be recorded and binding on the property and chain of title for perpetuity with the amendment discussed earlier regarding no launching of boats.

Mayor Pinder recalled memories fishing on the canal; and noted that he was torn because of the residential area. Councilman Gregg noted that prior to the Village incorporating, the property was zoned Suburban Commercial (SC) which was roughly the equivalent of Highway Commercial; that the SC designation continued until the Village changed the zoning in 2001; he reported that he had participated on Council in the adoption of the Comprehensive Plan and recalled voting against adoption because the maps contained numerous problems; noted that no one has built a house on the lot in twenty years and suggested the lot should be commercial like it used to be; opined that the current designation was a mapping error; commented about the quality and size of the hammock and preserving it; stated that if the applicant met the requirements of the Code he was entitled to receive what he applied for and that if the Village did not grant approval the applicant could seek approval through the appeals process; he referenced the years of litigation that ensued due to a Council land development decision that the Village ultimately lost and suggested litigation could arise from the Council's decision.

At 10:28 p.m. Councilman David Webb made a motion to extend the meeting. Councilman Gregg seconded the motion. Council voted all in favor.

Councilman Rosenthal moved to call the question. Councilman Gregg asked if Councilman Rosenthal was making a motion to approve. Councilman Rosenthal shook his head no and stated he was calling the question. Village Attorney Roget Bryan stated the question was called, that there was a recommendation in the staff report for approval and asked if Councilman Rosenthal was making a motion to approve. He asked Councilman Rosenthal to state his motion if it was not a motion to approve. The Village Attorney stated that he needed to be clear, due to the quasi-judicial nature of the meeting, as to what the question was that the Councilman was calling. Councilman Rosenthal made a motion to deny. The motion failed for lack of a second.

Councilman Mark Gregg made a motion to approve the application with the condition that the Declaration of Restrictive Covenants be recorded and binding in perpetuity on the applicant and any future development with the modifications/ amendment discussed earlier prohibiting the launching of boats. Councilman David Webb seconded the motion. Council voted and the motion failed 2-2 with Mayor Pinder and Councilman Rosenthal voting in opposition.

The Village Clerk requested direction from the Village Attorney as to whether the zoning item would be heard due to the denial of FLUM amendment. The Village Attorney stated the zoning could not be effective without the zoning change and suggested the zoning item could be tabled.

Mr. Lupino stated procedurally there was no basis to move forward, that they would have to come back after they went through the court system for the appeals. The Village Attorney confirmed Mr. Lupino's understanding and stated the zoning item, which was the companion piece, was essentially abated at this time for procedural reasons. Mr. Lupino stated that if they were successful in the court appeals process then they would come back to Council for the zoning item.

TAB 7: Second Reading: Ordinance of Islamorada, Village of Islands, Florida Considering the Request of James S. Lupino, Esquire, with Hershoff, Lupino and Yagel, LLP and Overseas Center, LLC to Amend the Village's Zoning Map from Residential Single-Family District (R-1) to Highway Commercial District (HC) for Property with Real Estate Number 00418050-000000

AN ORDINANCE OF ISLAMORADA, VILLAGE OF ISLANDS, FLORIDA, CONSIDERING THE REQUEST OF PDB ENTERPRISES, INC. AND OVERSEAS CENTER LLC., TO AMEND THE VILLAGE'S ZONING MAP FROM RESIDENTIAL SINGLE-FAMILY DISTRICT (R-1) TO HIGHWAY COMMERCIAL DISTRICT (HC) FOR PROPERTY WITH REAL ESTATE NUMBER 00418050-000000, AS LEGALLY DESCRIBED HEREIN; PROVIDING FOR THE TRANSMITTAL OF THIS ORDINANCE TO THE STATE DEPARTMENT OF ECONOMIC OPPORTUNITY; AND PROVIDING FOR AN EFFECTIVE DATE UPON THE APPROVAL OF THIS ORDINANCE BY THE STATE DEPARTMENT OF ECONOMIC OPPORTUNITY

Tab 7 was tabled because the FLUM companion piece, Tab 6, failed.

The Village Attorney closed the quasi-judicial hearing.

RESOLUTIONS

TAB 8: Resolution Approving Final Ranking and Recommendation of the RFP 21-01 Evaluation Committee for a Management Plan for the Area Known as "The Fills" in Islamorada, Florida

A RESOLUTION OF THE VILLAGE COUNCIL OF ISLAMORADA, VILLAGE OF ISLANDS, FLORIDA, APPROVING THE FINAL RANKINGS AND RECOMMENDATIONS OF THE RFP 21-01 EVALUATION COMMITTEE FOR SELECTION OF A CONSULTANT TO PREPARE THE MASTER PLAN FOR THE AREA KNOWN AS "THE FILLS"; AUTHORIZING THE VILLAGE MANAGER AND VILLAGE ATTORNEY TO NEGOTIATE AND ENTER INTO AN AGREEMENT FOR THE REQUESTED SERVICES; AUTHORIZING THE VILLAGE MANAGER TO EXPEND BUDGETED FUNDS; AND PROVIDING AN EFFECTIVE DATE

This item was heard at 10:33 p.m. Village Attorney Roget Bryan read the title of the resolution. Public Works Director A.J. Engelmeyer presented the staff report stating a long-term management plan was required pursuant to the FDOT lease agreement as well as the FDEP lease; stated the previous Council approved a cable barrier system to delineate parking; referenced a list of 14 items the previous Council had requested to be included in the management plan; stated the item before the Council was the Request for Proposal (RFP 21-01) for qualified engineers to assist the Village in preparing the management plan; and noted that the number one ranked firm was CPH, Inc. with a cost proposal of $55,000.00.

Councilman Webb commented about a past FDOT proposal that indicated FDOT would pay for improvements and asked if the Public Works Director was able to locate the information. Mr. Engelmeyer stated he could not locate the information but found information regarding the FDOT providing for parking and delineating the boat ramp area on Indian Key Fill. Councilman Webb expressed concern for safe access to and from the area; stated that he understood at one time FDOT was willing to install parking and a barrier system. He asked what the Council was limited to with passage of the resolution. The Public Works Director explained that the item before the Council was for approval of the ranking for the engineering firm to help the staff prepare the master plan document; that the 14- item list created by the previous Council could be modified by the Council; and noted that the top two priorities were the cable barrier system and delineated parking which would help staff greatly in managing the area. Councilman Gregg asked if the Council approved the resolution, were they approving the list of 14 items. Mr. Engelmeyer stated the list could be modified; that the item before them was purely approving the engineer so staff could move forward with creating the master plan; explained that each project would have to be approved by the Council. Councilman Gregg asked if the cost proposal included only preliminary items. Mr. Engelmeyer stated it was only preliminary and included a conceptual plan of what the area could look like. The Village Attorney stated the plan was conceptual, but that the idea was that the management plan would be consistent with the terms of the lease agreements with FDOT and FDEP. He stated the management plan may be preliminary in scope, but it was based on all the prior discussions they have had with the respective agencies about the area.

Councilman Webb suggested that the Council could have a workshop to address the items listed; that his preference was to reach out to the FDOT to see if they could get the agency to spend the $1.1 million to do what they had initially suggested. He stated it was unacceptable to him to have a park along the highway with limited space; and tasking Village employees with cleaning the area. Councilman Gregg suggested keeping the improvements small due to the size of the property; noted the potential improvement costs and annual maintenance costs and the need to determine the budget; and commented that $350,000 was included in the Capital Projects Fund for the Fills master plan. Vice Mayor Bacheler stated the first decision by the Council was whether or not to move forward. Councilman Webb stated that the item before them had to move forward but expressed concern for the list of items that he did not intend to support. The Vice Mayor stated he did not intend to support the entire list either.

Maria Bassett, Acting Village Manager explained the point was to better manage the area and the creation of the management plan was a first step in that direction; the engineering firm would be consulting with the Council and would provide opportunity for public comment. She stated there was nothing staff could do regarding the offer FDOT made about seven years ago when the FDOT had an active project in the area and noted the Village turned down their offer. She stated the Council was not locked into the fourteen features. Councilman Gregg confirmed that the Council would get one or two opportunities to provide feedback to the engineering consultant. Mr. Engelmeyer explained that the list was created because any improvement left out of the plan would require that the Village go through the approval process all over; explained that the Village could choose to only do one or two items on the plan; and stated that FDOT and FDEP suggested including any potential items the Village may want. He stated the primary items staff needed for managing the Fills area were the cable barrier system and delineated parking. He commented about the app-based parking system that was also included on the list that would help offset costs associated with managing the Fills.

Village Attorney Roget Bryan explained that the Village needed to create a master plan; if the Council wanted to change the elements of the plan they had the capability to do that; the list was in response to communication with FDOT regarding creating a “wish list”; the list included everything the previous Council could conceive as a possibility for the Fills area; and the $55,000 was the bid submitted in response to the proposal to create the master plan to do the engineering work and noted the bulk of the costs related to the cable barrier system, delineation of the no parking areas, and a few other items. He explained that the master plan explains how the Village intends to manage the area. Mr. Engelmeyer explained that FDOT would review the plan and remove items they did not approve of.

Vice Mayor Bacheler asked if the item was approved, how soon could the Village make some of the changes needed to manage the area. Ms. Bassett stated it could be another year. Mr. Engelmeyer commented that once the master plan was approved by FDOT and FDEP, then it would be up to the Village to implement the plan and begin projects. Councilman Webb noted that if the Village failed to meet the requirements of the master plan then the Village would be in default of the lease and noted the FDOT’s responsibility to maintain their right-of-way.

Councilman David Webb made a motion to approve. Councilman Mark Gregg seconded the motion. Council voted and the motion passed 5-0.

Mayor Pinder opened public comment.

Sue Miller opined that the Council was being asked to spend $55,000 on the previous Council's wish list; suggested the only feature needed was the boat ramp and opined that the 2014 FDOT plan could be used; opined that the Fills had become a nuisance; commented about FDOT projects and opined about different items on the list.

John Kocol indicated he wished to speak but did not offer comment.

Mayor Pinder closed public comment

At 11:00 p.m. Councilman David Webb made a motion to extend the meeting. Vice Mayor Pete Bacheler seconded the motion. Council voted all in favor.

TAB 9: Resolution Approving Work Authorization No. 1 between Islamorada, Village of Islands and K2M Design, Inc. for Design of Final Developments at the Key Tree Cactus Preserve

A RESOLUTION OF THE VILLAGE COUNCIL OF ISLAMORADA, VILLAGE OF ISLANDS, FLORIDA, APPROVING WORK AUTHORIZATION NO. 1 WITH K2M DESIGN INC. FOR DESIGN OF FINAL DEVELOPMENTS AT THE KEY TREE CACTUS PRESERVE; AUTHORIZING VILLAGE OFFICIALS TO IMPLEMENT THE TERMS AND CONDITIONS OF THE AGREEMENT; AUTHORIZING THE VILLAGE MANAGER TO EXPEND BUDGETED FUNDS; AUTHORIZING THE VILLAGE MANAGER TO EXECUTE THE PROJECT AGREEMENT; AND PROVIDING FOR AN EFFECTIVE DATE

This item was heard at 11:03 p.m. Village Attorney Roget Bryan read the title of the resolution. Environmental Resources Manager Peter Frezza presented the staff report recommending K2M Design Inc. at a cost not to exceed $51,7800.

Mayor Pinder opened public comment; no comment was offered.

Mayor Buddy Pinder made a motion to approve. Councilman David Webb seconded the motion. Council voted and the motion passed 5-0.

MOTIONS

Tab 10 was removed from the agenda prior to the meeting.

MAYOR / COUNCIL COMMUNICATIONS

TAB 11: Discussion Regarding Four-Year Terms and Term Limits for Councilmembers Vice Mayor Bacheler

This item was heard at 11:09 p.m. Vice Mayor Pete Bacheler reminded the Council that they had a desire to discuss term limits; commented about the need for continuity; suggested the terms needed to be longer than two years; terms needed to be staggered; and suggested the Council should have workshops to better inform the public. Councilman Webb and Councilman Gregg expressed their agreement to have further discussion regarding the matter. Discussion ensued regarding the lengthy amount of time it takes to begin and complete large capital projects; the ability to recall a Council person; the ordinance requirement for a referendum; and opinion that there was no urgency for a workshop. Council agreed to placing the item on the next agenda for discussion.

Mayor Pinder opened public comment.

Ed Davidson commented that Village residents had rejected the idea of four-year terms; and suggested more Council meetings and workshops due to the late nature of the meeting.

Mayor Pinder closed public comment.

Discussion Regarding Establishing a Mask Policy for the Village- Vice Mayor Bacheler
This item was heard at 11:07 p.m. Vice Mayor Pete Bacheler thanked local businesses and community for their efforts related to managing the COVID pandemic.

Update Regarding Lobster Mini Season Working Group- Councilman Gregg
At 11:23 p.m. Councilman Gregg deferred his update to the April 8, 2021 agenda.

Agenda Addition: Discussion Regarding Margolies Stormwater Issue
Councilman Gregg suggested a pilot program to address the stormwater issue Mr. Ross Margolies brought up during general public comment. Councilman Webb commented that the bike path was not a service or access road; that the homes on the Overseas Highway with an Overseas address had to have a driveway that went up to the highway; noted there was a shoulder in the area; and opposed a precedent that would bypass the stormwater strategic plan when other properties also had stormwater issues. Mayor Pinder requested that the item be added to the next agenda.

At 11:26 p.m. Councilman David Webb made a motion to extend the meeting. Councilman Mark Gregg seconded the motion. Council voted all in favor.

VILLAGE ATTORNEY / VILLAGE MANAGER COMMUNICATIONS

TAB 12: Update on Council Direction to Amend Regulations for Storage Containers
This item was heard at 11:27 p.m. Planning Director Ty Harris provided an update. He requested the Council provide direction to staff to remove the item from the strategic plan and not expand the use of storage containers. Councilman Webb opined that he did not think cargo containers should be used in Islamorada for storage; and stated he would like to have a future discussion about disallowing cargo containers in the Village. Vice Mayor Bacheler agreed with Councilman Webb. Council agreed to leaving the topic alone and that there was no need to expand the use of storage containers at this time.

ADJOURNMENT

Vice Mayor Pete Bacheler made a motion to adjourn. Councilman David Webb seconded the motion.

The meeting adjourned at 11:31 p.m.

Kelly S. Toth

Kelly S. Toth, CMC
Village Clerk