

KEY WEST
CITY COMMISSION MEETING

BOARD OF ADJUSTMENT

ITEM NUMBER 2

QUASI-JUDICIAL HEARING

Denying the appeal by Tropical Soup, Inc., of the Planning Director's determination dated May 7, 2019, pursuant to Section 108-91 D.1 & 2, with regard to referring a Mallory Square major development plan back to the Planning Board in light of significant material changes.

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
Patti McLauchlin, Assistant City Manager
Roy Bishop, Planning Director
Cheri Smith, City Clerk

Key West City Hall
1300 White Street
Key West, Florida 33040
Tuesday, May 7, 2019
7:44 p.m. - 8:21 p.m.

1 (WHEREUPON, the following proceedings were
2 had on September 4, 2019, at 7:44 p.m., with all
3 parties present:)

4 THE CLERK: Item Number 2. Quasi-Judicial
5 Hearing, granting -- denying the appeal by
6 Tropical Soup of the Planning Director's
7 determination dated May 7th, 2019, pursuant to
8 Section 108-91 D.1 and 2, with regard to referring
9 a Mallory Square major development plan back to
10 the Planning Board in light of significant
11 material changes.

12 MAYOR JOHNSTON: Do we have a presentation by
13 the applicant?

14 MR. FISCHER: Good evening. Van Fischer. I
15 represent Tropical Soup.

16 MAYOR JOHNSTON: Cheri, do you need to swear
17 people in?

18 THE CLERK: No.

19 MAYOR JOHNSTON: No, okay.

20 MR. FISCHER: Thank you. As just read, this
21 is a challenge of the administrative
22 determination. I trust that everyone has had an
23 opportunity to review the original appeal
24 submission with the basis of appeal. I don't want
25 to regurgitate that. So what I'm planning to

1 present tonight is sort of supplemental to that
2 and raises some -- hopefully, clarifies some
3 points.

4 The May 7th, 2019, administrative
5 determination by the former Planning Director is
6 not supported by the City Code. To start, the
7 determination was made more than two years after
8 the kitchen change was made to the site plan and
9 after a lengthy HARC appeal which resulted in the
10 issuance of a certificate of appropriateness for
11 the project with the changed kitchen. It's simply
12 too late now to send it back to the Planning
13 Board.

14 Until the administrative determination, the
15 removal of the kitchen was never identified or
16 raised as a concern by the City. In fact, back in
17 2017, the Planning Director treated the removal of
18 the kitchen as an administrative modification to
19 the development plan pursuant to Section 108.91
20 C.1(a) which allows reduction of building size to
21 be approved by the City Planner. This is more
22 fully discussed in the basis of appeal.

23 Patrick Wright's email dated July 10th, 2019,
24 directly supports this administrative modification
25 as he admits in the email that he and Enid

1 Torregrosa, the HARC Planner, were aware that the
2 kitchen had been removed in the second HARC
3 iteration. Further, Mr. Wright's email explained
4 that such changes to the development plan were
5 contemplated by the Planning Board and that the
6 project was still a restaurant by definition of
7 Section 86-9 of the Code.

8 Literally, there were not any material
9 changes made; there was simply a reduction of
10 building size and the kitchen was reconfigured.
11 This was the reason why the Planning Director felt
12 the project was ready to proceed to the City
13 Commission.

14 However, based on the email, the reason for
15 the administrative determination appeared to have
16 been the result of a meeting Mr. Wright had with
17 the City Manager and Attorney whereby they raised
18 concerns from a landlord's perspective, and
19 informed him that neither of them had known about
20 the removal of the kitchen specifically.

21 As mentioned, the City Code does not require
22 an on-site kitchen for restaurants. As such, the
23 removal of the kitchen is not a material change,
24 let alone a significant material change under the
25 Code.

1 This brings us to Sections 108-91 D.1 and 2,
2 which were cited in the administrative
3 determination as a basis for that determination.

4 Specifically, 108-91 D.1 provides for
5 development not fitting within the categories set
6 forth herein, the City Planner shall determine the
7 appropriate review process after considering
8 similarity, complexity of the development, impacts
9 on the demand for city services, and the potential
10 for adverse impacts upon neighboring areas.

11 The fact remains that this project was
12 reviewed as a major development plan which
13 necessarily means that it fit within a category
14 set forth in Section 108-91. As such, Section
15 108-91 D is inapplicable, because it's only
16 triggered for development not fitting within the
17 categories set forth herein.

18 Specifically, the category that it fit within
19 was 108-91 A.2(b) non-residential floor area,
20 addition or reconstruction of equal to or greater
21 than 2,500 square feet of gross floor area. This
22 is more fully described in the executive summary
23 which is dated April 2nd, 2019, which should have
24 been May 7th, 2019. Thus, the available evidence
25 strongly supports that the administrative

1 determination was a result of the objection letter
2 received from Tannex Development incorrectly
3 asserting that the removal of the kitchen somehow
4 changed the status of the project as a restaurant.
5 As explained, this is not supported by Code.

6 Referring this matter back to the Planning
7 Board would cause unwarranted and unnecessary
8 delay. The project is ready for review and action
9 by the City Commission pursuant to Section 108-
10 198. The Planning Board's power and authority is
11 limited to carrying out the duties and
12 responsibilities conferred upon it by the Land
13 Development Regulations. This is found in
14 Sections 90-51 C, and 90-55 A.

15 Pursuant to 90-55 A(4), the Planning Board
16 reviews major development plans and makes
17 recommendations to the City Commission regarding
18 such plans; and, importantly, pursuant to Section
19 90-55 B, the Planning Board shall act only in an
20 advisory capacity to the City Commission and shall
21 not render final determinations.

22 As such, there are two problems with sending
23 the project back to the Planning Board.

24 One, the Planning Board does not have power
25 or authority under the Land Development

1 Regulations to consider the removal of the
2 kitchen. The Planning Board is restricted to
3 applying the Land Development Regulations. As
4 mentioned, the Land Development Regulations do not
5 require a restaurant to have a kitchen, thus there
6 is no basis under the Code for the Planning
7 Commission to review the kitchen change. The
8 project remains a restaurant, per Code, regardless
9 of kitchen location or size. Further, the
10 logistics of operating a restaurant are outside of
11 the scope of the LDRs.

12 Two, the Planning Board can only act in an
13 advisory capacity and cannot render any final
14 determinations. That power and authority rests
15 with the City Commission. As such, this project
16 will come right back to the City Commission in its
17 current form, albeit unnecessarily delayed, the
18 only possible change being a second recommendation
19 from the Planning Board. As explained, this would
20 simply cause delay and not result in anything more
21 than a second recommendation.

22 The City Commission has ample information and
23 understanding of this project to render a final
24 decision and does not require any additional
25 recommendation from the Planning Board.

1 An issue that was raised and alluded to in
2 the email was there were concerns raised by the
3 City Manager and Attorney regarding removal of the
4 kitchen possibly affecting the nonconforming use.
5 These concerns are unfounded. The nonconforming
6 use is the restaurant use and not a nonconforming
7 commercial kitchen use.

8 The use of the Cable Tank parcel or leasehold
9 as a restaurant is what constitutes the existing
10 nonconforming use pursuant to Sections 122-26,
11 which is the nonconformity provisions of the Code.
12 This nonconforming restaurant use is limited to
13 2,344 square feet of consumption area as detailed
14 in the executive summary.

15 Under the Code, whether or not there is a
16 kitchen on site or not does not affect the
17 nonconforming restaurant use because:

18 One, a kitchen is not a requirement for a
19 restaurant use under the Code.

20 And, two, the presence or absence of a
21 kitchen does not affect consumption area.

22 Thus, the nonconforming restaurant use of
23 2,344 square feet of consumption area will remain
24 on the property regardless of the ultimate
25 configuration of the kitchen space or lack

1 thereof. In other words, the reduction of the
2 kitchen size requested by Tropical Soup will not
3 affect a future tenant's ability to operate a
4 restaurant on the site as the nonconforming
5 restaurant use status will remain.

6 A second concern was related to food delivery
7 and simply put, food delivery is not an expansion
8 of use. Having food delivered to a restaurant,
9 whether it is prepared or not, is not an expansion
10 of the restaurant use. It is just routine
11 deliveries. The logistics of restaurant
12 operations are outside of the scope of the Land
13 Development Regulations and as such, deliveries of
14 foodstuffs prepared elsewhere does not expand use.

15 Every restaurant in Key West relies on
16 regular deliveries of food and supplies necessary
17 to operate a restaurant. This takes many forms
18 but is not limited to deliveries by Cisco and
19 similar food-service delivery trucks, deliveries
20 from local bakeries and breweries, and deliveries
21 from farmers and fishermen. The point being that
22 virtually every restaurant in existence uses foods
23 prepared offsite in one capacity or another. It
24 is industry practice to do so and a reality of
25 operating a restaurant.

1 I had brought up in the basis of appeal, a
2 discussion of equitable estoppel. I'm not going
3 to repeat it here, but I would like to close with
4 a quote from the Florida Supreme Court, and I
5 think it's very appropriate in this particular
6 instance.

7 "Every citizen has the right to expect that
8 he will be dealt with fairly by his government.
9 While a City Commission certainly possesses the
10 prerogative of deciding to defer action on such a
11 proposal over a long period of time, it must
12 assume the attendant responsibility for that
13 adverse effect, it knows or should know its
14 deliberate inaction will have upon the parties
15 with whom it is dealing." This was from Hollywood
16 Beach Hotel Company vs. City of Hollywood, 329
17 So.2d 10, Florida Supreme Court, 1976.

18 MAYOR JOHNSTON: Thank you.

19 MR. FISCHER: Thank you.

20 MAYOR JOHNSTON: Presentation from the staff?

21 MR. BISHOP: Mayor, City Commissioners. Roy
22 Bishop, Planning Director.

23 I'm a new person here, obviously. As the
24 Planning Director, I just wanted to confirm the
25 previous Planning Director's decision that the

1 item should go back to the Planning Board. We've
2 already made that determination. I was acting
3 with respect to what I view the Planning
4 Department was acting -- what I view as they are
5 the landlords in this particular situation is the
6 City, and the City had an RFP calling for a full-
7 scale restaurant. The landlords were not aware of
8 the kitchen being removed and they were concerned
9 about that.

10 And we decided that because of all the
11 changes that had been made that it should go back
12 to the Planning Board. We don't think that this
13 is going to take a long time to review and it
14 would be a much cleaner process. Let the Planning
15 Board review it and make a decision, and then it
16 would come back to the City Commission.

17 MAYOR JOHNSTON: Do I have a motion before --

18 COMMISSIONER WEEKLEY: Could we hear from --
19 could we hear from our attorney?

20 MAYOR JOHNSTON: Commissioner Weekley is
21 asking to hear from the attorney.

22 MR. SMITH: What would you like me to
23 address, sir?

24 COMMISSIONER WEEKLEY: Well, I'd like you to
25 -- can you address what the attorney was saying in

1 some of his remarks?

2 MR. SMITH: Sure. And again, my role as --

3 COMMISSIONER WEEKLEY: I'd like to -- you
4 know, we have --

5 MR. SMITH: My role in this process isn't to
6 advocate for the Planning Director or Planning
7 Board. It's simply to advise you on any questions
8 of law.

9 The one thing that stood out to me was it
10 shouldn't go back to the Planning Board because
11 they're merely advisory to the City Commission.
12 Well, that's absolutely true, and they're advisory
13 to you because you put them in place because they
14 are the entity that is best suited to revise and
15 review issues such as this.

16 So the fact that you ultimately vote on the
17 major conditional use in this instance doesn't
18 obviate the need for Planning Board review should
19 you find that the Planning Director's decision to
20 send it back is appropriate.

21 COMMISSIONER WEEKLEY: Okay. Has the
22 Commission in the past sent anything back to the
23 Planning Board?

24 MR. SMITH: Yes, sir.

25 COMMISSIONER WEEKLEY: Okay. So it's not

1 unusual to do so?

2 MR. SMITH: No, sir.

3 COMMISSIONER WEEKLEY: Okay. Then with that,
4 I will move to deny the appeal.

5 COMMISSIONER HOOVER: Second.

6 MAYOR JOHNSTON: We have a motion to deny and
7 a second by Commissioner Hoover. Discussion.

8 MR. SMITH: Commissioner Weekley, is your
9 motion based upon the fact that you believe the
10 Planning Director complied with the substantive
11 and reasonable -- substantive and procedural
12 requirements of the Land Development Regulations
13 and Comp Plan?

14 COMMISSIONER WEEKLEY: Yes.

15 COMMISSIONER KAUFMAN: Madame Mayor?

16 MAYOR JOHNSTON: Yes, Commissioner Kaufman.

17 COMMISSIONER KAUFMAN: So, I have questions
18 but I'm not sure it's fair to ask Mr. Bishop
19 because he's new to the position, and I recognize
20 that. So I want to be clear with you, I know that
21 -- you know, it's maybe awkward to ask you some of
22 these questions because I don't know that you have
23 the answers to them.

24 MR. BISHOP: Uh-huh.

25 COMMISSIONER KAUFMAN: But the same questions

1 I asked on May 7th, and I've been asking since
2 then, and there is a record in the -- on this item
3 in our agenda of an email exchange. The day after
4 the meeting on May 7th, I posed these same
5 questions to the City Manager and I don't think
6 they've been answered.

7 So the first question is related to what you
8 just said, that the landlord had no idea about the
9 kitchen change. Well, we were -- this is not the
10 first time this has come before this Commission
11 and we know that that's not true. We know that
12 just from the email from our Planning Director, in
13 the record, he acknowledges back in 2017 he had a
14 meeting with Enid in HARC and recognizing the
15 change of the kitchen.

16 So we also have a signed development plan by
17 our City Manager that recognizes the change that
18 was accepted. And HARC, by the way, is part of
19 the Planning Department, if I'm not mistaken.

20 So the Planning Department has known at least
21 two years of this change. So, how -- and again,
22 I'm feeling a little awkward asking you this
23 question.

24 MR. BISHOP: Uh-huh.

25 COMMISSIONER KAUFMAN: But when you say the

1 landlord didn't know about the change to the
2 kitchen, and you reference the Planning Department
3 being the representative of the landlord, how,
4 factually, could that be possibly true?

5 MR. BISHOP: All I can say is when I reviewed
6 the record, that's exactly what the City Planner
7 reported on.

8 COMMISSIONER KAUFMAN: But he says in his
9 email dated May 22nd, it's attached to our agenda,
10 5:03 p.m., he says that in there, that he met --
11 "At that time, I met with Historic Preservation
12 Planner Enid to review the different plans and
13 iterations to make sure we had the correct set to
14 move forward to the Commission when it was time.
15 We discussed the changes to the plan and I was
16 aware that the kitchen had been removed in the
17 second HARC iteration." This is referenced 2017.

18 So the former Planning Director acknowledges
19 in his email that your department knew that.

20 MR. BISHOP: But that was two years before
21 the 2019. You're talking about something that
22 happened in 2017. And then, in 2019, he said
23 something different.

24 COMMISSIONER KAUFMAN: Well, because --

25 MR. BISHOP: Because changes --

1 COMMISSIONER KAUFMAN: Because on May 7th we
2 were --

3 MR. BISHOP: -- had been made over the two-
4 year period.

5 COMMISSIONER KAUFMAN: My problem is that
6 April 2nd -- the other question I asked is why is
7 there an April 2nd memo from -- again, I feel
8 awkward asking you these questions, okay, but I've
9 been asking this since this May time frame.

10 MR. BISHOP: Uh-huh.

11 COMMISSIONER KAUFMAN: Why is there an April
12 2nd memo from your department recommending --

13 MR. BISHOP: You're talking what year?

14 COMMISSIONER KAUFMAN: -- recommending --

15 MR. BISHOP: April 2nd of what year? Excuse
16 me.

17 COMMISSIONER KAUFMAN: This year.

18 MR. BISHOP: Okay.

19 COMMISSIONER KAUFMAN: Recommending approval.

20 MR. BISHOP: Okay.

21 COMMISSIONER KAUFMAN: The Friday before the
22 May meeting we received a memo from the opposition
23 with a litany of arguments against this project.

24 MR. BISHOP: Uh-huh.

25 COMMISSIONER KAUFMAN: I think number five or

1 six was this kitchen idea. And then, the next
2 thing we know, the day of the meeting, shortly
3 before the meeting, we receive the administrative
4 decision from your former -- the former director
5 of your department.

6 MR. BISHOP: Uh-huh.

7 COMMISSIONER KAUFMAN: So, and in that, in
8 that appeal, I mean, in his administrative
9 decision, he says that he didn't know about this
10 change in the kitchen, or that's what was
11 presented to us. And we had this whole discussion
12 about this at the time, remember, and we asked Jim
13 Scholl, our former City Manager, if he recalled
14 signing off on that application. He said he
15 didn't recall. It turned out that, in fact, in
16 2017, it's acknowledged in the email from the
17 former Planning Director.

18 So how is it that this is -- two years goes
19 by and the City Landlord can say that we didn't
20 know there was a change in the kitchen when the
21 City Planner says that we knew?

22 MR. BISHOP: I can't answer that.

23 COMMISSIONER KAUFMAN: Right. And I haven't
24 had an answer to that question.

25 MR. VELIZ: Well, Commissioner, I think we

1 did. You know, these packages, and this isn't
2 over a span of a short period of time. This is an
3 extremely long period of time from the proposal to
4 Planning Board, HARC, litigation, and the fact
5 that the changes happened, you know. And I think
6 what I said before was, yeah, I might have signed
7 off on the memo that said this was going forward
8 but I don't believe the package was complete with
9 all of the plans that came before me for that
10 approval to go forward.

11 And I think Patrick acknowledged that the
12 change, you know, there was a kitchen in the
13 original plans. That's stated over and over
14 again. And that the absence of a kitchen with the
15 adjustment of plans to preserve the historic Cable
16 Hut and adjust the consumption area, I think,
17 wasn't necessarily contemplated as removal of a
18 kitchen.

19 And when we discussed this before as the
20 landlord, you know, we have a relationship, at
21 least with a proposal and approval to go forward
22 with the proposal with Mr. Walsh who can, with his
23 other businesses, other restaurants close by,
24 accommodate perhaps preparing food and moving it
25 to this structure.

1 But that's good as long as Mr. Walsh is the
2 tenant in this particular location. But if for
3 some reason in the future that doesn't continue
4 and we're left with a restaurant that is not what
5 I believe is a full-service restaurant then it
6 becomes less valuable and perhaps harder for us to
7 be able to engage another tenant to operate a
8 restaurant down there.

9 So there were a lot of issues involved over a
10 very long period of time and the details of which
11 obviously didn't rise to the level of exposure to
12 me with saying, hey, this is a significant change
13 until -- and we didn't, we weren't aware of that
14 until just prior to that approval coming to the
15 Commission for the development plan.

16 So, yeah, it was a long period of time, very
17 complicated. Could I have known? I think I
18 probably could have, but I didn't. And,
19 obviously, when we became aware, that's when we
20 had concerns over the real value to the City
21 should the relationship terminate between
22 Mr. Walsh and the City with regard to operating
23 that facility.

24 COMMISSIONER KAUFMAN: Well, I'm not sure
25 that the email from our Planner bears that out.

1 He says that he moved the project to the City
2 Commission with the recommendation of approval
3 from the Planning Board and staff, and that was
4 true until May 7th of 2019. And he says he
5 reviewed this with the HARC, Historic
6 Preservation, they acknowledged in 2017 the change
7 in the kitchen.

8 So, I mean, all the way -- this only came to
9 our attention, this only came to our attention
10 because the opposition brought it to the attention
11 of the City, I would assume, because it was the
12 Friday before. And it was in that litany, a list
13 of arguments in opposition. And so, this would
14 have been approved unless the -- if the opposition
15 -- my view is unless the opposition, if the
16 opposition had not provided that memo, this most
17 likely would have just been approved.

18 So, I don't know. It doesn't seem right to
19 me that the way that this -- that this took place,
20 I still don't have an answer as to why we had the
21 memo in support of this from the Planning Board on
22 April 2nd, 2019.

23 COMMISSIONER DAVILA: Madame Mayor?

24 MAYOR JOHNSTON: Yes, Commissioner Davila.

25 COMMISSIONER DAVILA: I agree with

1 Commissioner Kaufman in that, in that sense that
2 the City essentially had all the information
3 presented to it in its packet with the adjustment
4 to the kitchen. And I don't see -- we're expected
5 here to, you know, either grant or deny an appeal
6 because of the Planning -- to the Planning Board
7 because there's been a significant material change
8 in the plan. And I just don't see, I can't make a
9 finding that there's been a significant material
10 change in the plan. Especially since our Code
11 doesn't necessarily define kitchen, nor does it
12 require a kitchen in a restaurant.

13 So how can it be a material change if we --
14 we may look at it and say there's no kitchen
15 there, that's a material change, but the Code, the
16 law doesn't say that. So we might believe that
17 but we have to go by what's in our books. Our
18 book doesn't recognize how big or how small a
19 kitchen needs to be.

20 So I just don't see how we can say that
21 there's been a significant material change to the
22 plan when we can't define that.

23 MAYOR JOHNSTON: Commissioner Wardlow.

24 COMMISSIONER WARDLOW: Yeah. I believe it
25 should go back to the Planning Board for the

1 reason both of you all are saying. We've had so
2 many changes and different things going on from
3 their side and our side, and the only way we're
4 going to get it straightened up is to go back to
5 the Planning Board and start the process over.
6 It's not like he's not going to get the
7 restaurant. I mean, he does a great job with
8 restaurants.

9 But I think it should go back and start the
10 process over and let the Planning Board decide,
11 and then HARC, and bring it back to us just like
12 we did, and then everything will be cleared from
13 the bottom and we start over.

14 MAYOR JOHNSTON: I'd like to comment here
15 because, you know, I see no reason for it to go
16 back to the Planning Board for a number of
17 reasons.

18 First of all, the Planning Board has nothing
19 to rule on. The LDRs don't require a kitchen to
20 be a restaurant. I mean, it clearly says that, so
21 they have really nothing to rule on.

22 When we say it's just another couple months,
23 this has been nine and-a-half years. I mean, we
24 haven't put this gentleman through just a little
25 wringer, he's been through a huge wringer.

1 I just want to point out, you know, we keep
2 talking about this restaurant or this kitchen when
3 we don't require a kitchen to be a restaurant.
4 Our RFP asked for a restaurant to be put on that
5 site.

6 In fact, in 2010, there were two respondents.
7 One was Tropical Soup and the other one was Ed
8 Swift. And if you take a look at Ed, the
9 presentation that Mr. Swift made, on page fifteen
10 it says, "In quantities large enough to pay the
11 desired rent to the City, must have a prep storage
12 in kitchen and tray system area that is much
13 larger than this site can hold. It is our intent
14 to use a much larger area of El Meson de Pepe with
15 its current freezers, coolers, prep areas and
16 service building, thus allowing the interior of
17 the Cable Hut to be mostly for cooking food.

18 "One further thing should be pointed out is
19 that delivery to this site, especially fresh food
20 and removal of trash, will be especially
21 challenging to the operation. To overcome this,
22 we will use El Meson de Pepe as a drop-off for all
23 goods and will transfer prepped foods and supplies
24 across the square before and after peak operating
25 hours."

1 So, to me, both of our respondents knew this
2 was a small area and that you were going to
3 operate differently.

4 Second of all, we did have the plans. The
5 plans were approved with the kitchen removed. You
6 know, we say it's no big deal, let's just take it
7 back to the Planning Department, but had we
8 approved this in 2010, with a year and-a-half
9 construction time, Mr. Walsh, in his proposal,
10 agreed to pay the City \$303,000 a year, plus seven
11 percent above the reasonable break point. So
12 let's just assume we would have had seven or eight
13 years of rent. That's \$2,424,000. That's 16,160
14 reserve pays for the City of Key West, now that
15 we're all in budgeting, just to put it in
16 perspective. We've been through four Planning
17 Directors. Three times, this has come in front of
18 us; once by the City Commission -- or, once by the
19 City Manager and twice by Commissioner Weekley,
20 that asked to cease negotiations with Mr. Walsh.
21 All three times, that failed or was withdrawn.

22 We just, I mean, the reason that we are
23 asking to bring this back has nothing to do with
24 our LDRs or the plans that have been approved.
25 They've been approved for years.

1 So, I agree with Commissioner Kaufman that
2 this was -- this was initiated by an unhappy
3 neighbor who has been unhappy for the entire time
4 after we gave the RFP approval process to
5 Mr. Walsh. They've been unhappy. They've sued.
6 They had every right to bring forth a proposal of
7 their own. They didn't. I mean, they didn't,
8 realistically. What they've done is they've made
9 it miserable for the City and for Mr. Walsh to
10 move forward at a cost of thousands and thousands
11 and thousands of dollars for this applicant.

12 I think it's clear that we need to move
13 forward right now and we need to -- we need to
14 approve this request to -- for this appeal. So
15 that's, that's my thoughts on it.

16 COMMISSIONER WEEKLEY: Just one point, Madame
17 Mayor.

18 MAYOR JOHNSTON: Yes.

19 COMMISSIONER WEEKLEY: And that is at one
20 time this was denied and it was early on when we
21 had gone out for the -- after the RFP, and the
22 process began and the project was denied.

23 MAYOR JOHNSTON: Uh-huh.

24 COMMISSIONER WEEKLEY: At that time, it
25 should have ended. The City should have gone back

1 out for RFP again. And I've asked the question a
2 number of times, why didn't that happen. I've
3 never been able to obtain an answer. No one seems
4 to know why it wasn't re-advertised in any manner.
5 So, with -- because of that, and I believe in the
6 RFP it said a full-service restaurant, you know,
7 and to me, a full-service restaurant has a
8 kitchen.

9 You know, in my business, I have food
10 delivered to me all the time, you know, but I'm
11 not doing the same type of businesses as Mr. Walsh
12 is doing but, you know, so that's food service
13 delivery. That's what that -- that's what that
14 is.

15 And really listening to what you were saying
16 just a few minutes ago about the other participant
17 of the RFP, you know, I understood it to mean that
18 deliveries would be dropped off at Meson de Pepe
19 but everything else would be prepped and prepared
20 at the restaurant location that we're discussing,
21 so.

22 MAYOR JOHNSTON: Actually, I need to, I need
23 to -- I need to disagree with something that you
24 just said, Commissioner Weekley. You said that
25 motion to cease negotiations was a long time ago,

1 and actually, it was June 18, 2019.

2 COMMISSIONER WEEKLEY: No, ma'am. I'm
3 talking --

4 MAYOR JOHNSTON: A motion was made by --

5 COMMISSIONER WEEKLEY: I'm talking, if I may
6 interrupt.

7 MAYOR JOHNSTON: Go ahead.

8 COMMISSIONER WEEKLEY: I'm talking about when
9 this first came before the Commission, it was
10 denied. I don't know what --

11 MAYOR JOHNSTON: No, it actually wasn't. It
12 as withdrawn. The City Manager --

13 COMMISSIONER WEEKLEY: No, no.

14 MAYOR JOHNSTON: -- brought it in front of
15 the --

16 COMMISSIONER WEEKLEY: No, no.

17 MAYOR JOHNSTON: -- City Commission the first
18 time and it was withdrawn.

19 COMMISSIONER WEEKLEY: You're mixing times.
20 It was --

21 MAYOR JOHNSTON: Well, I'll tell you, the
22 last time that --

23 COMMISSIONER WEEKLEY: You're talking about
24 two different time frames.

25 MAYOR JOHNSTON: -- that it was brought

1 forward in front of the City Commission to cease
2 negotiations, it was brought forward on June 18th,
3 2019.

4 COMMISSIONER WEEKLEY: That's correct.

5 MAYOR JOHNSTON: The motion was made by
6 Commissioner Weekley, seconded by Commissioner
7 Wardlow, the resolution failed --

8 COMMISSIONER WEEKLEY: Right.

9 MAYOR JOHNSTON: -- by the following vote.
10 No: Commissioner Davila, Commissioner Kaufman,
11 Commissioner Lopez, Commissioner Wardlow and Mayor
12 Johnston. Yes: Commissioner Hoover and
13 Commissioner Weekley.

14 COMMISSIONER WEEKLEY: Yes, that's correct,
15 but this was early on. I don't -- I don't have
16 the exact date in front of me but it was first
17 brought before the Commission, it was denied at
18 that time. The project was denied at that time.
19 I don't recall that date.

20 COMMISSIONER LOPEZ: We were all, we were all
21 on Angela, I believe it might be Angela Street at
22 the time. We were at Old City Hall is when that
23 was --

24 COMMISSIONER WEEKLEY: Right.

25 COMMISSIONER LOPEZ: That was when it first

1 came up.

2 COMMISSIONER WEEKLEY: That's correct. And
3 we denied it then, and that's when it should have
4 -- that's when it should have died.

5 MAYOR JOHNSTON: But it didn't die, so we
6 have plans that have been approved since 2017. It
7 had the kitchen removed in 2017. The Planning
8 Director, the fourth Planning Director that we've
9 had involved in this process said it had been
10 removed and did not have an issue with that.

11 So I don't know how we got here one more time
12 trying to deny this process when they've got a
13 restaurant, they've got a workable restaurant.

14 Do we have any other discussion? No? Oh,
15 Commissioner Hoover. Sorry.

16 COMMISSIONER HOOVER: So, Shawn, I'd like to
17 ask you if -- tonight, if we deny, what happens;
18 and tonight, if we approve, what happens?

19 MR. SMITH: If you deny the appeal, then the
20 Planning Board will take up the item, and then it
21 will move to the City Commission after their
22 action.

23 If you grant the appeal, you'll have to
24 rescind the resolution you made the last time that
25 the major development plan was before you where

1 you voted to refer it to the Planning Board to be
2 heard by the City Commission immediately after the
3 Planning Board meeting. So you'll make the
4 recision of that resolution, and then you would
5 hear the major development plan as it stands
6 today.

7 COMMISSIONER WEEKLEY: So, basically, what
8 we're doing, then if this is approved, we're
9 denying the motion which made -- that was made to
10 send it back to the Planning Board?

11 MR. SMITH: Well, it's a -- it would be a
12 two-step process. Actually, three. If you uphold
13 the appeal, then it will not go back to the
14 Planning Board.

15 COMMISSIONER WEEKLEY: Right.

16 MR. SMITH: Okay. It will come back to the
17 City Commission after you rescind your previous
18 action referring it to the Planning Board. And
19 then, you take it up as a major development plan
20 before you, for final action.

21 COMMISSIONER WEEKLEY: So when we sent it to
22 the Planning Board, it was a unanimous vote, I
23 believe. I think it was a unanimous vote by this
24 Commission to send it to the Planning Board.

25 MR. SMITH: I can't recall the vote.

1 COMMISSIONER WEEKLEY: Yeah, but it was -- it
2 was --

3 MR. SMITH: I watched it at the request of
4 Commissioner Kaufman and I think it may have been.

5 COMMISSIONER WEEKLEY: Yeah. It was. So,
6 okay.

7 MAYOR JOHNSTON: Okay. So the motion on the
8 table right now is to deny the appeal.

9 COMMISSIONER WEEKLEY: That's correct.

10 MAYOR JOHNSTON: Motion by Commissioner
11 Weekley. Seconded by --

12 COMMISSIONER WEEKLEY: Commissioner Hoover.

13 MAYOR JOHNSTON: -- Commissioner Hoover. Is
14 there any further discussion?

15 Okay. Cheri, can you call the roll.

16 THE CLERK: Commissioner Davila.

17 COMMISSIONER DAVILA: No.

18 THE CLERK: Commissioner Hoover.

19 COMMISSIONER HOOVER: Wait a minute. I want
20 to deny.

21 MR. SMITH: This is to deny the appeal, to
22 send it to the Planning Board.

23 COMMISSIONER HOOVER: So I say yes?

24 COMMISSIONER WEEKLEY: Yes.

25 MR. SMITH: Correct.

1 COMMISSIONER HOOVER: Yes.

2 THE CLERK: Commissioner Kaufman.

3 COMMISSIONER KAUFMAN: No.

4 THE CLERK: Commissioner Lopez.

5 COMMISSIONER LOPEZ: Yes.

6 THE CLERK: Commissioner Wardlow.

7 COMMISSIONER WARDLOW: Yes.

8 THE CLERK: Commissioner Weekley.

9 COMMISSIONER WEEKLEY: Yes.

10 THE CLERK: Mayor Johnston.

11 MAYOR JOHNSTON: No. Motion passes.

12 MR. SMITH: Madame Mayor.

13 MAYOR JOHNSTON: Yes.

14 MR. SMITH: Now, your last motion on the
15 major development plan will still apply. So what
16 will happen is it will go back to the Planning
17 Board.

18 The next, your motion was, the next City
19 Commission meeting, so long as it fits within the
20 LDRs and the advertising time frame, it will come
21 immediately to the City Commission after that
22 Planning Board consideration.

23 MAYOR JOHNSTON: Yeah. Okay. Meeting
24 adjourned.

25 (Item Number 2 was concluded at 8:21 p.m.)

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CERTIFICATE OF REPORTER

STATE OF FLORIDA)
COUNTY OF MONROE)

I, Suzanne Ex, Certified Verbatim Reporter and Florida Professional Reporter, do HEREBY CERTIFY that I was authorized to and did transcript the foregoing proceedings from the City of Key West audio; and that the transcript, pages 1 through 32 are a true and correct record.

I further certify that I am not a relative, employee, attorney, or counsel of any of the parties, nor am I a relative or employee of any of the parties' attorneys or counsel connected with the action, nor am I financially interested in the action.

Dated this 12th day of October, 2019.

Suzanne Ex, CVR-M, FPR
Certified Verbatim Reporter
Florida Professional Reporter .

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Dated this 12th day of October, 2019.

Suzanne J. Ex

Suzanne Ex, CVR-M, FPR
Certified Verbatim Reporter
Florida Professional Reporter