

Key West Committee for Safer, Cleaner Ships

October 6, 2022

Mayor Johnston and City of Key West Commissioners,

I am writing today to present information to you that is relevant to your consideration of Item #14 at tonight's meeting.

The Executive Summary states, "This is an Addendum to a Temporary Use Agreement (TUA) allowing Key West Bar Pilot vessels to moor on sovereign submerged lands adjacent to City property waterward of 700 Front Street. Continuance of the TUA authorizes the City to continue allowing the Bar Pilots to moor one vessel in the location with City upland interest. **The Key West Bar Pilots have a separate 99-year lease with the City for this location.**"

This description inaccurately connects these two items. The "Bar Pilot 99 year lease" is not a lease covering the submerged area of the TUA. It is for a landside property adjacent to the location of the TUA, i.e. an entirely separate location.

Essentially, in this TUA request, the city is requesting rights from the state for a wet slip. The landside Bar Pilot lease does not provide for or contain that wet slip, or indeed any wet slip. As we all know, wet slips in this area are quite valuable. Why would the City propose to grant the gift of a wet slip to the Bar Pilots when the underlying land lease provides no such wet slip? We ask the City to consider that when discussing this item.

Further, the 99 year lease document itself has a number of potentially fatal flaws:

- 1) The Lease provided is between the City of Key West and "Captain Edwin E. Crusoe IV, Bar Pilot and Harbor Master, Port of Key West, Florida, his successors or whomsoever shall serve as Harbor Master and/ or Bar Pilot, Port of Key West Florida, according to law, herein called Lessee."
 - Captain Crusoe was both the Harbormaster and Bar Pilot and has since deceased and the public position of Harbor Master has since been abolished by the state of Florida.
 - There is no statutory position of Bar Pilot in the Key West Charter
 - The current Bar Pilots serving Key West are commercial interests composed of individual corporations. Even if there were a public position of Bar Pilot in Key West, it is unclear which of these corporations would serve as a legally valid successor to that role under this lease.
- 2) In the lease conditions, it is stated, "The premises are leased to be used as the Office of the Harbor Master and Office of the Bar Pilot, Port of Key West, Florida. Lessee agrees

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to restrict his use to such purpose and not to use or permit the use of the premises for any other purpose.”

- In 2020, an organization, with no registration with the Florida Secretary of State, known as “Key West Bar Pilots Association”, filed a Federal lawsuit against the Monroe County Supervisor of Elections, The City of Key West and The Key West Committee for Safer Cleaner Ships. The Bar Pilots sued Key West and its Citizens in an effort to take away voting rights by preventing three citizen-sponsored referendums from going to ballot. Pier B later joined that lawsuit as it required an entity legally registered with the State of Florida, which the Bar Pilots Association are not.
 - After the successful passage of our referendums, the Bar Pilots then began lobbying in an eventually successful effort to preempt and overturn the new laws of Key West.
 - We pose the following question: Did the Pilots use their commercial offices at the leased premises for activities connected with its lawsuit against the City and County, and/or activities connected with lobbying for preemption? If so, did these activities violate the conditions of the lease?
 - What is the public policy interest in subsidizing at \$1/per year use of the City-owned land at this location by a group of commercial corporations?
- 3) The lease conditions further state, “Lessee agrees not to assign or sublease the leased premises, any part thereof, or any right or privilege connected therewith, or to allow any other person, except Lessee’s agents to occupy the premises or any part thereof.”
- On October 13, 2021, Captain Robert W. Maguire signed a Letter of Concurrence for Setback Waiver. In that document, Capt Maguire states that he is the “upland riparian owner of the land” covered in the lease with the City of Key West. The purpose of the document is to waive certain riparian rights and grant them to the neighbor to the South. But the question arises, by what right does Capt. Maguire grant a concurrence of a waiver of rights on City land?
 - In other words, even if somehow Capt Maguire is found to be the legal successor as required under the lease, we must ask if the lessee had the right to waive City rights respecting the underlying land?

While we generally support the City obtaining submerged land leases to areas in which it has valid riparian rights, the presentation of this item is perhaps inadvertently misleading to the Commission. The Bar Pilots are engaged in highly profitable businesses. Rather than seek to exploit a forty-one year old lease of questionable validity to try and add a gift of a free wet slip to

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these commercial businesses, why would the City not wish to rent a wet slip in the Bight to the Bar Pilots, as they do to any other commercial business that operates in the Bight?

The public interest solution to this awkward situation seems straightforward. The City should simply negotiate a market rate lease for the land which the Bar Pilot premises occupy on Front Street, and a market rate wet slip for their vessel in the adjacent area of the Bight. The City should also determine whether or not the City's riparian rights were waived by Capt Maguire and, if so, work to regain those rights for the City, through legal action if necessary.

Sincerely,

Evan Haskell

On behalf of

Key West Committee for Safer Cleaner Ships

Evan Haskell, President

William Benson, Vice President

Arlo Haskell, Treasurer

David Dunn, Secretary

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LETTER OF CONCURRENCE FOR SETBACK WAIVER

TO: FOD Marina 1, LLC (owner/applicant)
c/o Barton Smith, Smith Hawks P.L. (address of project)
138 Simonton Street, Key West, Florida 33040

File No.: 0129209-007, Monroe County

FROM: Capt. Robert W. Maguire (adjacent property owner)
Key West Bar Pilots Association (KWBPA)
PO Box 848, Key West, FL 33041-0848

Section 18-21.004(3)(d), Florida Administrative Code, provides:

Except as provided herein, all structures, including mooring pilings, breakwaters, jetties and groins, and activities must be set back a minimum of 25 feet inside the applicant's riparian rights lines. Marginal docks, however, must be set back a minimum of 10 feet. Exceptions to the setbacks are: private residential single-family docks or piers associated with a parcel that has a shoreline frontage of less than 65 feet, where portions of such structures are located between riparian lines less than 65 feet apart, or where such structure is shared by two adjacent single-family parcels; utility lines; bulkheads, seawalls, riprap or similar shoreline protection structures located along the shoreline; structures and activities previously authorized by the Board; structures and activities built or occurring prior to any requirement for Board authorization; **when a letter of concurrence is obtained from the affected adjacent upland riparian owner;** or when the Board determines that locating any portion of the structure or activity within the setback area is necessary to avoid or minimize adverse impacts to natural resources.

I hereby state that I am the owner of the adjacent upland riparian property located to the **(north / south / east / west)** of the facility or activity proposed to be constructed or conducted by FOD Marina 1, LLC (the applicant), as shown in the above referenced file (and on the attached drawing). **I understand that the subject project will be located entirely within the applicant's riparian rights area, and I do not object to the proposed structure or activity being located within the area required as a setback distance from the common riparian rights line, as required by Chapter 18-21.004(3)(d), F.A.C.** This file shows the structure will be located entirely within the applicant's riparian rights area and within 1.0 feet of the common riparian rights line between our parcels.

Captain Robert W. Maguire Digitally signed by Captain Robert W. Maguire
Date: 2021.10.13 08:48:30 -0500
(Original signature of adjacent owner)

October 13, 2021
(Date signed)

Capt. Robert W. Maguire, KWBPA
(Printed name of adjacent owner)

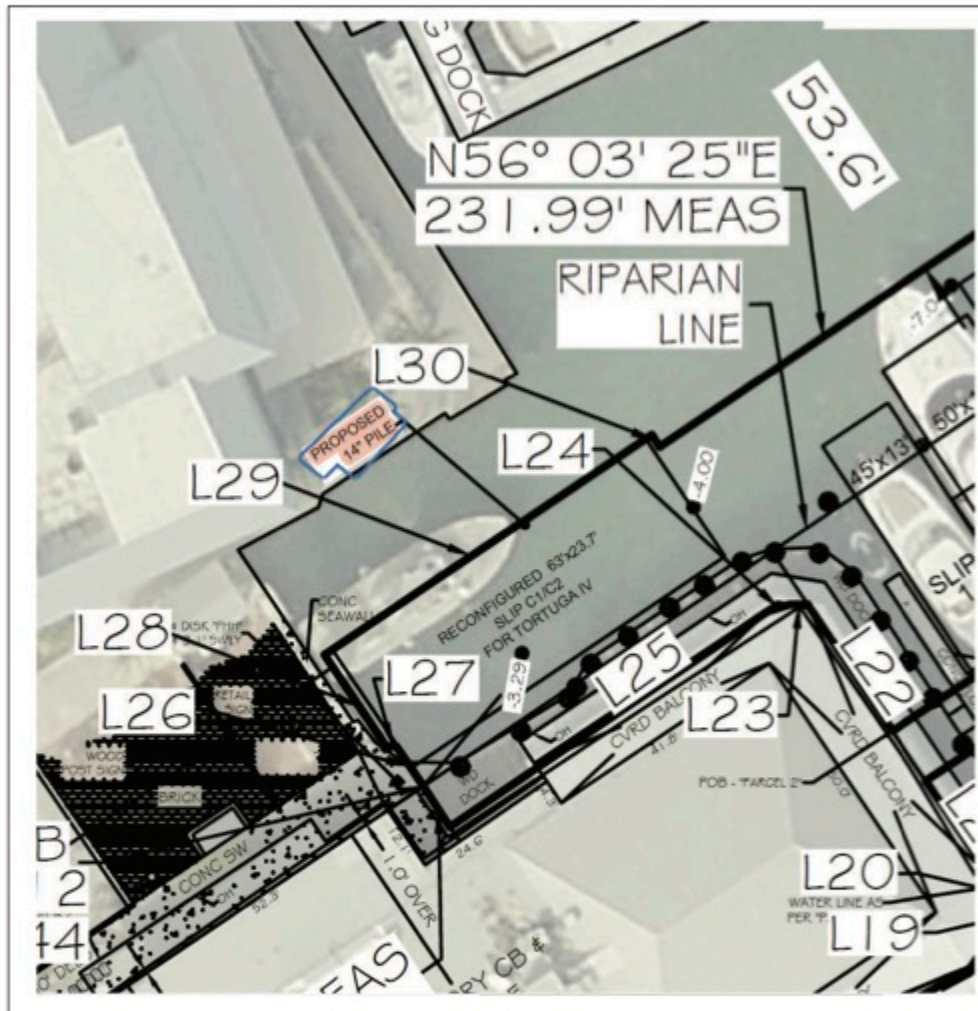
This form is not adopted by rule; therefore, any letter of concurrence of similar content may be accepted.

(1/30/03)

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LETTER OF CONCURRENCE FOR SETBACK WAIVER

PAGE 2 – DRAWING, SKETCH, OR SURVEY OF PROPOSED DOCK LOCATION



BWS _____ (Initials of adjacent owner)

10/13/21 _____ (Date)