January 15, 2021

**Re: Appeal of Res. #2011-059 as modified administratively March 17, 2015 and by Planning Board on December 17, 2020**

Dear Mayor Johnston, Vice Mayor Sam Kaufman, Commissioner Gregory Davila, Commissioner Mary Lou Hoover, Commissioner Clayton Lopez, Commissioner Billy Wardlow, and Commissioner Jimmy Weekley

**Introduction.** Several affected neighbors filed this timely appeal not only of the Planning Board's December 17, 2020 action in passing Res. #2020-44, but also of the Res. #2011-059 in its totality as modified. The appeal includes that the Planning Board's action in 2011 passing Res. #2011-059 for a Major Development Plan in the Historic District was only advisory to the City Commission. Res. #2011-059 was never considered by the City Commission before this appeal, and was never approved by the City Commission. Therefore, Res. #2011-059 is not now and never was an enforceable conditional use, and any actions taken by City Officials giving effect to Res. #2011-059 beyond the resolution's advisory status are ultra vires and void. Res. #2020-44 is only a modification of Res. #2011-059, so it has no more validity as a final action than Res. #2011-059 which it modifies.

Res. #2011-059 was and is an advisory resolution of the Planning Board passed in 2011. It is for a conditional use for 6,637 square feet of flexible consumption area for a maximum 150-seat bar and restaurant on the HNC-3 property bordering Whitehead and Petronia Streets and Terry Lane, including 4,595 sq. ft. of which was for outdoor consumption area in the Historic District. Therefore, it is a Major Development under §§ 108-91, 108-196 and 108-198.

Notwithstanding affected neighbors opposition to the application to modify Res. #2011-059 heard by the Planning board at the December 17, 2020 meeting, three of the five Planning Board members voting approved the application in part, causing further erosion of the already severely weakened and ineffective mitigating conditions that are contained in Res. #2011-059.

Res. #2011-059 was a major development plan, so under Sec. 90-427 it was only a recommendation and advisory to the City Commission; it was not a final decision. Only action on it by the City Commission could make Res. #2011-059 a final and enforceable conditional use, but Res. #2011-059 has never been previously presented to nor considered by the City Commission. Notwithstanding, Key West officials have since 2011 erroneously treated Res. #2011-059 as a final decision of the Planning Board.

Affected neighbors appealed the most recent December 17, 2020 Planning Board action on Res. #2011-059 and Res. #2020-044 because (1) City of Key West officials have mistakenly treated the Planning

Board's action on Res. #2011-059 as final; and (2) as a result, this is the affected neighbors' first opportunity to address the neighbors' concerns and objections to Res. #2011-059 with the City Commission.

Res. #2011-059 and all Planning Board modifications to it are not final until the City Commission has reviewed them and taken final action on them. The City Commission's review in an "appellate capacity under section 108-196(b), only applies to "[t]he planning board's decision on a minor development outside the historic district." Therefore, by the City Commission must be in its final approval capacity under Sec. 108-198, which states in part:

> Sec. 108-198-A development plan shall be reviewed by the city commission either in its final approval capacity or its appellate capacity, as provided in section 108-196(b)…..

The Planning Board is created with its powers limited by Sec. 90-55:

> Sec. 90-55. - Functions and powers.
>
> (a)The planning board shall have the power and authority to carry out the duties and responsibilities conferred upon it by the land development regulations consistent with F.S. § 163.3174 and shall perform these duties in the best interests of the health, safety, and welfare of the citizens of the city. The planning board shall have the following functions:

* * *

> (4) Review major development plans submitted pursuant to article II of chapter 108 and make recommendations to the city commission regarding such plans;
>
> *    *    *
>
> (b) *In performing functions set forth in subsections (a)(1) through (5) and (8) of this section, the planning board shall act only in an advisory capacity to the city commission and shall not render final determinations. When the planning board reviews and recommends actions regarding a conditional use which is part of a major development plan as referenced in subsection (a)(7) of this section, the recommendation of the planning board is advisory only, and the city commission shall render the final determination. Any appeal available by provisions of the land development regulations, where the planning board is acting only in an advisory capacity, shall be taken from the final determination of the city commission, and not from the recommendation of the planning board.* (Emphasis added).

It must be noted that the Planning Board's function and power with regard to Res. #2011-059 is identical to its function and power with respect to the application to change the FLUM and Zoning on the 806 Whitehead part of this Property that is the subject of Res. #2011-059. See Sec. 90-55(a) (1), (2) and (3). Yet, the City Commission and Planning Board process for the City Commission's pending review has been treated demonstrably different from its review of the Res. #2011-059 Major Development Plan, in which its role also is limited to

“making recommendations to the city commission regarding such plans.” Calling a spade a spade—the Planning Board got it wrong on the finality of Res. #2011-059.

The affected neighbors should not have been required to appeal the Planning Board’s actions, and spend $2,100 appealing them. Sec. 108-198 governs review by the City Commission of Res. #2011-059 and all modifications, and the City Commission’s review is supposed to have been automatic in the City Commission’s final approval capacity.

Incredibly, the Applicant has been able to apply for and obtained Planning Board approval to weaken the Conditions in Res. #2011-059 on two occasions. However, the adversely impacted neighbors have no vehicle, except for this appeal to beg the City Commission for help in fixing the problems with Res. #2011-059 as modified that are summarized below, but of which the City Commission is well aware from the pending FLUM/Zoning change record. Indeed, Planning Board members have acknowledged on the record that Res. #2011-059 has created a bad situation for the neighbors.

The Bahama Village Plan, adopted by the City Commission as consistent with the Comprehensive Plan, envisions businesses operating in the HNC-3 district to be small, neighborhood serving businesses. Rams Head’s current bar/restaurant operations are not consistent with those Plans. The City Commission is already aware of this from the property owner’s pending applications to change the FLUM and zoning on 806 Whitehead Street from HMDR to HNC-3. Those opposition filings were adopted *in haec verba* by the affected neighbors into their filings in

opposition to the recent application to modify Res. #2011-059 and are part of the record in this appeal.

Affected neighbors have appealed Res. #2011-059 in its entirety, so the City Commission can act to correct the deficiencies in Res. #2011-059 as modified. The affected neighbors are not seeking an end to the Res. # 2011-059 conditional use approval of a maximum 150 seat restaurant with the 6,637 square feet of flexible consumption area on the Property. But, Res. #2011-059 in its current form it is broken. The neighbors are requesting that the City Commission clarify and revise any Conditional Use that the City Commission does approve so that the Conditional Use for the Property that is approved is well drafted and contains effective conditions that mitigate the effects on the community of the operation of Rams Head on the Property.

**Relief Sought Requires the City Commission to Evaluate and Revise Mitigative Conditions.** The affected neighbors' believe the advisory actions of the Planning Board relating to Res. #2011-059 are dated, disjointed, and require clarification and updating. Code Enforcement and Planning Board members at the December 17th meeting stated that several Res. #2011-059 conditions, notably noise abatement measures, area hiring goals, and garbage and waste handling, are confusing and unenforceable, thus gutting many intended mitigating objectives of several conditions in Res. #2011-059.

This confusion was compounded by material changes made administratively to Res #2011-059 on March 17, 2015, without notice or an opportunity for the neighbors to weigh in on the changes. The staff

report on the recent application of Rams Head to modify Res. #2011-059 focuses on the four requested, and does not address most other conditions and provides no comprehensive evaluation and recommendations. The Affected neighbors believe the 2010 Zoning Letter and 2011 staff report, and evidence submitted by the Applicant in 2010 are dated. The recent staff report focused on the four condition subparts in the application. It is not-comprehensive, and is not an adequate analysis for the City commission to address the required evaluation criteria applicable to Res. #2011-059 as to be applied now in 2021. A comprehensive, updated analysis of the Requirements should be undertaken and completed with respect to Res. #2011-059 before the City Commission decides on the site Plan and conditions under which such a conditional use can be granted.

Res. #2020-44 seeks to clarify siting of the garbage storage area to where it was approved on the site plan. However, enforcement of the conditions depends in large part on enforcement personnel understanding them, which is made difficult with revisions of and incomplete site plans and exhibits, the March 17, 2015 modifications, material changes in ordinances impacting conditions, changed circumstances with the passage of time. Also, the record demonstrates City Officials misunderstand the nature of and enforceability of many of the Conditions. These and other factors, including Rams Head's noncompliance proclivity, have materially and seriously eroded the intended mitigating protections for the surrounding neighbors as to almost all of the conditions.

Many of these deficiencies have been addressed by affected neighbors in the record before the City Commission on applications to change the FLUM and zoning on part of this Property. Neither the Planning Board nor its staff has addressed most of the conditions and the problems the affected neighbors have suffered as a result of the conditions and their non-enforcement for a host of reasons, including City Officials claiming that some very important ones are ambiguous or otherwise unenforceable.

The City Commission should reform Conditional Use Res. #2011-059 as modified by the Planning Board so that is consistent with the original intent of the Planning Board, when the mitigating conditions and site plans were first approved as recommendations to the City Commission, updated to make it easier for the City of Key to enforce many of the Conditions. Those Conditions and site plans were intended to protect neighboring property owners and residents from the large consumption area and a 150 seat bar and restaurant in the midst of the historic Bahama Village residential neighborhood.

The 2010 and 2011 zoning letter and staff reports and evidence on the original application for what became Res. #2011-059 were done in 2010-2011. As will be outlined below many of them were well intended, but others were based on mistaken information and arguments from the applicant and its consultants, and long sense proven wrong. Also, it has become clear that poor drafting of some conditions of Res. #2011-059 and confusion with modified site plans, among other things, have led to an almost non-existent enforcement of most of the important Res. #2011-059's mitigating conditions. But, The City Commission is

reviewing whether to grant Res. #2011-059 *in 2021*—ten years after Res. #2011-059 was made a recommendation to the City Commission.

**The City Commission is Pursuing the Wrong Approach.** The City Commission Agenda identifies this Agenda Item 11 at its January 20, 2021 meeting as: "Quasi-Judicial Hearing - Appeal: Granting/Denying the Appeal of Nancy Paulic, by Affirming/Reversing the determination of the Planning Board rendered in Resolution 2020-44, approving Modification of a Conditional Use Approval at 809-811 Terry Lane."

However, the City Commission is not supposed to be reviewing Res. #2011-059 and its modifications, including Res. #2020-44 in an appellate capacity on the record before the Planning board on December 17, 2020, but in the City Commission's final approval capacity under Ordinance Sec. 108-198. The Draft Resolution included in agenda item #11 erroneously states "in accordance with City Code of Ordinances section 90-431, the City Commission considered the record upon which the Planning Board rendered its decision…." That is in error because §90-431 applies only when the City Commission is "considering and acting upon appeals of final decisions of the planning board." It states:

> Sec. 90-431. - Procedures for rendering decisions.
>
> ***In considering and acting upon appeals of final decisions of the planning board***, the historic architectural review commission, or the tree commission, as well as final orders and

questions of interpretation and enforcement of the land development regulations and the building codes by the city planner and the chief building official, the following procedures shall be observed:

* * *

(4) Scope of review by city commission, board of adjustment, and special magistrate. In reviewing final orders, requirements, decisions or determinations of boards, commissions…..

The City cannot use the Planning Board final decision appeal process of Sec. 90-431, when as the draft resolution admits, under Section 90-427, the Planning Board's actions with regard to Conditional uses for more than 2,500 sq. ft. of restaurant consumption space in the Historic District is a Major Development Plan and therefore the Planning Board's decision is not a Final Decision. Section 90-427 states:

90-427 . - Final decisions of planning board.

Decisions of the planning board shall be considered final in actions regarding minor development plan review as defined in section 108-91, in review of conditional uses proposed as part of a minor development plan approval, and in review of variance requests. **Decisions of the planning board regarding major development plan review, including proposed conditional uses that are a part of the major development plan, as well as subdivision of land, change in the land development**

**regulations, change in the comprehensive plan, and/or other decisions of the planning board, shall be advisory to the city commission.** But, the Planning Board's action passing Res. #2011-059 is not a final decision. It is only advisory to the City Commission, as this is a Major Development in the Historic District. Sec. 90-431.does not apply in this appeal.

Res. #2011-059 is an Historic District conditional use that brings it within Chapter 108, so Sec. 90-55(a)(4) applies. Chapter 108, Sec. 108-91(A)(2)(c) states

> .2.Major development plan required for…(c) Commercial land use: addition of outdoor commercial activity consisting of restaurant seating, outdoor commercial storage, active recreation, outdoor sales area or similar activities equal to or greater than 2,500 square feet.

Therefore, City Commissions review of Res. #2011-059 must be under Sec. 108-198 (quoted above). Sec. 108-198-***A development plan shall be reviewed by the city commission either in its final approval capacity…***.

Contrary to the approach suggested in the draft resolution in Agenda Item 11, the City Commission is not limited to checking boxes, ("inconsistent/consistent," "granted/denied," or "affirmed/reversed."

Rather, in reviewing Res. #2011-059 as modified being presented to the City Commission, under Sec. 108-198 the City Commission's review is supposed to be robust:

> Sec. 108-198 …….The city commission shall approve with or without conditions or disapprove the development plan based on specific development review criteria contained in the land development regulations and based on the intent of the land development regulations and comprehensive plan. The city commission may attach to its approval of a development plan any reasonable conditions, limitations or requirements that are found necessary, in its judgment, to effectuate the purpose of this article and carry out the spirit and purpose of the comprehensive plan and the land development regulations. Any condition shall be made a written record and affixed to the development plan as approved. If the city commission disapproves a development plan, the reasons shall be stated in writing.

This is why the City Commission is required to give notice under Sec. 108-199 to affected neighbors within 300 feet, not under Key West's good neighbor policy.

The affected neighbors assert that the City Commission cannot limit its review to only Res. #2020-44, which appears to be the City Commission's current intent. The Planning Board's action on Res. #2011-059 is ultra vires, to the extent it has been treated as Final and enforceable, because it did not have the power to make it final. The Planning Board also cannot be the final decision making authority on

Res. 2020-44, which is a modification of the still advisory recommendation of the Res. #2011-059 Historic District Major Development Plan, which only the City Commission can adopt and make a valid and enforceable conditional use—acting not in an appellate capacity but in its final approval capacity.

The current City Commission approach evidenced by its Draft Resolution is procedurally and substantively wrong and if followed would violate Key West's Ordinances, Comprehensive Plan, and other Requirements. The City Commission is tasked for the first time under Sec. 108-198 with deciding *ab inito* in its final approval capacity whether to adopt Res. #2011-059 as modified on March 17, 2015, and again on December 17, 2020. But, the Planning Board's December 17, 2020 record on Res. 2020-44 does not allow the City Commission to do this. The Planning Board did not at that meeting address the totality of Res. #2011-059 but only modification of four subparts of the innumerable conditions in Res. #2011-059. That record is not the 2011 record on which Res. #2011-059 was based. The record before the Planning Board on December 17, 2020 is woefully inadequate to support any determination that Res. #2011-059 is "consistent with the procedural and substantive provisions of Florida Statutes, the adopted Key West comprehensive plan, and land development regulations"(the Requirements"), unless the record before the Planning Board when it initially passed Res. 2011-059 is currently before the City Commission.

If the City Commission proceeds without a full record on Res. #2011-059, and limits its record and review to Res. 2020-44, it is

treating the Planning Board's ten year old recommendations in Res. #2011-059 as a final decision, and the affected neighbors believe that approach violates Key Ordinances and Florida law.

**Some of the Problems with Res. #2011-059 as modified that Need to be Addressed in a Revised Conditional Use.** Below we address the major problems with Res. #2011-059, as modified. The affected neighbors believe these adversely and unfairly impact the neighbors in Rams Head's operations and require reevaluation and clarification of mitigating conditions required under applicable regulations and ordinances before the City Commission decides to approve Res. #2011-059 and in what form it should be approved.

**Unreasonable Noise.** Attached is a decibel meter recording from Christmas night and here are links to other recordings of Rams Head's amplified music readings between 80dBA and 90dBA.
https://bit.ly/rams-head-1
https://bit.ly/rams-head-2

Rams Head has been able to abuse its neighbors because Code Enforcement claims it cannot enforce the noise control Conditions in Res. #2011-059 intended to protect the neighbors. The Conditions incorporate the unreasonable noise definition of the Sound Control Ordinance and also require sophisticated sound monitoring equipment with real time Code Enforcement access to be used to ensure Rams Head's Compliance. But, Code Enforcement has not yet ever enforced the noise conditions. Worse, at the December 17th meeting Jim Young told the Planning Board and the shocked affected neighbors that (1) Code Enforcement can only enforce the unreasonable noise definition

through the Sound Control Ordinance, which is apparently impossible, and (2) the required programmable sound equipment is worthless in enforcing the Sound Control Ordinance. That is not what was intended in the Res. #2011-059 Conditions

General Condition #8 of Res. #2011-059 States "No outdoor music of any kind is allowed after the hour of 10pm……***Amplified music will be regulated by the*** "unreasonable noise" ***definition of Section 26-191*** of the Code of Ordinances."

Condition #4 of the conditions subject to annual conditional approval permits requires equipment to enforce that definition:

> 4. The applicant will install and maintain a programmable distributive sound system ***to assure compliance with the "unreasonable noise" definition of Section 26-191 of the Code of Ordinances,*** and shall include a computerized sound monitoring system with real time monitoring access is provided to the City. The applicant expressly agrees to provide the City's agents unfettered access to the computer-generated reports and full, real time web-based access to the digital monitoring of on-site acoustics for the purpose of assuring compliance with the conditions contained herein.

The clear intent of the Conditions was that only the unreasonable noise definition was being borrowed from the Sound Control Ordinance. Otherwise, General Condition #8 is meaningless. Worse, when the Res. #2011-059 mitigating sound conditions were enacted in 2011, the HNC-3 district was included with the HMDR district for the

unreasonable noise definition.  Thus, at 8pm until 8am “unreasonable noise” dropped from 75 dBA to 60 dBA.  Then, in 2016 Jim Young proposed to change that and move the HNC-3 district into the commercial district under the Sound Control Ordinance and the City Commission did so in 2016.   But, the clear intent of the condition #8 in 2011 was to stop the restaurant/bar’s amplified music at 8pm, since almost all amplified music is greater than 60 dBA.

The neighbors disagree with Mr. Young’s assessment of Key West’s ability to use the sound monitoring equipment to enforce the unreasonable noise definition.  But **nothing prevents the City Commission from amending the language of**

**Conditions 4 and 8 of Res. #2011-059 to make them effective enforcement tools for Rams Head’s unreasonably loud amplified music’s adverse impact on the Bahama Village**.  The City Commission can solve the noise problem by clarifying the conditions aimed at protecting the residents.  There is no reason for the Conditional Use to require enforcement exclusively under the Sound Control Ordinance, Jim Young’s current enforcement position.  The City Commission can and should make enforceable sound control conditions and self-contained enforceable enforcement mechanisms a quid pro quo of granting a restaurant use and its annual renewal.  The City Commission need only not reference the Sound Ordinance and change Condition #8 to what was originally intended:

> **General Condition #8 (Proposed)**: No outdoor music of any kind is allowed after the hour of 10pm unless approved under a special event permit per Section 6-86 of the City Code or for special city-sanctioned event within the Petronia Street Commercial Corridor. No amplified music shall take place in or emanate from the Property which equals or exceeds a measured sound of 75 dBA or 77 dBC between 8:00 a.m. and 7:59 p.m. and 60 dBA or 62 dBC from 8:00 p.m. to 7:59 a.m. (maximum permitted sound level in decibels) collectively for more than 30 seconds of any measurement period which shall not be less than five minutes.

Then, the original intended mitigating condition # 4 that is subject to Conditional approval permit annually can also be clarified to what was originally intended, which is that General Condition #4 can be enforced by Code Enforcement by using that mandated sound monitoring equipment to which the City of Key West has "unfettered access." If ##8 and 4 are clarified to what was originally intended in Res. #2011-059, then the City's enforcement of Rams Head's unreasonable amplified music noise nuisance adversely impacting its neighbors will be like shooting fish in a barrel. The City Commission should fix the language to what was the original intent.

**Unreasonable Hours.** General Condition #10 of Res. #2011 allows the restaurant to be open from 9am to 11pm (14 hours). In Rams Head's recent application it requests extending the opening time to 7:30am (15 ½ hours) 7 days a week, and 365 days a year. In the owner's original

application in 2010 it requested open hours of 8am to 11 pm, but only a 9am opening was allowed.

Rams Head claims that it should be able to open earlier because a couple other restaurants in the area are allowed to open earlier. But those restaurants are incomparable to Rams Head. 1st, unlike the three restaurants, who have proven to be good Key West neighbors, Rams Head has chosen to be a Bad neighbor as testimony at the Planning Board (and before the City Commission in the FLUM/zoning matter) shows; 2nd, Rams Head already opens continuously from 9 am-11pm –**14 hours. Rams Head wants to be open 15 ½ hours. None of the other three restaurants the Applicant and staff report mentions are open past 10 pm, and none are open for more than 10 ½ hours a day:**

> Blue Heaven Restaurant hours are Monday through Saturday from 8 a.m. - 2:30 p.m., 5 p.m. - 10 p.m. and Sunday from 8 a.m. - 2 p.m., 5 p.m. - 10 p.m. **Daily total hours open worst case 10.5 hours**
>
> • La Creperie French Café hours are Monday through Sunday 7:30 a.m. – 3 p.m. **Daily total hours open worst case 7.5 hours**
>
> • Viv Wine Bistro hours are Monday- Sunday 12 p.m. – 10 p.m., Closed on Wednesdays **Daily total hours open worst case 10**

3rd Rams Head has been ignoring the 9am opening time since it started a year ago; and 4th Rams Head operates mostly as a bar for many of its open hours, and solely as a bar from 10pm to 11pm daily. Even now Rams Head advertises openly on its website that **Rams Head is**

**operating as a bar and not a restaurant from 10pm to 11pm nightly.** Its website states:

**HOURS**

9 AM to 11 PM Daily

Food served until 10 PM

The September 10, 2010 Zoning Verification letter on the original application for what became Res. # 2011-059 states in relevant part, which is still true today:

> The HNC-3 district allows restaurants conditionally. Bars and lounges are not permitted as of right or conditionally and are not allowed on this site. Chapter 86-9 defines restaurants as follows: …..The phrase "principal business is the sale of food" is particularly important……However, the continuous provision of food sales (a full menu) at all times alcohol is sold or occurring seems to be a minimum threshold to ensure that the restaurant definition and intent of the code is being met."

Rams Head cannot be a restaurant from 10PM to 11PM when all it serves are the drinkers hanging around past 10pm until after its 11pm close. Rams Head should not be allowed to operate past 10 pm, as clearly it is and has never been a restaurant after 10pm. Notably, the other restaurants Rams Head floats as comparators advertise and stress their good food. In contrast Rams Head's focus is on FUN + BEER and a Bloody Mary Bar, as its webpage demonstrates:

**FOOD, FUN + BEER**

## FUN

Rams Head's business plan is not what the Bahama Village Plan passed by the City Commission envisions-- small, neighborhood serving commercial businesses along the Petronia Street corridor. Rams Head is neither small nor a neighborhood serving business. In contrast, Rams Head's three proffered comparators are neighborhood serving businesses. More importantly, each of those restaurants has proven to be a Good Key West Neighbors. They abide by the Conditions of their conditional use permits. Rams Head does not.

As shown below giving Rams Head more hours to be open will only increase the parking/trip and intensity problems its operations already imposes on the community. It adds to a parking nightmare in the neighborhood, and Rams Head wants to start that problem earlier. What the Commission should do is move the closing time to 10:00pm, since Rams Head admits it only operates as a bar after 10:00 PM. Let Rams Head close no later than the latest of its three good neighbor comparators' closing hours—no later than 10:00 pm.

**Parking and Trips.** In passing Res. #2011-059 the Planning Board disregarded Key West's ordinances with regard to parking and trips and the result is a neighborhood parking and congestion problem that is not neighborhood serving. Ordinance Sec. 108-572 states:

**Sec. 108-572. - Schedule of off-street parking requirements by use generally. Off-street parking spaces shall be provided in accordance with the following schedule for motor vehicles and bicycles:**

| | Minimum Number of Parking Spaces Required For: | |
|---|---|---|
| **Use** | **Motorized Vehicles** | **Bicycles As % of Motor Vehicles** |

| (9) | **Restaurants, bars and lounges** | **1 space per 45 square feet of serving and/or consumption area** | **25%** |
|---|---|---|---|

Doing the math. Res. #2011-059 allows a 150-seat restaurant with an approved 6,637 square feet of flexible consumption area. Even if 5,836 sq. ft. of consumption area is used the Ordinance requires the Owner and Rams Head to have 129.7 parking spaces only 25% of which (32.4) can be bicycles/scooters. Inexplicably, the Conditions only require Rams Head to have 2 compact, 6 standard, 1 handicap [total of ***nine***] vehicle spaces, and 40 scooter/bicycle parking spaces. The Ordinance only allows bicycles to be 25% of the parking requirement. The result—there's a parking and traffic nightmare in the Bahama Village. Moreover, Res #2011-059 was granted based on the assumption that the hours of operation impacting the neighborhood would not start before 9am and would not be longer than 14 hours. The Planning Board staff did not assess the impact an earlier opening would have on additional trips and parking demands generated by 1 ½ hours additional use. There is an impact on scale and intensity of proposed changes to the Conditional Use. Without explanation the Staff Report simply states "no changes in traffic generation are proposed" and "There are no changes to off-street parking." But the request is for a 7:30 a.m. opening, which adds 1 ½ hours of trip generations to the start of most people's day and would start the trip generation at 7:30am.

If the 7:30 am or 8:00 am opening are allowed, when an affected neighbor drives to take their children to school at 7:30 am, upon their return to the neighborhood all available parking spaces would likely be

taken by a Rams Head patron. As it is Rams Head has only 9 vehicle parking spaces and 40 bicycle parking spaces. The vehicle parking spaces are woefully inadequate. Key West requires for this restaurant. Even the Staff's recommended 1 extra hour of operations has a material impact on scale and intensity under the required criteria that must be evaluated. The fact that none of the Commissioners can say whether that last statement is true or not, demonstrates an analysis needs to be made to meet the standard.

A current traffic study should be required that assesses the impact on trips and traffic and parking of Res. #2011-059. If it confirms what the affected neighbors already know to be the case from living through Rams Head's operations, then the City Commission should require more parking. Notably, 806 Whitehead is HMDR and it is part of the property subject to Res. #2011-059. It also is owned by Rams Head's landlord. Part of it is already sited for garbage storage in Res. #2011-059. In addition, part of 806 Whitehead is also already sited for bicycle/scooter parking spaces. Even though 806 Whitehead is zoned HMDR, parking is a conditional use in the HMDR zoning district. Most of 806 Whitehead, spanning from Whitehead Street to Terry Lane, is unused, but it is already paved, and at a minimum conditioning its conversion to parking should be one of the conditions required by the City Commission to approve any conditional restaurant use on the remainder of the Property.

**The Garbage Nuisance.** Before any restaurant licenses, occupancy permits or a restaurant was allowed to operate under Res. #2011-059 the

small, sited garbage storage area was supposed to be fenced in with a roof. No fence walls or roof were ever installed, and worse, until a short time ago its garbage was stored by Rams Head adjacent to Terry Lane, where bicycle/scooter parking was to be sited. After over a year and a half of neighbor complaints Rams head, right before the December 17th meeting organized some of its garbage cans where the trash storage area was sited originally. However, in the picture Rams Head showed to the Planning Board the garbage dumpster was conspicuously missing from the picture. That demonstrates Rams Head was just dressing up for the picture it presented at the Planning Board meeting.

Rams Head's recent application requests to remove the roof requirement on the garbage storage it was supposed to build along with fenced/walls before occupancy, and to have garbage pickup on the one-way Petronia Street. There is no reason that the City Commission should approve only a one-way erosion of the mitigating conditions, while the record attests to the stench from Rams Head's garbage storage. The roof was meant to protect the neighbors. If Rams Head does not want a roof, come up with another equally mitigating alternative. Although mentioned to the Staff the staff report did not mention nor did the Planning Board consider that the back of the house of 318 Petronia Street (also part of Res. #2011-059 and zoned HMDR) has no current commercial use approval. It could easily be air-conditioned and used to store Rams Head's garbage cans, so no walls nor roof need be built, and it would open up another parking space or two where the garbage was originally sited to be stored.

Res, #2011-059 requires that all garbage be picked up daily on Whitehead Street, as this 150-seat restaurant operates in a residential neighborhood surrounded by a narrow Terry Lane and narrow one-way Petronia Street. Despite innumerable complaints by neighbors Rams Head ignored this condition from the time it took over the business in spring 2019 until recently. Garbage was not picked up daily and it was picked up during most of spring and summer of 2019 on Terry Lane, and then later Waste Management started picking it up on Petronia Streets despite the neighbors' continuing complaints. And worse, it was only picked up a few times a week, leading to a much larger accumulation of garbage cooking in the hot sun. As recently as November 2020 garbage was being picked up four times a week and recycling three days a week; then, shortly before the December 17th meeting Waste Management began daily pickups, but still only on Petronia.

The recent Staff Report recommends denial of the Petronia pick-up location change, recognizing Rams Head has no legitimate excuse for refusing to comply with this condition and recommends denying this request. Finally, after the December 17th Planning Board meeting Rams Head finally started Whitehead Street pickups, but it still does not comply fully, as its grease and some other refuse is still picked up on Terry Lane. The City Commission should reemphasize and clarify the conditions and penalties for noncompliance that will get Rams Head's attention.

This garbage siting and conditions were all part of the integrated mitigation conditions required for issuance of the conditional use, and there is no legitimate reason for retracting those mitigation conditions. Now that all garbage, according to the Staff Report, is to be picked up daily as the start of the operations as required by 2011-059, previously

violated by the owner and Rams Head, the amount of garbage storage and required storage containers should decrease by from 43% to 55% from Rams Head's three and four days a week pick-up schedules with Waste Management. Applicant cannot and has not shown garbage pickup on Whitehead of materially fewer garbage cans a day cannot be done. Ignoring the roof also is not justified by the record. It was to prevent the stench from entering the neighborhood.

**Employment Opportunities for BVCRA Residents. .** General Condition #13 of Res. #2011-059 contains a condition intended to increase the hiring opportunities for qualified local Bahama Village Redevelopment Area residents, by requiring timely and targeted postings and advertising of employment openings by Rams Head in the local community, including at specified locations. Neighbors had been investigating compliance and found that Rams Head had not been complying with this requirement and it has been one of the complaints made by affected neighbors to the Planning Board. Even though General Condition #13 was not part of any request by Rams Head, at the December 17th meeting, one of the Commissioners commented that this condition is unclear and ambiguous and wondered how it could be enforced. Other City officials present agreed, with apparent concurrence on its lack of clarity for enforcement purposes. General Condition #13 states in relevant part:

> 13. In an effort to increase employment for residents of the Bahama Village Community Redevelopment Area ("BVCRA") the restaurant operator will make a good faith effort to employee a minimum of 25% of the restaurant workforce from qualified residents of the BVCRA.

> Good faith effort" means all employment opportunities will be advertised and posted in places frequented by residents of the BVCRA, such as the District 6 Commissioner's office, the Douglas Community Center, the Nutrition Center, the Martin Luther King swimming pool, neighborhood churches, neighborhood fraternal organizations, grocery stores, etc.……the property owner shall, in turn, provide the proof of compliance to the City of Key West, upon request. ..

Under #13 if it is not complied with the Property owner, reimbursed by the restaurant operator, "shall tender to the BVCRA the amount of $750 for each month the requirement is not met to be used to further employment programs within the Bahama Village Community. This is another example of a well-intended condition that does not get enforced because City officials claim that it lacks clarity. The laudable purpose, goal, and steps for of Condition #13 are certainly clear, and it seems clear enough to enforce. But, if City officials say it is unclear, then it should be revised and clarified by the City Commission to ensure its purpose is fulfilled. That should be a priority of Commissioner Lopez, whose constituents are the intended beneficiaries of this condition.

**The Most Seriously Impacted Neighbors are not Owners and Do Not Get Notice.** What the Planning Board ignored in Res. #2011-059 and the modifications and the City Officials have overlooked are the residents in the housing authority across Petronia Street from Rams Head's amplified music and congestion. Those affected neighbors are the most seriously impacted because Rams Head's amplified music is blasting right across the street from them. The record shows Rams Head is causing them grievous harm, and they get no real notice of this or any other meetings. They look to the planning board and their public

officials to protect their quiet enjoyment of their homes. To date the City of Key West has failed them, but it is not too late to correct that situation.

**Conclusion.** We ask the City Commission to defer ruling on Res. #2011-059 until the Planning staff can do an investigation and comprehensive analysis that updates and addresses all of the Requirements as of 2021 that must be evaluated under the ordinances and regulations that are important to the delicate balance of protecting the affected neighbors when granting such a conditional use. Res. #2011-059 is broken and everyone knows it. The City Commission should not pass or allow a flawed conditional use as this to continue without repairing it first. That is all the affected neighbors ask.

Sincerely yours,

Signed by:

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Todd Santoro, Owner of 818 Whitehead St, #4

Nancy A. Paulic 2015 Revocable Trust, Owner of 812 Terry Lane, Nancy Paulic, Trustee

Jeff Dunaway, Co-Owner of 807 Thomas Street

John Caldwell, Co-Owner of 807 Thomas Street

Marci L. Rose, Owner of 810 Thomas Street

Marci L. Rose, Owner of 812 Thomas Street

Mark E. Furlane, Co-Owner of 819 Terry Lane

Susan M. Keegan, Co-Owner of 819 Terry Lane

Bob Walsh, Co-Owner of 810 Terry Lane

Vicki Walsh, Co-Owner of 810 Terry Lane

Birch Ohlinger, Trustee, OHLINGER BIRCHARD HAYES REVOCABLE LIVING TRUST Owner of 817 1/2 Terry Lane

David Amendt, Co-Owner of 815 Whitehead Street