

KEY WEST  
CITY COMMISSION MEETING

ITEM NUMBER 21

Directing the City Manager to cease negotiations for a Lease Agreement between the City and Tropical Soup Corporation for parcels 1, 2, 3 and 4 at Mallory Square; Withdrawing the "City of Key West Planning Department Authorization Form" signed by the City Manager and dated 1 May, 2015, which authorized Tropical Soup Corporation and its professional team to represent the City in the application process for the parcels; Directing the City Manager to make recommendations to the City Commission/CRA for the best use of the property.

COMMISSION:

Mayor Jill Johnston  
Commissioner Mary Lou Hoover  
Commissioner Gregory Davila  
Commissioner Jimmy Weekley  
Commissioner Clayton Lopez  
Commissioner Billy Wardlow  
Commissioner Samuel Kaufman

ALSO PRESENT:

Shawn Smith, City Attorney  
Greg Veliz, City Manager  
Jim Scholl, Former City Manager  
Cheri Smith, City Clerk

PUBLIC SPEAKERS:

Van Fischer, Esquire, for Tropical Soup Corp.  
Burt Bender  
Margaret Romero  
Judy Martinez  
Bart Smith, Esquire, for Tannex Development  
Joe Walsh  
Owen Trepanier

Key West City Hall  
1300 White Street  
Key West, Florida 33040  
Tuesday, June 18, 2019  
5:20 p.m. - 6:15 p.m.

1           (WHEREUPON, the following proceedings were  
2 had on June 12, 2019, at 5:20 p.m., with all parties  
3 present:)

4           THE CLERK: We will have to go to Item Number  
5 21. Its time approximate was 5:20.

6           MAYOR JOHNSTON: Okay.

7           THE CLERK: Resolutions, Item 21. Directing  
8 the City Manager to cease negotiations for a Lease  
9 Agreement between the City and Tropical Soup  
10 Corporation for parcels 1, 2, 3 and 4 at Mallory  
11 Square; Withdrawing the "City of Key West Planning  
12 Department Authorization Form" signed by the City  
13 Manager and dated 1 May, 2015, which authorized  
14 Tropical Soup Corporation and its professional  
15 team to represent the City in the application  
16 process for the parcels; Directing the City  
17 Manager to make recommendations to the City  
18 Commission/CRA for the best use of the property.

19           I do have speakers. Mr. Van Fischer.

20           MR. FISCHER: Good evening. Thank you. I'm  
21 Van Fischer. I am the attorney for Tropical Soup.  
22 I'll be brief.

23           Tropical Soup has done nothing wrong since  
24 its bid for a restaurant at Mallory Square was  
25 unanimously approved by this Commission in 2010.

1           Rather, Tropical Soup has worked diligently to  
2           fulfill its side of the bargain with the City to  
3           operate a restaurant at Mallory Square.

4           Unfortunately, the approval process has been  
5           delayed with a seemingly endless string of legal  
6           and political impediments. Notably, Tropical Soup  
7           has overcome all of these impediments which is why  
8           the project is ready for final Commission review.

9           The basis of the Resolution to pull the plug  
10          on Tropical Soup's restaurant appears to be the  
11          result of confusion regarding the size and  
12          location of the restaurant kitchen. It has been  
13          alleged that Tropical Soup somehow removed the  
14          kitchen and materially changed the project without  
15          the knowledge of City staff and the City Manager.  
16          This is simply untrue.

17          It is correct that the Planning Board  
18          originally approved a plan including a standalone  
19          kitchen, but that approval also reduced the  
20          percentage of the cable tank structure that could  
21          be demolished.

22          Tropical Soup was further directed by HARC,  
23          HARC staff and Planning staff, that no demolition  
24          of the cable tank would be allowed. This is why  
25          the kitchen was removed and merged into the bar

1 area, specifically to prevent any demolition of  
2 the historic cable tank structure.

3 Contrary to the City Manager's previous  
4 statements, the City Manager signed and approved  
5 this revised version of the plans in March 2017,  
6 and this was necessary before HARC could even  
7 review the project. Pursuant to City procedures,  
8 the manager could only approve the plans after  
9 Planning and Legal had approved or green-lighted  
10 these plans. As such, it was not possible for  
11 Tropical Soup to change the plans without direct  
12 knowledge of the City.

13 Furthermore, the removal of the kitchen was  
14 nothing more than a reduction in building size.  
15 Pursuant to Section 108.91 City Code, a reduction  
16 of building size constitutes an administrative  
17 modification of a development plan. This is  
18 exactly how the removal of the kitchen was treated  
19 back in 2017, an administrative modification.

20 As mentioned, Tropical Soup has done nothing  
21 wrong. However, an approval of the proposed  
22 Resolution pulling the plug on Tropical Soup is  
23 subject to estoppel. The Third District Court of  
24 Appeals recently explained, "Stripped of the legal  
25 jargon which lawyers and judges have obfuscated it

1 with, the theory of estoppel amounts to nothing  
2 more than an application of the rules of fair  
3 play. One party will not be permitted to invite  
4 another onto a welcome mat and then be permitted  
5 to snatch the mat away to the detriment of the  
6 party induced or permitted to stand thereon. A  
7 citizen is entitled to rely on the assurances or  
8 commitments of a zoning authority and if he does,  
9 the zoning authority is bound by its  
10 representations whether they be in the form of  
11 words or deeds."

12 For those interested, that case was *Castro v.*  
13 *Miami-Dade County Code*, 967 So.2d 230, Florida  
14 Third District Court of Appeals 2007.

15 That said, Tropical Soup strongly urges that  
16 the proposal to pull the plug or the Resolution be  
17 denied. Thank you.

18 THE CLERK: Bert Bender and then Margaret  
19 Romero.

20 MR. BENDER: Good evening. I'm Bert Bender.  
21 I'm here representing myself. I'm not here as a  
22 HARC member or an architect. And I am here to  
23 speak on the cable huts which you are going to be  
24 voting on. From my opinion, having done an  
25 historic structure report, I can tell you that

1 those are two extremely significant buildings that  
2 do deserve being restored.

3 The project was denied at the HARC meeting  
4 because the proposal that was presented did not  
5 restore the existing buildings. Instead, it  
6 looked at creating a superficial bar in order to  
7 serve alcohol. They don't have a kitchen there.  
8 They've avoided some of the issues that they  
9 planned to do. But the buildings themselves do  
10 represent documents and buildings that should be  
11 restored.

12 You, as the City Commission, have an  
13 obligation to see that that's done. I don't care  
14 if you do it or if you find someone else to do it,  
15 but as the City Commission, you have an obligation  
16 to make sure that those buildings are restored.  
17 Thank you.

18 MS. ROMERO: Margaret Romero, 1615 Washington  
19 Street.

20 For many years, as a citizen and then three  
21 years as a Commissioner, I have watched this story  
22 ebb and flow. I've watched it, and my viewpoint  
23 tonight is going to be that of a citizen. A  
24 citizen who watched a business come forward and  
25 change every time a change was asked. I watched

1 that business, as a citizen, see the lawsuits that  
2 happened which you could read in the daily papers  
3 that they won. And I have to ask if the cable  
4 huts were so valuable, why did the City let them  
5 fall into such disrepair over this time frame?  
6 Why didn't the City come forward?

7 As a citizen, I ask you, your motion tonight  
8 seems to be to withdraw the approvals that have  
9 been given by the City Manager. Does that mean  
10 that we're going to go back and look at every  
11 Planning and Zoning or HARC approval that has not  
12 been made good, if you will, or construction or  
13 such started, and withdraw all of those?

14 Since when do we withdraw the approval that  
15 has been given and supposedly, given under  
16 scrutiny, to get it to where, at the point that  
17 it's approved and signed off on?

18 Now, you won't find somebody who's more a  
19 supporter of restoring things that are traditional  
20 than I am. I've probably sat through more HARC  
21 meetings than all of you up there combined so I  
22 have shown my support for that board in many ways.  
23 I was one of the people that thought we should do  
24 something, if you will, quasi-historic, if not  
25 with the de-sal buildings down near Truman

1 Waterfront. I never did understand why the City  
2 didn't say to Keys Energy, hey, you're letting  
3 those things deteriorate.

4 So to come forward with Resolution tonight  
5 and say, hey, we're going to withdraw, we're  
6 taking back our word, we're not your partner  
7 anymore, the City has had ten years to come  
8 forward with what had to have been done. And,  
9 yes, as a Commissioner, there were many times I  
10 would come back to Jim and Greg and say, hey, that  
11 place looks like a trash dump. We're not even  
12 keeping the area around it clean and safe.

13 So I think to all of a sudden now say, it's  
14 historic, yada, yada, yada, I don't think you're  
15 being fair to the business that's put forth a lot  
16 of time, effort and money, as any citizen can see,  
17 and I think for the City to go back on its word  
18 opens you up to a number of people coming forward  
19 and saying, hey, well, I saw such-and-such a  
20 variance given, I saw this, I saw that, and I  
21 think you're going to open a pandora's box.

22 So I suggest maybe this goes down as a lesson  
23 learned and people, everybody, whether it's  
24 management or elected officials, need to start  
25 reading the documents that come before them before

1 they start taking votes rather to try to go back  
2 and change something in the end. Thank you.

3 THE CLERK: Judy Martinez and then Janette.

4 MS. MARTINEZ: Good evening, Commissioners,  
5 City Managers, Attorney, and all the ladies.  
6 1020 Emma, 3A.

7 I'm in support of this. It was about six  
8 years ago that I went to a Planning Board meeting  
9 and a very lovely blond-haired lady approached me,  
10 last name starts with S. She's no longer on the  
11 committee. And she asked me if I would be in  
12 support and help out with restoring one of the  
13 cable huts. And I said, yes, I will.

14 Now, I'm a woman of my word. I will do that.  
15 And I have a lot of income, I have money in the  
16 bank, I'm an historian, and I will do that. You  
17 have my word.

18 This would be a tourist attraction. Build  
19 this restaurant, and maybe we'll take a look at  
20 the ship later on. Take the people out, show them  
21 where the cables were laid, how they were laid,  
22 give them a tour of the cable hut, maybe both.  
23 And please, please pass this. Thank you.

24 THE CLERK: Is there someone named Janette  
25 that would like to speak on this item? I don't

1 have -- I can't read the last name.

2 JANETTE: I'm Janette and I'm (indiscernible)  
3 but I'm not speaking on this item.

4 THE CLERK: What item? You didn't put the  
5 number down.

6 JANETTE: I didn't see it on the agenda but I  
7 think about 34.

8 THE CLERK: Okay. You can speak under the  
9 citizens' comments.

10 MAYOR JOHNSTON: Yes.

11 JANETTE: Okay.

12 THE CLERK: Thank you.

13 Bart Smith and then Joe Walsh.

14 MR. SMITH: Bart Smith on behalf of Tannex  
15 Development, also known as Margaritaville.

16 In 2010, the City issued an RFP for the use  
17 of a portion of Mallory Square that originally  
18 consisted of a forty-seat restaurant. Tropical  
19 Soup responded and proposed a full-service  
20 restaurant of undefined seating, a museum and a  
21 park. Tropical Soup was selected. The full-  
22 service restaurant proposed was massive, two  
23 stories, over 200 seats, out of scale with  
24 anything in Mallory Square; and because of this,  
25 it was denied by the City Commission. That was

1           2013. The process should have ended then. It  
2           didn't.

3           Instead, in 2015, Tropical Soup submitted  
4           again, but this time it did not have a museum, it  
5           did not have any real park, but did have a  
6           kitchen. The proposal was approved by Planning  
7           with a condition that no deliveries occur after  
8           11:00 a.m. That proposal was also denied by HARC.  
9           Tropical Soup did not appeal that decision of  
10          HARC.

11          Instead, Tropical Soup went back, removed the  
12          kitchen and tried again for approval. It was  
13          denied by HARC and Tropical Soup appealed. It won  
14          the appeal but, ultimately, HARC has never  
15          actually approved the design at issue.

16          The time pass was not the City Commission's  
17          fault. This should have been done in 2013. The  
18          time pass of not getting a lease was not the City  
19          Commission's fault. The fact that the museum and  
20          park was not -- was removed, was not the City  
21          Commission's fault. The fact that it no longer  
22          has a kitchen and does not look anything like a  
23          restaurant but looks like a bar, was not the  
24          City's fault. That was a decision made by the  
25          applicant in order to make more money. It no

1 longer resembles anything of what was proposed as  
2 part of the original proposal in 2013 -- in 2010.  
3 After it was denied in 2013, this process should  
4 have ended.

5 We're dealing with a bar that delivers food.  
6 It's not a restaurant. There is no museum. There  
7 is no park. The City should not, because of its  
8 neglect of the cable huts, approve something that  
9 was never proposed as the response to the RFP.  
10 The City should hold itself to a standard that it  
11 must be the response to the RFP, and that it  
12 should hold itself to the standard that it  
13 restores its property and doesn't allow it to go  
14 to neglect.

15 Terminate it today and start again. The  
16 cable huts can be restored. A new RFP can be  
17 issued. This is not the City's fault that it no  
18 longer looks like the original proposal response.  
19 Terminate it. Thank you.

20 THE CLERK: Joe Walsh, Owen Trepanier.

21 MR. WALSH: Good evening. I'm Joe Walsh, 402  
22 Wall Street.

23 In the structure that's colloquially known as  
24 The Hospitality House, formerly the ticketing  
25 office for the Mallory Steamship Company, in 2010

1 we proposed a museum. That's still in the  
2 proposal. We proposed a park in the section  
3 that's designated as parcel three. That's still  
4 in the proposal. If you go to Mallory Fish  
5 Company Facebook, you'll see our fly through, fly-  
6 through designations. I would love to talk about  
7 those things but everybody wants to be talking  
8 about some other stuff.

9 In terms of fealty to the RFP that the City  
10 put out and that we responded to in 2010, we'll be  
11 living up to every word of it. The only  
12 challenge, only challenge that we had is when this  
13 City Commission decided the structure that we  
14 originally proposed and went through HARC,  
15 et cetera, was too large, and we redesigned it.

16 That then required us adding prep kitchen  
17 work elsewhere. This is not something that is  
18 unusual for restaurants to do. Many restaurants  
19 don't bake their own bread. Many supermarkets and  
20 butcher shops don't butcher their own cows. Meat  
21 will come in cut to a greater degree or lesser  
22 degree based on the size of the space.

23 There's still a kitchen on the property.  
24 I've been happy to write "kitchen" in, except  
25 we've gotten all kinds of push-back about how I

1 suddenly changed the plans.

2 From the HARC denial in December of 2016  
3 until the next HARC meeting, we had multiple  
4 meetings with City staff; the Building Department,  
5 Planning staff, the City's Floodplain Coordinator,  
6 et cetera. For the City to suggest that it  
7 somehow did not know that we were going to be  
8 retaining more of the cable tank is just  
9 disingenuous and really, straight up dishonest.  
10 The removal of the 300 square foot standalone  
11 kitchen space at the back part of the property was  
12 suggested, in fact demanded, by first, the City's  
13 Planning Board and secondly, the City staff.

14 With regard to the historic preservation of  
15 the structures, again, there will be a museum in  
16 The Hospitality House. There will be a park in  
17 parcel three. With regard to the preservation of  
18 the cable tank, the building we're sitting in and  
19 standing in right here, that Lieutenant Barrios  
20 went to school at, is no longer a school. So  
21 there is an adaptive reuse to historic structures.  
22 We'll be adaptively reusing the cable tank  
23 structure for some seating.

24 We looked at putting a kitchen into it;  
25 however, the City's Floodplain Coordinator said it

1 would be impossible to flood proof that particular  
2 structure in historic fashion. So therefore, we  
3 had to be going up into the same new small  
4 pavilion area that houses the bar for the  
5 additional kitchen space.

6 I also would urge you to identify any point  
7 that Tropical Soup has not either been respondent  
8 to the wishes of the City or has been pushing the  
9 project forward, or has been somehow or another  
10 responsible for any of the delays that have gone  
11 on. The City itself is responsible for a year  
12 and-a-half, two years of litigation, and Bart and  
13 his team responsible for another couple.

14 I'd urge you to deny this application and  
15 then put the whole thing on the July 16th agenda  
16 so we can push this forward. Thank you very much.

17 MR. TREPANIER: Hi, Mayor, Commissioners.  
18 Owen Trepanier, 39 Bay Drive. My firm is the  
19 agent for this application but I'm not here  
20 representing Tropical Soup. I just wanted to  
21 speak to you as Owen Trepanier. And that is that  
22 there has been so much effort, and time, and  
23 resources from all the sides, from the neighbors  
24 who oppose it, from Tropical Soup who wants to get  
25 it done, from City staff that has processed this.

1           It's just so much time and effort. And I'd just  
2           ask you to consider that and let the process -- we  
3           have one meeting to go to make a decision based on  
4           the merits of the project. And so I'd just ask  
5           you to consider that and let it -- let the project  
6           go forward to its final meeting and make a  
7           decision based on the merits of the project.  
8           Thank you.

9           MAYOR JOHNSTON: Is that it? Do I have a  
10          motion?

11          COMMISSIONER WEEKLEY: Can I ask a question,  
12          Madame Mayor?

13          MAYOR JOHNSTON: Yes.

14          COMMISSIONER WEEKLEY: So, Shawn, the  
15          attorney talked about estoppel, and I've asked you  
16          this before about our legal jeopardy.

17          MR. SMITH: Yes.

18          COMMISSIONER WEEKLEY: Can you --

19          MR. SMITH: Yeah, let me just address that,  
20          that legal argument.

21          What Mr. Fischer referred to as a bid is  
22          really a request for proposal. The case he cited  
23          regarded zoning authority. What we're talking  
24          about here is the City Commission accepted a  
25          request for proposals and specifically said,

1 negotiate a contract. Until a contract is  
2 executed, the individual has no property interest  
3 in this location. So the line of cases cited are  
4 inapplicable in an RFP situation. The cases there  
5 are clear that until a contract is executed, a  
6 person acquires no interest.

7 COMMISSIONER WEEKLEY: Thank you.

8 MAYOR JOHNSTON: Do I have a motion?

9 COMMISSIONER WEEKLEY: I'll move to approve.

10 MAYOR JOHNSTON: Motion to approve by  
11 Commissioner Weekley. Do I have a second?

12 COMMISSIONER WARDLOW: I'll second it.

13 MAYOR JOHNSTON: Seconded by Commissioner  
14 Wardlow. Discussion?

15 COMMISSIONER KAUFMAN: Madame Mayor?

16 MAYOR JOHNSTON: Yes, Commissioner Kaufman.

17 COMMISSIONER KAUFMAN: I just think this is a  
18 horrible idea. And the reason it is, is because  
19 it just looks so bad.

20 Here we had -- I agree with Commissioner,  
21 Former Commissioner Romero. For four years that  
22 I've been on this Commission, this has been  
23 tracking. And, from time to time, we've sat up  
24 here and asked, when is this coming, when is this  
25 coming. It's been on our agenda many times

1 without any support materials. I've asked each  
2 time, when is this going to be coming?

3 We care about the cable huts. We've said  
4 that time after time. And I agree with Bert  
5 Bender, we do care about the cable huts. And for  
6 someone who doesn't miss City Commission meetings,  
7 I think I've missed one meeting in four years,  
8 every time this has come up, we always say we care  
9 about the cable huts and we want to see this  
10 proposal come forward and get started. That's  
11 what we've been saying over and over again.

12 Then, May 3rd of this year, the competitors  
13 provide a memorandum. And, by the way, the City  
14 shouldn't be getting involved with people  
15 competing with each other. We should be a neutral  
16 party here. And it just doesn't look that way to  
17 me.

18 May 3rd, the competitors provide a memorandum  
19 to the City Commission. Two business days before  
20 the City Commission meeting. And five minutes  
21 before the meeting on May 7th, we receive an  
22 administrative decision by our Planning Director  
23 turning back a memorandum that he wrote a month  
24 earlier in April that said that our Planning  
25 Department supported this project. It just

1 doesn't look right because the -- it was argument  
2 number five or six in the memorandum from the  
3 competitor that talked about this kitchen.

4 And at the meeting before last, I think  
5 Commissioner Hoover was asking, well, did we have  
6 -- did the City Manager sign, in March of 2017,  
7 with the current view of what the kitchen should  
8 be. And it turns out, that's what happened.

9 So the question I think we had before us was  
10 -- because the reason why this was pulled the last  
11 time was because the kitchen had changed, but in  
12 fact we learned that the kitchen hadn't changed  
13 since 2017.

14 So I know there's a lot of maybe complexity  
15 to this but it just doesn't look right to me. I  
16 agree with former Commissioner Romero. We've been  
17 tracking this. We have one more meeting to go.  
18 If we, if we approve this Resolution, we could go  
19 another two, three, four, five years. How many  
20 years before another RFP process takes shape? And  
21 that's not good.

22 So I think we need to give this a shot, at  
23 least as Mr. Trepanier said, let's see what the  
24 proposal is and let's speak about the merits at  
25 the next meeting.

1           COMMISSIONER DAVILA:  Madame Mayor?

2           MAYOR JOHNSTON:  Yes, Commissioner Davila.

3           COMMISSIONER DAVILA:  I just, I think the  
4           last time this came up, I spoke my piece and I  
5           haven't changed my position with that when this  
6           was denied last time.

7           I'm the new guy here so I'm looking at this  
8           objectively.  I wasn't here for the history of  
9           this, for the whole ten years it's gone on between  
10          the City and -- but it seems to me, looking at it  
11          from fresh eyes from the outside, is that we put  
12          in front of Mr. Walsh a lot of hoops, a lot of  
13          hurdles, and each one of those hoops and hurdles  
14          he seems to have complied with and jumped over and  
15          gone through, and then a couple times he, you  
16          know, there's been some litigation and he's won  
17          that litigation against the City.

18          So I don't know at what point -- it seems  
19          like there was a disconnect.  At one point, we  
20          were like, in a partnership essentially with him,  
21          and then at some point that partnership dissolved  
22          in some way.  I don't know what happened, I don't  
23          know.  But I'm not involved in the emotional side.  
24          I'm not involved in -- I'm just looking at it  
25          from, objectively from outside eyes, so to speak.

1 And I think it just would be patently unfair to,  
2 at this point in the game, you know, pull the rug  
3 out from this project without at least giving it  
4 its due process and having its hearing and, like  
5 Owen said, having a hearing on the merits.

6 COMMISSIONER WARDLOW: Madame Mayor?

7 MAYOR JOHNSTON: Yes, Commissioner Wardlow.

8 COMMISSIONER WARDLOW: So, Shawn, if this is  
9 denied tonight and it comes back on the 16th of  
10 July -- no -- yeah, the 16th of July.

11 MAYOR JOHNSTON: Yeah, yeah.

12 COMMISSIONER WARDLOW: Basically, what --  
13 what would we be doing.

14 MR. SMITH: What would be before you on the  
15 16th would be the applicant's appeal of the  
16 Planning Director's decision to have the Planning  
17 Board hear the item.

18 COMMISSIONER WARDLOW: For the Planning Board  
19 to hear it again?

20 MR. SMITH: Yes. That, that was the  
21 administrative determination of the Planning  
22 Director that Commissioner Kaufman referenced.

23 So the item was heading back to the Planning  
24 Board for that review. However, the applicant has  
25 appealed that decision, and that appeal is

1 scheduled for your meeting of the 16th. So the  
2 16th would not be a hearing on the major  
3 development plan. It would be a hearing on their  
4 desire not to go to the Planning Board.

5 COMMISSIONER WARDLOW: Okay. And then we'll  
6 decide if it goes to the Planning Board or not?

7 MR. SMITH: Yes, sir.

8 COMMISSIONER WARDLOW: Okay. And so, the  
9 legal cost as the City -- how much has the City  
10 got in this in legal fees?

11 MR. SMITH: We haven't paid anything in legal  
12 fees. We were part of the defense of the, I  
13 believe, the Planning Board's decision a number of  
14 years ago at the Third DCA with Mr. Walsh, and  
15 then we were opposed to Mr. Walsh on behalf of  
16 HARC because they had originally denied the  
17 application that was overturned by the Special  
18 Magistrate. But, as far as legal fees, we've done  
19 everything in-house.

20 COMMISSIONER WARDLOW: Okay. So if this is  
21 accepted or -- yeah, accepted, how long would it  
22 take to get another RFP going?

23 MR. SMITH: That's more of a question for  
24 Jim.

25 MR. SCHOLL: I mean, it wouldn't take very

1 long to resurrect the RFP and, you know, make some  
2 modifications and put it back out on the street.

3 COMMISSIONER WARDLOW: I mean, yeah, it's  
4 been going back and forth a lot and there's a lot  
5 of confusion. I think there's a lot of confusion  
6 there from going back and forth with it. And, you  
7 know, I don't know, I just, I don't like it, you  
8 know.

9 My main problem is there's like, eight  
10 restaurants in that area, and there's one little  
11 tiny Mallory Square parking lot that used to be a  
12 whole parking lot, and that was reduced down to  
13 half. And right now, you're having a hard time  
14 finding a parking place in there any -- any time.  
15 Now, if we could build another story down there,  
16 it might be different, on the parking lot, you  
17 know, and make a little parking garage.

18 But, you know, right now, like I say, I think  
19 there's a lot of confusion going on here, and I  
20 really don't think the City nor Mr. Walsh is right  
21 completely, a hundred percent complete on this.

22 MAYOR JOHNSTON: Commissioner Hoover.

23 COMMISSIONER HOOVER: So I don't understand  
24 why we would go forward with this when we're going  
25 to hear whether or not he should be going back to

1 the Planning Board. That seems like the cart  
2 before the horse, so --

3 MAYOR JOHNSTON: No, that's not what the --  
4 not what this Resolution is. That's not what this  
5 Ordinance is.

6 COMMISSIONER LOPEZ: This Resolution.

7 MAYOR JOHNSTON: It's to kill it.

8 COMMISSIONER WEEKLEY: It's to start over.

9 COMMISSIONER HOOVER: Okay. Got it.

10 MAYOR JOHNSTON: Yeah, yeah.

11 COMMISSIONER WEEKLEY: Madame Mayor?

12 MAYOR JOHNSTON: Yes, Commissioner Weekley.

13 COMMISSIONER WEEKLEY: Shawn, I don't know if  
14 it's for you, or Jim, or whoever wants to answer  
15 it.

16 So, in 2013 when the Commission denied it,  
17 why didn't that stop it and start all over then?  
18 Why wasn't that process to start over in 2013 when  
19 the original plan was denied?

20 To me, if somebody put an RFP in and that  
21 plan that they submitted was denied, that killed  
22 that RFP. The City, at that time, should have  
23 gone out for another RFP and not allowed -- that  
24 person could have, you know, applied again, but --  
25 you know, so I don't know why it didn't stop it at

1           that point.

2           MR. SMITH: I don't know that I have an  
3 answer for you. Jim wasn't here at the time.

4           COMMISSIONER WEEKLEY: Right.

5           MR. SMITH: I believe we had a different  
6 manager sitting next to me.

7           COMMISSIONER WEEKLEY: We had a different  
8 City -- we had a different City Planner at the  
9 time as well. So, but, I mean, to me, that -- it  
10 killed it at that time.

11           I've got a number of issues with this. I've  
12 said this a number of times. Since the beginning  
13 of this, this has been nothing but a nightmare.  
14 It's been a nightmare for the City with different  
15 plans that HARC has seen one set, the Planning  
16 Board has seen something else. One of them  
17 doesn't touch anything at all.

18           None of the plans that I have seen today  
19 showed anything at all about a museum, and that  
20 was part of the proposal was that a museum would  
21 go in. There's nowhere on the plans that shows a  
22 museum. It shows two ADA handicap bathrooms. It  
23 shows a number of other things, but no museum.

24           The other thing is that the plans I saw  
25 today, there is absolutely no kitchen. There's no

1 kitchen on the plans at all. To me, to be a full-  
2 service destination restaurant has a kitchen. In  
3 my lifetime that I can think of, that I can  
4 recall, I've never gone to a restaurant that  
5 didn't have a kitchen.

6 So you can't call it a restaurant without a  
7 kitchen, as far as I'm concerned, you know. And  
8 that was the main reason, as I recall, that the  
9 City Planner said, wait a second, this needs to go  
10 back to the Planning Board because they have to  
11 look at this, these plans again. Because talking  
12 to HARC, talking to the Planner today, neither one  
13 of them have ever given any direction at all to  
14 remove that kitchen from the -- from the plan.

15 So that was done solely, from what I gather,  
16 by the applicant himself, decided that he would be  
17 able to cater from one of his other restaurants to  
18 the, to the place, which also expands the use,  
19 we're expanding the use if he's got to bring food  
20 from one of the restaurants over, that's expanding  
21 the use, I believe, to the -- to the facility, to  
22 the restaurant as well.

23 So that's why I'm saying, you know what, we  
24 need to start this ball rolling again. We need to  
25 stop this.

1           If he wants to put another proposal in, he's  
2 more than welcome to do it. This has nothing to  
3 do with that. It has to do with the process that  
4 we follow. Did the City make mistakes? Was the  
5 City in error in some cases? Absolutely. I think  
6 the biggest error we made was in 2013 when it was  
7 denied. It should have been stopped at that  
8 point, you know.

9           And the Commission is right, this has been on  
10 a number of agendas in the past and they were  
11 always postponed for various reasons, a lot  
12 because of the court hadn't made a decision.  
13 Other reasons was somebody was out of town or what  
14 have you. But it has been a long process. And I  
15 think, to get this right, we need to start over  
16 with a whole new, a whole new RFP.

17           And, in the meantime, I would like to see the  
18 City go out there and make whatever -- whatever  
19 they could do to make sure that those buildings  
20 aren't going to deteriorate any more than they may  
21 have.

22           So that's -- that's why I'm supporting this.  
23 That's why I think it's important that we, in  
24 fact, be able to get this done right with -- if  
25 we're going to have a restaurant, with a kitchen.

1           We also need to bring HARC into that process  
2 of putting together the proposal, the RFP as well.

3           MR. SMITH:   Madame Mayor?

4           MAYOR JOHNSTON:   Yes.

5           MR. SMITH:   If I may just touch --

6           MAYOR JOHNSTON:   Yes.

7           MR. SMITH:   And I raised this last meeting.  
8 There's two different hats the Commission is  
9 wearing in this process, a multifaceted process.

10           The one I believe Commissioner Weekley is  
11 addressing this evening is the landlord.  The  
12 other issue regarding processing a major  
13 development plan, that's really a different hat as  
14 a processing body.

15           I will tell -- I said this last meeting, this  
16 is a legal opinion.  As most of you know, I  
17 represented a large number of commercial landlords  
18 prior to working for the City and, in my view, if  
19 I were to give you any other advice other than to  
20 tell you, do not reduce the scope of a  
21 nonconformity because it devalues your asset --  
22 the removal of that kitchen, once gone, can't be  
23 expanded because you cannot expand a  
24 nonconformity.  So once that kitchen is reduced in  
25 scope and you're limited to delivering food in,

1           you limit the number of potential tenants you can  
2           have at that location in the future. So I think  
3           if I gave you any advice other than that, I'd be  
4           negligent.

5           COMMISSIONER WEEKLEY: Madame Mayor?

6           So I can understand what you're saying, if  
7           the relationship soured between the developer and  
8           the City at some point, and they walked away or  
9           the City forced them to walk away for whatever  
10          reason, for lack of payment or whatever reason, it  
11          puts the City in a position to have a piece of  
12          property that they may not be able to do anything  
13          because of the disappearance of the restaurant.

14          MR. SMITH: Yes, sir. And not even that, if  
15          you go to -- let's say you enter into a ten-year  
16          agreement -- and again, a lease still has to come  
17          before the City Commission and you have no idea  
18          what those terms are. But if you were to get to a  
19          point where you go to renew the lease, your  
20          leverage is much less because you have basically  
21          an individual that has the ability to shuttle food  
22          in and out, and you're going to have to find  
23          somebody else like that in the future. So I think  
24          you reduce your leverage somewhat as well.

25          COMMISSIONER KAUFMAN: Can I follow up with a

1 question?

2 MAYOR JOHNSTON: Yes. Yes, you can,  
3 Commissioner Kaufman.

4 COMMISSIONER KAUFMAN: So then, why are we  
5 learning this now?

6 MR. SMITH: Learning what, sir?

7 COMMISSIONER KAUFMAN: What you're just  
8 telling us. Why is -- no one has answered my  
9 earlier question which is why do we have a  
10 memorandum dated April 3rd from our Planning  
11 Director telling us, recommending to approve this  
12 project? Why?

13 Why is it that five minutes before the  
14 meeting on May 7th, after we received a memo  
15 Friday, the Friday afternoon before, raising this  
16 kitchen issue from the competitor, why did we  
17 receive that Planning Director's notice of  
18 administrative decision? How did that all come  
19 about? Why didn't --

20 MR. SMITH: I can leave -- I can leave --

21 COMMISSIONER KAUFMAN: Why wasn't this caught  
22 years ago?

23 MR. SMITH: I can leave that to Jim and to  
24 Patrick, but I gave you this exact same legal  
25 advice last time, so you're not just hearing it

1 now.

2 MAYOR JOHNSTON: Yeah, after this.

3 COMMISSIONER KAUFMAN: April 3rd, we have a  
4 memo in the record from our Planning Director that  
5 says "approve this" and that was valid up until  
6 the day of the meeting of May 7th.

7 And here we have -- and at that meeting, we  
8 were told that the manager didn't sign off on this  
9 new kitchen design, but that turned out -- to  
10 Jim's credit, he said he didn't remember, and it  
11 turns out that it was signed March of 2017.

12 MR. SMITH: So, but that was --

13 COMMISSIONER KAUFMAN: It just doesn't -- I  
14 don't understand how this all played out and why  
15 we're here today putting this applicant through  
16 all of this.

17 MR. SCHOLL: The document that I signed was a  
18 document to go forward with the process, but that  
19 didn't come with a stack of documents.

20 MAYOR JOHNSTON: Yes, it did. Yeah.

21 MR. SCHOLL: So by the time the plan, we were  
22 made aware of the plan, it was very late in the  
23 process that the kitchen had been removed. And we  
24 had one of the -- well, George Wallace who works  
25 for Shawn, went back, reviewed the Planning Board

1 meeting. I had copies of it as well, but in the  
2 Planning Board meeting where they went through the  
3 process that said you need to preserve sixty  
4 percent of the cable hut as a condition of them  
5 saying go forward, didn't contemplate and  
6 certainly didn't direct Mr. Walsh to remove the  
7 kitchen, which is a substantial change from what  
8 the Planning Board had reviewed.

9 And in all that time with the, again,  
10 different Planning Directors, different City  
11 Managers, it certainly didn't come to my attention  
12 until before that April meeting. And we had a  
13 discussion with the Planning Director and said,  
14 this is a pretty significant change from what the  
15 direction and the conditions applied at the  
16 Planning Board, so this probably needs to go back  
17 to the Planning Board.

18 So that's where that came from. But because  
19 so much of the detail was very difficult to cull  
20 through and find out that the changes weren't  
21 specifically directed as Mr. Walsh says, but at  
22 his choice said, well, I can preserve consumption  
23 area. I'm assuming that because the kitchen --  
24 or, the consumption area took precedence over  
25 maintaining a kitchen somewhere in the redesign.

1           But going back to the original proposal,  
2           which was a full-service restaurant, you know,  
3           you're the lawyer, not me, but a full-service  
4           restaurant, to me, should have a kitchen.

5           COMMISSIONER KAUFMAN: Okay. But Jim,  
6           Mr. Walsh says that the kitchen design of what you  
7           signed off on in March of 2017 had the same  
8           kitchen design as today. That's either true or  
9           not true.

10          MR. SCHOLL: Well --

11          COMMISSIONER KAUFMAN: So you're saying that  
12          that's not true?

13          MR. SCHOLL: That document that comes forward  
14          as, okay, they're going to go through a process  
15          for the City, that's what that document was for.  
16          That document didn't say that the City Manager  
17          reviewed the plans as they existed. The last time  
18          I saw a full-blown plan of that design, it had a  
19          kitchen in it. That's what I remember.

20          COMMISSIONER KAUFMAN: Okay. But that's not  
21          what --

22          MR. SCHOLL: But that document was in a  
23          package of many documents, but that whole package  
24          wasn't brought before me to approve going forward  
25          for the Planning Board.

1           COMMISSIONER KAUFMAN: But you see where I'm  
2 coming from. May 3rd, the competitors write a  
3 memo. They put out eight, seven arguments as to  
4 why this is a bad project. They threw everything  
5 against the wall in that memo, if you read it.  
6 Number five or six was the kitchen issue, okay.  
7 That's what -- it's in the record, it's in the  
8 email. Every single one of us got that email.  
9 Someone globbed (phonetic) onto that kitchen issue  
10 and decided, we better take a look at that, or  
11 that's -- that's what we're going to look --  
12 that's what we're going to go with or that's what  
13 we're going to look at.

14           How is it, if that's -- if it's true that  
15 what you're saying, that you said back in 2017  
16 that we had to look more closely at this kitchen  
17 issue, we had to do all that, how is it that in  
18 2019, April, our Planning Director tells us to --  
19 that's what I don't understand. And that memo was  
20 dated April 3rd, in our packets, up until May 7th.  
21 Five minutes before the meeting we were handed a  
22 one pager, remember?

23           MAYOR JOHNSTON: Yeah, right.

24           COMMISSIONER KAUFMAN: We got a one-page, a  
25 paragraph.

1 MR. SCHOLL: Well, a determination that  
2 because that is a substantial change, that it  
3 should go back to the Planning Board for their  
4 review. And I agree with that.

5 COMMISSIONER KAUFMAN: So it slipped through  
6 everything? I mean, all of these meetings and all  
7 of this --

8 MR. SCHOLL: Absolutely.

9 COMMISSIONER KAUFMAN: Really?

10 MR. SCHOLL: Yes. And because, I mean, that  
11 was a substantial change that our -- you know,  
12 Mr. Walsh certainly didn't bring to my attention,  
13 and Planning Department didn't bring it to my  
14 attention.

15 But when we got to the, to the point where  
16 we're saying, hey, this is not what was expected  
17 and, as Shawn has offered, is a pretty substantial  
18 detriment going forward for the City to have an  
19 asset that is now significantly diminished and a  
20 nonconformity that can't be returned, I think  
21 that's something that the Planning Board needs to  
22 consider if we were going to go forward.

23 MAYOR JOHNSTON: Mr. Walsh, can you come up?  
24 I've got a couple questions for you, please.

25 This document that's of question where the

1 City Manager signed it on May 17th, it's a  
2 combination application, Floodplain and  
3 construction and HARC, were there full plans  
4 attached to that application?

5 MR. WALSH: Yes, Madame Mayor. That's the  
6 HARC submittal.

7 MAYOR JOHNSTON: Right. Okay.

8 MR. WALSH: And the -- that wouldn't -- that  
9 would be, include the report created by the City's  
10 Historic Planner. Plus, if it was less than a  
11 hundred pages, I would be surprised. And the  
12 drawings would need to be a part of that  
13 application in order to be able to submit it to  
14 HARC.

15 MAYOR JOHNSTON: Okay. And what did that  
16 application on May 17th, show as far as a kitchen?

17 MR. WALSH: It did not show the words  
18 "kitchen" anywhere on it. It's the same exact  
19 design that was before this body a few weeks back,  
20 and it's been the design for the past two-plus  
21 years, that the kitchen was reduced in size in  
22 order to preserve the cable tank and put into the  
23 bar area.

24 MAYOR JOHNSTON: Okay. And how many times  
25 have you revised your plans based on direction by

1 a City staff member or the City Commission?

2 MR. WALSH: In total, dozens. In this  
3 particular instance, the design that was approved  
4 by the Planning Department or the Planning Board  
5 in the fall of '16, went to HARC at a HARC meeting  
6 in December and the HARC Board denied it. After  
7 that, we had probably six or seven meetings with  
8 the Historic Planner, with the Chief Building  
9 Official and Floodplain Coordinator to try to come  
10 together with something that HARC -- that we hoped  
11 HARC could approve. Those multiple meetings  
12 resulted in the design that's before you now.

13 MAYOR JOHNSTON: Okay. And how many  
14 restaurants are you the majority owner in right  
15 now?

16 MR. WALSH: Five in Key West right now.

17 MAYOR JOHNSTON: Okay. So you've got some  
18 experience here, right?

19 MR. WALSH: Yes, ma'am. And I run no bars at  
20 all.

21 MAYOR JOHNSTON: Okay.

22 MR. WALSH: So I have bars as parts of those  
23 restaurants, but bars by themselves, I don't run  
24 any.

25 MAYOR JOHNSTON: Okay. And based on your

1 proposal, how much did you agree to pay the City  
2 every year for running that restaurant?

3 MR. WALSH: \$303,000 per year against seven  
4 percent of gross sales, whichever is greater.

5 MAYOR JOHNSTON: Okay. All right. Thank you  
6 very much, Joe. I just, I --

7 MR. WALSH: I've got just one more item. The  
8 suggestion that after my company invests a  
9 substantial amount of money in improving that  
10 property that this will somehow be a detriment to  
11 the City is laughable.

12 MAYOR JOHNSTON: Yeah, yeah.

13 MR. WALSH: And the idea that you can't find  
14 somebody else to go take it in the extraordinarily  
15 unlikely event that the City and I part ways, is  
16 just, it's a ridiculous statement.

17 MAYOR JOHNSTON: Yeah. Thank you.

18 COMMISSIONER WEEKLEY: Could I ask him a  
19 question?

20 MAYOR JOHNSTON: No, I'm not finished yet,  
21 Commissioner Weekley.

22 COMMISSIONER WEEKLEY: Oh, I'm sorry.

23 MAYOR JOHNSTON: I'm going to continue on  
24 here because --

25 COMMISSIONER WEEKLEY: Can I ask him a

1 question? I just need to question him.

2 MAYOR JOHNSTON: Yeah, we can bring him back  
3 up.

4 COMMISSIONER WEEKLEY: Yeah, okay.

5 MAYOR JOHNSTON: If anybody has been down to  
6 Mallory Square lately, you know that it is a  
7 blighted area. Nine and-a-half years ago, we gave  
8 the City Manager direction to negotiate a lease.  
9 That has not been done in nine and-a-half years.  
10 We've had four Planning Directors dealing with  
11 Mr. Walsh. He employs 350 people in the City of  
12 Key West in restaurants, so he's pretty good at  
13 this.

14 But when Commissioner Wardlow asked the City  
15 Attorney about how much money have we expended, I  
16 just want to take you through the litigious nature  
17 of this whole situation, and I just want you to  
18 know that the Westin, who is at one end of these  
19 litigious actions, had every opportunity to bid on  
20 this project.

21 There were sixteen respondents who went out  
22 to the pre-bid meeting and took a look at this  
23 property. The Westin didn't attend, nor did they  
24 put in a proposal, but they certainly have been  
25 very active at suing.

1           On June 11, 2011, the Westin sued our  
2           Planning Board for the Planning Board's decision  
3           to approve it.

4           On February 13th, the Circuit Court upheld  
5           the Planning Board's decision and the City and  
6           Tropical Soup win.

7           On March 12th, Westin appealed the Circuit  
8           Court decision to the Third District Court.

9           On May 23rd, 2017, HARC then denies the  
10          design. I think we referred back to that.

11          On May 31st, 2017, Tropical Soup appeals the  
12          HARC ruling to the Special Magistrate.

13          On August 30th, 2017, the Special Magistrate  
14          rules in favor of Tropical Soup, our own Special  
15          Magistrate.

16          So, on November 17th, 2017, the City files a  
17          twenty-two page appeal to the Special Magistrate's  
18          ruling in favor of Tropical Soup, requesting that  
19          this case be reviewed by the Circuit Court.

20          On January 18th, the City's request for  
21          Circuit -- the City requested that the Circuit  
22          Court relinquish jurisdiction, then back to the  
23          Special Magistrate to rehear the case.

24          On May 5th, 2018, the Special Magistrate  
25          rehears the case and affirms his previous decision

1 in favor of Tropical Soup.

2 On August 27th, 2018, the City files a motion  
3 requesting reinstatement of the jurisdiction of  
4 the Circuit Court.

5 On March 4th, 2019, the Circuit Court denies  
6 the City's appeal and upholds the HARC and the  
7 Special Magistrate approval.

8 You know, when we say we haven't spent any  
9 time or much money on this, that's just a  
10 misstatement. Not only have we not received  
11 \$303,000 of rent from this applicant, Mallory  
12 Square continues to fall into a state of  
13 disrepair, so we're leaving that there. It's in  
14 such a state of disrepair that we can only  
15 attract, you know, the lowest cruise ship that's  
16 out there floating on the sea with the most  
17 reprehensible environmental record out there right  
18 now.

19 It just, I mean, this is, this is just  
20 nonsense. This applicant has jumped through every  
21 hoop. It is the City that's withheld their lease,  
22 and it's also a neighbor who didn't even, didn't  
23 even bother to apply for this, to put something  
24 that they would find appealing in that spot. They  
25 just, they just decided to sue.

1           You know, I went through all of this and I  
2           went through the timeline and it looked like we  
3           were getting really close this year, because we'd  
4           run out of appeals. The City was denied, was  
5           denied our appeal. So we get down to -- I just  
6           want to get these dates correct for you.

7           We went down to April 26th of this year, and  
8           Mr. Walsh receives a letter from our leasing agent  
9           that says, "Good afternoon, Joe. Attached is the  
10          lease agreement from Mallory Square that has been  
11          reviewed by the Legal Department. I'm happy to  
12          review any changes with you at your convenience  
13          should you choose. Have a good weekend."

14          But a mere nine days later, our Legal  
15          Department then contacts Marilyn and said,  
16          "Marilyn, to the extent that 6H on page ten was  
17          intended to allow the tenant to run food and  
18          beverages back and forth due to the elimination of  
19          the kitchen, I can no longer approve the lease as-  
20          is, subject to Planning Board action."

21          I agree with Commissioner Kaufman. We were  
22          given our last packet, our last review of this,  
23          after asking and asking and asking that this be  
24          moved along and come back in front of us. For  
25          seven days we had a Planning Board opinion to

1 please approve this. Less than a half-hour before  
2 we sat down here at this dias, that was changed.

3 The whole process stinks. The whole process  
4 stinks to high heaven. You know, I'm not sure how  
5 you can do business with the City in this nature.  
6 We've talked about the cable huts and how much  
7 they mean to us. And yet, in 2010, our own Chief  
8 Building Inspector condemned one of them. And  
9 then, eight months later, we decide they're  
10 historic.

11 So, and you know, I'm sure you're listening  
12 to this and just shaking your head, but I will not  
13 agree to stop this process right now because I  
14 think the City as a whole has been the culprit in  
15 this not going through. And I think the City  
16 taxpayers have been denied \$303,000 a year based  
17 on our performance as a City Commission, a  
18 Planning Board, a HARC Board, our City Attorney,  
19 our City Manager. There has just been a multitude  
20 of errors, but none of them are the applicant's.

21 So I'm going to vote no on stopping this  
22 process. I'm not sure why we would expect a  
23 different outcome when all the players are the  
24 same here. So I'm going to vote no on this.

25 Commissioner Weekley, did you have a follow

1 up for Mr. Walsh?

2 COMMISSIONER WEEKLEY: No, that's okay.

3 MAYOR JOHNSTON: Okay. Any other comments?

4 Cheri, could you call the -- could you just  
5 remind us what the motion is?

6 THE CLERK: The motion is to approve the  
7 Resolution.

8 MAYOR JOHNSTON: Okay. To kill the, kill the  
9 -- okay. Can you call the roll, please?

10 THE CLERK: Commissioner Davila.

11 COMMISSIONER DAVILA: No.

12 THE CLERK: Commissioner Hoover.

13 COMMISSIONER HOOVER: Yes.

14 THE CLERK: Commissioner Kaufman.

15 COMMISSIONER KAUFMAN: No.

16 THE CLERK: Commissioner Lopez.

17 COMMISSIONER LOPEZ: No.

18 THE CLERK: Commissioner Wardlow.

19 COMMISSIONER WARDLOW: No.

20 THE CLERK: Commissioner Weekley.

21 COMMISSIONER WEEKLEY: Yes.

22 THE CLERK: Mayor Johnston.

23 MAYOR JOHNSTON: No. Motion denied.

24 I would like to, I would like to now make a  
25 motion -- oh, I better turn this over.

1           Is there a motion on the floor, I should say?  
2           Do we have another motion?

3           COMMISSIONER LOPEZ:   What other motion did  
4           you --

5           MAYOR JOHNSTON:   Okay.  I'd like to bring  
6           forth a motion that we bring this back for  
7           approval on the July -- the first meeting in July,  
8           July 16th.

9           COMMISSIONER LOPEZ:   It doesn't --

10          COMMISSIONER WARDLOW:  You can't.

11          COMMISSIONER LOPEZ:   Can't do that, no.

12          MAYOR JOHNSTON:   Why?

13          COMMISSIONER LOPEZ:   This one failed.

14          MAYOR JOHNSTON:   Well, we have an appeal out  
15          there by Tropical Soup for the Planning Board.

16          COMMISSIONER LOPEZ:   Correct.  And we just  
17          wait for that.

18          MAYOR JOHNSTON:   So we bring them back on  
19          July 16th to hear the appeal.

20          MR. SMITH:   That's when it's scheduled  
21          presently.  Yes, ma'am.

22          MAYOR JOHNSTON:   All right.  Okay.  All  
23          right.  So we don't need a motion for that?  Is it  
24          on the agenda?

25          MR. SMITH:   Correct.

1           MAYOR JOHNSTON: Okay. It's on the agenda.  
2 All right.

3           COMMISSIONER KAUFMAN: Well, I can say this  
4 did feel good for thirty seconds. So, thank you.

5           COMMISSIONER LOPEZ: After the 16th,  
6 depending on how we vote, it could go back to the  
7 Planning Board.

8           COMMISSIONER DAVILA: Shawn, so our decision  
9 on the 16th is either to grant the appeal and  
10 then, if we deny the appeal, it goes to the  
11 Planning Board?

12          MR. SMITH: Correct.

13          COMMISSIONER DAVILA: If we grant the appeal,  
14 then we hear it then?

15          MR. SMITH: The major development would come  
16 before you at another meeting.

17          COMMISSIONER DAVILA: At another, not on the  
18 16th?

19          MR. SMITH: Correct.

20                 (Item Number 21 was concluded at 6:15 p.m.)  
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## 1 CERTIFICATE OF REPORTER

2  
3 STATE OF FLORIDA )

4 COUNTY OF MONROE )

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6 I, Suzanne Ex, Certified Verbatim Reporter  
7 and Florida Professional Reporter, do HEREBY CERTIFY  
8 that I was authorized to and did transcript the  
9 foregoing proceedings from the City of Key West audio;  
10 and that the transcript, pages 1 through 46 are a true  
11 and correct record.  
1213 I further certify that I am not a relative,  
14 employee, attorney, or counsel of any of the parties,  
15 nor am I a relative or employee of any of the parties'  
16 attorneys or counsel connected with the action, nor am  
17 I financially interested in the action.  
1819 Dated this 16th day of October, 2019.  
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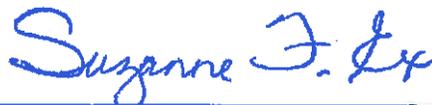
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19 Dated this 16th day of October, 2019.

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