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Sent: Monday, January 5, 2026 10:33 AM
To: City Clerk External E-Mail
Subject: [EXTERNAL] Opposition to Agenda #21

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Agenda Item #21---City Commission Meeting – January 6, 2026---Opposition Letter

I am submitting this letter to oppose approval of the Fourth Amendment to the Lease Agreement between the City of Key West and Tropical Shell and Gifts, Inc.

Before addressing the specific issues, I believe the timing of this item deserves attention. The current lease will not expire for more than two years. At the same time, the City has just ended the Duval Loop and is actively considering new private transit services, including the Buggy Bus. These changes directly affect the use of public streets, rights-of-way, and City-owned land. Given that context, it is reasonable to ask why a long-term lease extension involving prime City property is being advanced now, rather than reviewed alongside these broader transportation and public-space decisions.

Procedural Objections

First, I object, based on inadequate and unreasonable public notice. I was given only four business days to review and respond to lengthy and complex agenda materials. That timeframe is not sufficient for meaningful public review, particularly for a lease amendment extending major commercial use of City-owned waterfront property for an additional ten years. This lack of procedural due process and transparency in noticing by the City was one of the major concerns raised in the recent grand jury's recommendations for reform of our city governance.

Second, I object to placing this item on the 9:00 a.m. consent calendar. Items of this magnitude deserve full public discussion and engagement, especially an item that may very well relate to and interconnect with agenda items #36, #37, and #38 on the 5:00 p.m. evening session. Placement on the consent agenda discourages questions, limits debate, and once again reduces transparency and, perhaps more importantly, flies in the face of the grand jury's recommendations.

Background

The lessee is Tropical Shell and Gifts, Inc., a for-profit corporation owned by Ed Swift. Mr. Swift is also President of Historic Tours of America, owners of Old Town Trolley Tours and Conch Train Tours, Inc.

HTA and their affiliates have a virtual monopoly on sightseeing tours in our city. This sightseeing enterprise was, in no small part, responsible for a prior civil multi-million-

dollar judgment in damages against the City as a result of “monopolistic” practices the City was found by a jury to be complicit in.

The lease in question covers approximately two acres of prime City-owned land located behind Mallory Square, as well as the waterfront Aquarium.

The legal description of the City-leased premises explicitly exempts:
“That thirty (30) feet public right-of-way known as Wall Street.”

Wall Street is a public one-way street. By design, it should allow public parking. In practice, it functions almost entirely as a loading and unloading area for Old Town Trolley passengers.

Wolkowsky Street, which runs alongside the former Coast Guard storage building and borders the lease area, is posted with signs stating, “For Trolley Parking Only” and “No Bicycle Parking” (see attached photographs).

These streets and rights-of-way are public assets. Their current use appears to primarily support private commercial tour operations rather than general public usage.

Public use and compensation matters:

When public streets and rights-of-way are effectively dedicated to private commercial use, two questions of concern arise:

1. Is the use authorized?
2. Is the City being fully compensated for it?

The agenda materials do not clearly answer either question. They do not explain under what authority these streets are being restricted, whether that use is permitted under the Aquarium lease or a separate agreement, or what consideration the City receives in return.

This matters because approving a long-term lease extension without clarifying these issues risks locking in practices that may not have been fully reviewed, valued, or authorized.

Lease rent requirements

The underlying lease requires rent equal to the greater of \$200,000 annually or 10% of gross admission receipts. This is a material provision intended to protect the City if the operation is more profitable than anticipated.

The agenda packet does not show that the City has audited or independently verified gross admission receipts for any lease year. There is no documentation demonstrating:

- annual gross admissions,
- calculations comparing the 10% figure to the flat rent, or
- confirmation that the City consistently received the higher amount due.

This is significant because the Fourth Amendment extends the lease for ten additional years and states that all other lease terms remain unchanged. Approving an extension without first confirming compliance with the rent formula exposes the City to several risks:

- potential long-term under-collection of revenue,
- loss of leverage to address past discrepancies, and
- the appearance of accepting existing calculations without verification.

Audit authority already exists; therefore, the lease and its amendments already grant the City authority to inspect records and enforce compliance with financial terms. None of the amendments remove or limit that authority.

This is important because the City is not being asked to create new rights or renegotiate terms. The City already has the tools it needs to verify compliance. The issue is simply whether those tools have been used.

Extending a lease before exercising existing audit authority, under the totality of the circumstances, is a primary breach of the City Commission's fundamental fiduciary responsibilities.

Staff have verified that Tropical Shell and Gifts spent approximately \$827,560 on capital improvements, which was a condition for exercising the renewal option. Capital improvements are important. However, rent compliance is an ongoing obligation that directly affects City revenue year after year. Verifying one but not the other creates a definable imbalance in oversight.

Certifying that "all conditions of the lease" have been met without reviewing revenue compliance constitutes an actionable breach of due diligence.

Another concern is the affiliated commercial use of City land:

Documents submitted to the City indicate that Mallory Square and 1 Whitehead Street function as:

- staging and loading areas for Old Town Trolley and Conch Tour Train operations,
- origin and termination points for tour routes, and
- a transportation hub supporting frequently scheduled tour activity throughout the day.

These operations are conducted by companies affiliated with the lessee but, unlike other potential uses of the City's leased land, are not mentioned or referenced in the lease.

The agenda materials do not identify:

- the agreement authorizing this use,
- whether it is included in the Aquarium lease, or
- whether the City receives separate compensation for it.

This is of concern because affiliated commercial use of City land affects valuation, fairness, and revenue. Under these circumstances, it should be clearly documented before extending the lease.

Conclusion

This lease extension is being advanced unnecessarily early, at a time when the City is making major changes to transportation policy and public-space use, which raises questions about the true motives behind it. The context of events alone supports taking a closer look rather than moving forward quickly without full review and public input.

From a risk-management and fiduciary perspective, extending a ten-year lease without first verifying rent compliance, authorized uses, and full compensation constitutes a complete failure of prudent governance. I sincerely doubt that any small business in Key West would be treated with such deference and receive such an incredible deal.

The City of Key West already has audit and enforcement authority. Using that authority before approving a long-term extension is both reasonable and responsible stewardship of public assets, and to insist on or ignore the same otherwise is utter nonsense and a complete dereliction of duties and responsibilities.

Given the commercial privatization of public streets (e.g. Wall Street and Wolkowsky) the extension of the lease should be **denied**.

However, having formerly served on the Planning Board for seven years, and given the current composition of this City Commission, I realistically know that is not going to happen. So, in the alternative, and considering agenda items #36, #37, and #38 are factually and functionally linked together with this agenda item, until such time that the above questions and concerns are fully examined, considered, and addressed, I propose a **postponement** of all these matters.

To move forward on this lease extension at this juncture otherwise verges on the abandonment of the City Commission's governing responsibilities, flies in the face of the Grand Jury's recommendations, and would and should subject certain City Commissioners to further well-deserved Grand Jury scrutiny.

Respectfully Submitted,

Greg Lloyd

(Retired Trial Attorney, Former seven-year member of the Planning Board and Co-founder of Protect Our Residential Neighborhoods)