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September 23, 2021

By email and by courier

Michael McNees mmcnees@cityofmarcoisland.com
City Manager
City of Marco Island
50 Bald Eagle Drive
Marco Island, FL 34145

Subject: Notice of Appeal to City Council and Appeal of Planning Board Resolution 21-46 That Denied Petition BD-21-000177; 986 Sundrop Court, Marco Island, FL

Mr. McNees,

986 Sundrop, LLC, ("Petitioner"), as an affected property owner and the owner of the real property located at 986 Sundrop Court, Marco Island, Florida (Marco Beach Unit 4, Block 127, Lot 14, the "Property"), by and through undersigned counsel, and pursuant to the Code of Ordinances of the City of Marco Island, including section 54-115(h), Code of Ordinances, City of Marco Island, Florida, ("City Code") hereby timely files and submits this Notice of Appeal and Appeal ("Appeal") of the denial of Petitioner's boat dock extension Petition BD-21-000177 (the "BDE Application") by City of Marco Island Planning Board ("Planning Board") Resolution 21-46 (the "Resolution"). The Resolution has a rendition date of September 10, 2021.[1]

The Appeal is made to the City Council of the City of Marco Island, Florida, (the "City"), by the filing of the Appeal with the City Manager. Based upon communications with Mary Holden, the City's Senior Planner, there is no filing fee for this Appeal. Should the City later determine that an appeal

[1] The Planning Board held a hearing on the BDE Application on September 3, 2021. The Resolution denying the BDE Application was filed with the City Clerk on September 10, 2021, thus the Resolution was rendered on September 10, 2021. See definition of "*Rendered*" and *"Rendition"* in Section 54-101, City Code. The Petitioner has timely filed this appeal within 14 days of the rendition of the Planning Board's final decision.

filing fee is required, the Petitioner will pay such fee.

The filing and submittal of this Appeal and the various documents, materials, and arguments herein as part of this Appeal is and are being made and provided while reserving the right to further amend, modify, or supplement this filing and Appeal with additional arguments, documents, evidence, and materials. No rights, claims, privileges, concerns, arguments, positions, or objections of the Petitioner appealing the decision of the Planning Board or concerning this Appeal are waived by anything stated herein or omitted herefrom and the right to present, make and submit additional arguments and materials before the City Council of the City of Marco Island is specifically reserved.

This Appeal should be granted, the decision of the Planning Board should be reversed, and the BDE Application should be granted. In support, Petitioner states as follows.

A. Background

1. Petitioner is the owner of 986 Sundrop Court, Marco Island, Florida 34145 (the "Property"). *See* **Exhibit 1.**

2. On July 14, 2021, Petitioner submitted an application for a boat dock extension, pursuant to section 54-115, Code of Ordinances, City of Marco Island, Florida ("section 54-115, City Code"), for a boat dock at the Property, which application was assigned case number BD-21-000177 (the "BDE Application"). *See* **Exhibit 2.**

3. The City staff, after reviewing the BDE Application and applying the criteria outlined in section 54-115, City Code, prepared a staff report recommending approval of the BDE Application ("Staff Report"). *See* **Exhibit 3**.

4. The BDE Application was heard by the City Planning Board on September 3, 2021. See Agenda and Agenda Packet, **Exhibit 4**. Attached as **Exhibit 5** are updated engineered drawings.

5. At the conclusion of the public hearing on September 3, 2021, a motion was made to approve the BDE Application.

6. The Planning Board voted 4 to 3 to deny the BDE Application.[2]

7. The Resolution rendered on September 10, 2021, evidencing the denial is attached as **Exhibit 6.**

8. The denial of the BDE Application was improper for a number of reasons, including, but not limited to: (i) it was contrary to law; (ii) it was not supported by competent substantial evidence; (iii) it was not based solely upon the factors and criteria outlined in section 54-115, City Code; (iv) it disregarded competent substantial evidence that the criteria outlined in section 54-115, City Code were met; and, (v) action of two Planning Board members, who did not act as the required impartial decision maker, resulting in Petitioner's due process rights being violated.

B. Standing; De Novo Application

1. Action taken by the Planning Board on an application for a boat dock extension for facilities located in a single-family district is a final action for which any affected property owner may take an appeal to the City Council. Any such appeal to the City Council is quasi-judicial in nature and is subjected to a *de novo* application. Section 54-115(h), City Code.

2. As the owner of the Property and the applicant for the BDE Application, the Petitioner is an affected property owner and has standing to file the appeal and have it heard by the City Council, *de novo*.

C. Arguments in Support of Appeal and Reversal of the Planning Board action

i. Competent and Substantial Evidence was Provided that the BDE Application Met All Criteria and Factors for Granting the Requested Boat Dock Extension

1. As a matter of law in Florida, the consideration of a boat dock extension request may only be based on the criteria contained in the operative

[2] A transcript of the Planning Board hearing is attached as **Exhibit 7**.

code or ordinance, in this case section 54-115, City Code, including that the request consistent with the City's adopted land development code and comprehensive plan. Section 54-115(j), City Code.

2. Planning Board hearings to consider boat dock extension requests are quasi-judicial proceedings.

3. The Planning Board, as the body conducting a quasi-judicial hearing to consider the BDE Application, may not, *ad hoc,* impose, require, consider, or create new and additional factors not existing in any City codes. Furthermore, the Planning Board cannot ignore existing criteria or factors, nor question the validity of the adopted criteria or factors.

4. "[Q]uasi-judicial boards do not have the power to ignore, invalidate or declare unenforceable the legislated criteria they utilize in making their quasi-judicial determinations." *Miami-Dade County v. Omnipoint Holdings, Inc.*, 863 So. 2d 375, 377 (Fla. 3d DCA 2003) (*cited in Verizon Wireless Pers. Communs., L.P. v. Sanctuary at Wulfert Point Cmty. Ass'n,* 916 So. 2d 850, 854 (Fla. 2d DCA 2005)).

5. When an ordinance outlines mandatory factors, as is the case here, that mandatory language does not allow the decision maker to consider other factors. *Friends of the Great S., Inc. v. City of Hollywood*, 964 So. 2d 827, 831 (Fla. 4th DCA 2007).

6. Section 54-115, City Code, uses mandatory language and does not allow the Planning Board to consider factors outside the criteria provided by stating: "The planning board and city council shall base its decision for approval, approval with conditions, or denial, on the following criteria:" *See* Section 54-115(f), City Code. The criteria in Section 54-115, City Code, do not permit the decision makers to act upon whim or caprice nor vest the Planning Board with unbridled discretion.

7. Once an applicant, such as the Petitioner in the instant case, by competent substantial evidence, meets the standard(s), here the requirements of section 54-115, City Code, the burden shifts to the opponents, and a denial can **only** occur if competent and substantial evidence supporting denial is presented

and made a part of the record. *Irvine v. Duval Cty. Plan. Com.*, 495 So. 2d 167 (Fla. 1986).

8. The Petitioner presented and introduced competent and substantial evidence showing that the BDE Application satisfied or met all of the factors, criteria, and requirements contained in section 54-115, City Code, supporting approval of the BDE Application. Thus, the Petitioner, by competent and substantial evidence, met its burden showing that the BDE Application satisfied and met the adopted criteria.

9. The only competent substantial evidence presented was that from the Petitioner and the City staff.[3]

10. In addition to the BDE Application, the Petitioner presented the Planning Board with testimony and evidence from qualified personnel of marine and environmental consultants Turrell, Hall & Associates, dock builder Collier Seawall and Dock, and Captain Douglas Howard.

11. The City staff that reviewed the BDE Application stated and opined that the Petitioner and the BDE Application met all of the factors for granting the requested boat dock extension, including that the request is consistent with the City's adopted land development code and comprehensive plan. *See* City Staff Report, **Exhibit 3.** The City Staff Report is part of the record and was before the Planning Board.

12. As a result, and as a matter of law, the only way that the Planning Board could lawfully deny the BDE Application was if contrary competent and substantial evidence showing that the criteria in section 54-115, City Code, was presented.

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[3] *See City of Hialeah Gardens v. Miami-Dade Charter Found., Inc.*, 857 So. 2d 202, 205 (Fla. 3d DCA 2003) (confirming that the testimony of professional staff, when based on "professional experiences and personal observations, as well as [information contained in an] application, site plan, and traffic study" constitutes competent substantial evidence); *Palm Beach Cty. v. Allen Morris Co.*, 547 So. 2d 690, 694 (Fla. 4th DCA 1989) (confirming that professional staff reports analyzing a proposed use constituted competent substantial evidence).

13. However, no contrary competent and substantial evidence was presented. Thus, there was no competent substantial evidence before the Planning Board to support denial.

14. One of the many factors that are considered in the review of a boat dock extension request is whether the request is consistent with the City's adopted comprehensive plan. City staff agreed that the BDE Application was and is consistent with the City's comprehensive plan.[4] *See* City Staff Report, **Exhibit 3**.

15. There was no competent or substantial evidence presented or submitted that the BDE Application is inconsistent with the City's comprehensive plan.

16. The testimony and evidence in opposition to the BDE Application consisted solely of lay person testimony by various individuals, none of which qualified as either competent or substantial evidence.

17. One of the areas addressed by these individuals related to concerns that reasonable waterway width for navigation would not exist for paddleboarders and kayakers if the BDE Application was granted. That testimony was and is neither competent nor substantial evidence.

18. The only competent substantial evidence as to navigability was and is that of the Petitioner's expert witnesses and documents that showed that the requested boat dock extension did not have any adverse effect on navigation.

19. Regarding the dimensions of the boat dock facility, the only competent substantial evidence before the Planning Board showed that the dimensions of the boat dock facility were the minimum dimensions necessary to adequately secure the moored vessel while providing reasonable access to the boat for routine maintenance without the use of excessive deck area.

20. No evidence, let alone competent and substantial evidence, was provided that in any way contradicted the expert testimony presented by Petitioner's consultants and witnesses.

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[4] Note, the only comprehensive plan that can be considered is the "adopted plan" approved in accordance with Florida Statutes and administrative code. See definition in Section 30-10, City Code.

21. Much of the testimony by the opponents of the BDE Application related to asserted adverse impacts to views. The only right of view at issue in a boat dock extension request relates to views associated with “riparian rights”.

22. In this matter, the only riparian right of view is “to the channel”, as codified in both the City Code and Florida Statutes. Section 54-115(f)(6), City Code. A graphic depicting this riparian right of the “view to the channel” will be submitted as a supplement to this filing. Attached as **Exhibit 5**, p. 3 to this Appeal is a graphic depicting the various channels surrounding the Property.

23. While certain persons expressed concern as to certain views, there was no evidence, much less competent and substantial evidence, that any “view to the channel” would be impacted or affected by the granting of the BDE Application. As clearly noted on the attached **Exhibits 2** through **3** (part of the record before the Planning Board) and the additional attached **Exhibit 5** and the forthcoming exhibit regarding view to the channel**,** granting of the BDE Application has absolutely no impact on “the view to the channel” of surrounding or neighboring property owners.

24. No competent substantial evidence was presented that any riparian owner, i.e., neighboring or surrounding property owner, will have his or her riparian view to the channel obstructed or compromised in any way by the approval of the BDE Application. The only competent, substantial evidence on this issue, which was presented by the Petitioner’s witnesses and Petitioner’s documents in the record, unequivocally shows that the proposed boat dock extension will have absolutely zero impact on the view to the channel by the surrounding property owners.

25. Therefore, because the legislated and mandatory criteria the Planning Board must use to evaluation boat dock extension applications was met, as shown by competent substantial evidence, and since no competent substantial evidence was provided to the contrary, it was error for the Planning Board to not approve the BDE Application.

ii. Members of the Planning Board Improperly Provided Information Not Related to Any Criteria in Section 54-115, City Code

a. Boat Height is Not a Listed Factor/Criteria and cannot be considered

1. The transcript of the Planning Board Meeting shows that certain members of the public and two Planning Board members,[5] presented and introduced "information" asserted to be evidence and analysis concerning the height of "the boat" that would use the requested boat dock facility. *See*, *e.g.*, Exh. 7, p. 11 and 15. Some of this "analysis" applied height restrictions in the City codes that are only applicable to buildings. As fundamental as it may seem, it is submitted that the obvious must be reiterated: a boat is a "vessel"; *a boat is not a "structure"; a boat is not a building.* [6]

2. While the factors for a boat dock extension address certain dimensional criteria, there is no mention of vessel or boat height in section 54-115, City Code, nor are there any provisions in the Code of Ordinances of the City of Marco Island that address or regulate the height of boats or vessels, or components thereof, for example sailboat masts, towers, bridges, or other superstructure.

3. Thus, any weight given to, or any consideration given to the speculative testimony or presentation(s) regarding the alleged height of the boat was improper. None of that "testimony" was relevant to the factors in the City Code. None of that testimony was either competent or substantial evidence. Any use or application or consideration of building heights to the boat or vessel that would use the boat dock was improper and prejudicial.

b. Any Consideration of a Document Titled "Strategic Plan" Was and Is Improper

1. The Planning Board members inappropriately and improperly discussed and engaged in an analysis as to whether the BDE Application was

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[5] See further discussion below.
[6] See the definitions of "building" and "building height", Section 30-10, City Code.

consistent with portions of a document titled the “Strategic Plan”. Exh. 7, pp. 13 and 101.

2. The Petitioner is unaware of any document titled “Strategic Plan” that has been adopted as a document to be used when reviewing and evaluating boat dock extension requests.

3. Further no such document is included as one of the criteria or factors to be used when evaluating a boat dock extension application. § 54-115(f), City Code.

4. Any Planning Board reference, consideration, or reliance upon any text or content in a document titled “Strategic Plan” was improper and prejudicial to the Petitioner.

c. Hurricane Plans are Not a Factor/Criteria That Can Be Considered

1. The Planning Board members, during the hearing, inquired as to the existence of hurricane plans for the boat that would use the boat dock facility. Exh. 7, pp. 10-12.

2. Section 54-115, City Code, does not require that an applicant submit a “hurricane plan”. The existence or non-existence of a “hurricane plan” is not a factor or criterion to be applied or considered in reviewing a boat dock extension request.

3. Thus, any consideration of the existence or non-existence of a hurricane plan or plans was improper.

ii. The BDE Application is Consistent with the Comprehensive Plan

a. City Staff Determined that the BDE Application is Consistent with the Comprehensive Plan

1. The transcript of the Planning Board Meeting shows that the Planning Board was presented with evidence and engaged in analysis whether the BDE Application is consistent with the City’s Comprehensive Plan.

2. The Planning Board members discussed one portion of the first goal in the Future Land Use Element. The discussion referred to the following excerpt: "to enhance Marco Island's quality of life, environmental quality and tropical small town and resort character".[7] The City staff, in its written report and testimony determined that the BDE Application was and is consistent with the City's adopted comprehensive plan. In doing so, the City staff had to consider the language in the Future Land Use Element, including the generalized first goal of the Future Land Use Element. There was no competent or substantial evidence or testimony to the contrary.

3. There was no competent substantial evidence that the BDE Application is not consistent with the adopted comprehensive plan.

4. The criteria in section 54-115, City Code, have been adopted to implement the adopted comprehensive plan and its elements, including the first goal in the Future Land Use Element. Therefore, the extension requested by the BDE Application is consistent with the noted goal by meeting the criteria in section 54-115, City Code.

5. Thus, the BDE Application was in compliance with the comprehensive plan.

b. Consideration of the Yet-To-Be Adopted Comprehensive Plan Improper

1. Planning Board members quoted from and discussed language from a portion of a proposed and yet-to-be adopted revised comprehensive plan ("Proposed Revised Plan"). [8]

2. A Planning Board member queried the Petitioner regarding application of excerpts from the Proposed Revised Plan, i.e., factors outside the Section 54-115 Criteria. *See* Exh. 7 Pp. 61-62.

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[7] Full text of goal: To enhance Marco Island's quality of life, environmental quality, and tropical small town and resort character by managing growth and assuring a stable residential community with sufficient businesses to serve the needs of residents and visitors.

[8] While the Planning Board member did not provide the specific reference to the quoted objective, our research leads us to believe that he was quoting from the Proposed Revised Plan, specifically the proposed objective 2.2.

3. No portion of the Proposed Revised Plan can as a matter of law be considered by nor form the basis of the review of the BDE Application.

4. The Planning Board erred by considering the Proposed Revised Plan in reviewing and voting on the BDE Application.

iii. The Planning Board is Required to be an Impartial Decision Maker

1. The Planning Board, and its members, as the decision maker(s) in a quasi-judicial proceeding, must be impartial. "An impartial decision-maker is a basic constituent of minimum due process." *Cherry Commun. v. Deason*, 652 So. 2d 803, 804 (Fla. 1995) (citations omitted).

2. During the hearing, a Planning Board member presented prejudicial and irrelevant information regarding the size of the boat.

3. During the hearing, another Planning Board member presented a 7-slide presentation he prepared that included prejudicial and irrelevant pictures of an unidentified boat and photoshopped pictures of an unidentified boat superimposed behind the house on the Property and clearly argued against the BDE Application.

4. The City Attorney attempted to stop this second Planning Board member from introducing these prejudicial and irrelevant documents and advised the Planning Board that the Planning Board members are to "consider evidence presented by City staff and the applicant". Exh. 7, p. 16. Despite this cogent advice, the Planning Board member continued to present and discuss the prejudicial and irrelevant documents that he had prepared.

5. Counsel for Petitioner, at the beginning of the Petitioner's presentation, preserved an objection to improper submittal or consideration of evidence by a Planning Board member.

6. The improper, prejudicial and irrelevant "evidence" provided by the aforementioned Planning Board members, prevented them from being impartial decision-makers and violated Petitioner's due process rights.

D. Conclusion

1. The Planning Board was provided competent and substantial evidence that supported approval of the BDE Application.

2. No competent and substantial evidence was presented to support a denial of the BDE Application.

3. The Planning Board had no legal basis for denying the BDE Application.

4. The Petitioner's due process rights were violated as a result of the Planning Board hearing and considering information relating to matters outside of the factors and criteria contained in the City's codes applicable to consideration of the BDE Application.

5. As a result of the actions of two members of the Planning Board, resulting in the Planning Board not being the required impartial decision-maker.

Therefore, Petitioner respectfully submits this Notice of Appeal and Appeal and requests the City Council, upon a de novo review of the BDE Application and supporting documentation reverse the decision of the Planning Board and grant the BDE Application.

Please advise when this item will be scheduled and noticed for public hearing with the City Council. In addition, please advise us of the procedures and requirements for providing notice.

Respectfully submitted,

/s/ Lenore T. Brakefield, Esq.
Lenore T. Brakefield, Esq.
/s/ Zachary W. Lombardo, Esq.
Zachary W. Lombardo, Esq.
Woodward, Pires & Lombardo, P.A.
Counsel for Petitioner

Exhibits attached
Copies to: client; City Attorney A. Gabriel; City Senior Planner M. Holden; City Director of Community Affairs D. Smith; and City Clerk L. Litzan

Exhibit 1

INSTR 6009272 OR 5899 PG 2219 E-RECORDED 3/1/2021 8:23 AM PAGES 2
CLERK OF THE CIRCUIT COURT AND COMPTROLLER, COLLIER COUNTY FLORIDA
DOC@.70 $26,250.00 REC $18.50 INDX $1.00
CONS $3,750,000.00

Prepared by and return to:
Fred W. Mundie, Jr.
Attorney at Law
Fred W. Mundie, Jr., P.A.
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Marco Island, FL 34145
239-394-3072
File Number: **21094jc**
Considersation.: **$3,750,000.00**

NOT A CERTIFIED COPY

[Space Above This Line For Recording Data]

Warranty Deed

This Warranty Deed made this **26th** day of **February, 2021** between **John W. Packer, Jr. and Karen N. Packer, Husband and Wife, Individually and as Trustees under The J&K Packer Revocable Trust dated January 11, 2011** whose post office address is **15325 Edgewater Circle NE, Prior Lake, MN 55372**, grantor, and **986 Sundrop, LLC, a Florida limited liability company** whose post office address is **986 Sundrop Court, Marco Island, FL 34145**, grantee:

(Whenever used herein the terms "grantor" and "grantee" include all the parties to this instrument and the heirs, legal representatives, and assigns of individuals, and the successors and assigns of corporations, trusts and trustees)

Witnesseth, that said grantor, for and in consideration of the sum of TEN AND NO/100 DOLLARS ($10.00) and other good and valuable considerations to said grantor in hand paid by said grantee, the receipt whereof is hereby acknowledged, has granted, bargained, and sold to the said grantee, and grantee's heirs and assigns forever, the following described land, situate, lying and being in **Collier County, Florida** to-wit:

> **Lot 14, Block 127, MARCO BEACH UNIT FOUR, according to the map or plat thereof as recorded in Plat Book 6, Pages 32, Public Records of Collier County, Florida.**
>
> **Parcel Identification Number: 56942480004**
>
> **Subject to taxes for 2020 and subsequent years; covenants, conditions, restrictions, easements, reservations and limitations of record, if any.**

Together with all the tenements, hereditaments and appurtenances thereto belonging or in anywise appertaining.

To Have and to Hold, the same in fee simple forever.

And the grantor hereby covenants with said grantee that the grantor is lawfully seized of said land in fee simple; that the grantor has good right and lawful authority to sell and convey said land; that the grantor hereby fully warrants the title to said land and will defend the same against the lawful claims of all persons whomsoever; and that said land is free of all encumbrances, except taxes accruing subsequent to **December 31, 2020**.

In Witness Whereof, grantor has hereunto set grantor's hand and seal the day and year first above written.

Signed, sealed and delivered in our presence:

Witness Name: Fred W. Mundie, Jr., Witness as to Both

John W. Packer, Jr., Individually and as Trustees under The J&K Packer Revocable Trust dated January 11, 2011

Witness Name: Jennifer L. Carr, Witness as to Both

Karen N. Packer, Individually and as Trustees under The J&K Packer Revocable Trust dated January 11, 2011

State of Florida
County of Collier

The foregoing instrument was acknowledged before me by means of [X] physical presence or [_] online notarization, this 25 day of February, 2021 by John W. Packer, Jr. and Karen N. Packer, Husband and Wife, Individually and as Trustees under The J&K Packer Revocable Trust dated January 11, 2011, who [_] is personally known or [X] has produced a driver's license as identification.

[Notary Seal]

FRED WALTER MUNDIE, JR.
Commission # GG 202801
Expires April 12, 2022
Bonded Thru Troy Fain Insurance 800-385-7019

Notary Public

Printed Name: Fred W. Mundie, Jr.

My Commission Expires: April 12, 2022

NOT A CERTIFIED COPY

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Exhibit 2

WOODWARD, PIRES & LOMBARDO, P.A.
ATTORNEYS AT LAW

EST. 1971

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July 14, 2021

By Email

City of Marco Island
Community Development Department
gmhelp@cityofmarcoisland.com

Re: 986 Sundrop Court Boat Docking Facility Extension Petition

To the Community Development Department:

This firm, as indicated in the enclosed Owner/Agent affidavit, represents 986 Sundrop, LLC.

Enclosed, as the completed Boat Docking Facility Extension Petition for 986 Sundrop Court, please find:

- The completed application;
- Attachment 1 to the completed application, Site Information and Factors for Boat Docking Facility Extension Petition, with Exhibits,
    - The Exhibits contain the Site Plan, drawn to scale, and meeting the criteria specified in the Application;
- Attachment 2 to the completed application, Additional Requirements,
    - This attachment contains the permit number and the certificate of completion date for the original construction of the existing boat docking facility; and
- The completed Owner/Agent affidavit, signed and notarized.

If you have any questions, please do not hesitate to contact our office at (239) 629-6555. If further information is required or would be helpful, please let us know.

Sincerely,

Zachary W. Lombardo, Esq.

PF-11

City of Marco Island
Community Development Department
50 Bald Eagle Drive
Marco Island, FL 34145
Phone: 239-389-5000 or FAX: 239-393-0266

BOAT DOCKING FACILITY EXTENSION PETITION

Petition number: **BD**-_____ Date Received: _____

Planner: _____

ABOVE TO BE COMPLETED BY STAFF

Property Owner(s): 986 SUNDROP LLC

Owner's Address: _____

Telephone: _____ Fax: _____

Agent's Name: Zachary W. Lombardo, Esq. - Woodward, Pires & Lombardo, P.A.

Agent's Address: 3200 Tamiami Trail N., Suite 200, Naples, FL 34103

Telephone: (239) 649-6555 Fax: (239) 649-7342

Site Information

Address: 986 Sundrop Court Property ID #: 56942480004

Subdivision: Marco Beach Unit 4 Block: 127 Lot(s): 14

Width of Waterway: 2,785 ft; measured from ☐ plat ☐ survey ☐ visual estimate

Width of Nav. Channel: N/A ft; measured from ☐ plat ☐ survey ☐ visual estimate

Total property water frontage: 193 ft Total proposed protrusion: 40 ft

Setbacks provided: 27 ft Setbacks required: 15 ft, maximum ft

Number and length of vessels to use facility: 1. 130 ft 2. _____ ft 3. _____ Ft

Description of project (# of slips, boatlifts, deck square footage, etc.)

See Attachment 1.

Zoning and Land Use

Property	Zoning	Land Use	Protrusion of Existing Dock Facility
Subject	RSF-3	Single-Family Dwelling	Roughly 20-25 ft
N	N/A	Water	N/A
S	RSF-3	Single-Family Dwelling	Roughly 20-25 ft
E	RSF-3	Single-Family Dwelling	None
W	RSF-3	Single-Family Dwelling	Roughly 20-25 ft

The following criteria, (pursuant to Ordinance 03-) shall be used as a guide by staff in determining its recommendation to The City of Marco Island Planning Board in its decision to approve or deny a particular dock extension request. Please provide a ***narrative*** response to the listed criteria and/or questions. Attach additional pages if necessary.

1. **Does the proposed boat docking facility meet the other standards (setbacks, height, etc.) set forth in Ordinance 03-?**

   See Attachment 1.

2. **Is there sufficient water depth where the proposed vessel(s) is to be located (as a general guide, -4 feet mean low water is deemed to be sufficient) to allow for safe mooring of the vessel?**

   See Attachment 1.

3. **Are there any special conditions related to the subject property or waterway which justify the proposed dimensions and location of the proposed boat docking facility?**

See Attachment 1.

4. **Does the proposed boat docking facility and moored vessel protrude greater than 25% of the width of the navigable waterway and is a minimum of 50% of the waterway width between dock structures/moored vessel(s) on the opposite side of the waterway maintained in order to ensure reasonable waterway width for navigability?**

See Attachment 1.

5. **Is the proposed dock of minimal dimensions necessary in order to adequately secure the moored vessel while providing reasonable access to the boat for routine maintenance without the use of excessive deck area?**

See Attachment 1.

6. **Is the proposed structure of minimal dimensions and located (designed) to minimize the impact of view to the channel by surrounding property owners?**

   See Attachment 1.

7. **Is the moored vessel in excess of 50% of the length of the waterfrontage such that the addition of a dock structure will increase the impact on or negatively impact the view to the waterway by surrounding property owners? (In the case of multi-family developments and public marinas, the 50 percent provision may be exceeded).**

   See Attachment 1.

8. **Will the proposed location and design of the boat docking facility and moored vessel(s) be such that it may infringe upon the use of neighboring properties, including any existing dock structures?**

   See Attachment 1.

10. **Regarding existing benthic organisms in the vicinity of the proposed extension:**

    a. **Are seagrasses located within 200 feet of the proposed dock?**

       See Attachment 1.

b. Is the proposed dock subject to the manatee protection requirements in Sec 10 of Ordinance 00-04?

See Attachment 1.

AFFIDAVIT OF AUTHORIZATION

FOR PETITION NUMBERS(S) 986 Sundrop Court Boat dock extension

I, David B. Curtis (print name), as Manager (title, if applicable) of 986 Sundrop, LLC (company, If applicable), swear or affirm under oath, that I am the (choose one) owner [ ] applicant [✓] contract purchaser [ ] and that:

1. I have full authority to secure the approval(s) requested and to impose covenants and restrictions on the referenced property as a result of any action approved by the County in accordance with this application and the Land Development Code;
2. All answers to the questions in this application and any sketches, data or other supplementary matter attached hereto and made a part of this application are honest and true;
3. I have authorized the staff of Collier County to enter upon the property during normal working hours for the purpose of investigating and evaluating the request made through this application; and that
4. The property will be transferred, conveyed, sold or subdivided subject to the conditions and restrictions imposed by the approved action.
5. We/I authorize Zachary W. Lombardo, Esq. & Woodward, Pires & Lombardo, P.A. to act as our/my representative in any matters regarding this petition including 1 through 2 above.

**Notes:*

- *If the applicant is a corporation, then it is usually executed by the corp. pres. or v. pres.*
- *If the applicant is a Limited Liability Company (L.L.C.) or Limited Company (L.C.), then the documents should typically be signed by the Company's "Managing Member."*
- *If the applicant is a partnership, then typically a partner can sign on behalf of the partnership.*
- *If the applicant is a limited partnership, then the general partner must sign and be identified as the "general partner" of the named partnership.*
- *If the applicant is a trust, then they must include the trustee's name and the words "as trustee".*
- *In each instance, first determine the applicant's status, e.g., individual, corporate, trust, partnership, and then use the appropriate format for that ownership.*

Under penalties of perjury, I declare that I have read the foregoing Affidavit of Authorization and that the facts stated in it are true.

Signature

April 30, 2021
Date

STATE OF FLORIDA
COUNTY OF COLLIER

The foregoing instrument was sworn to (or affirmed) and subscribed before me on April 30, 2021 (date) by David B. Curtis (name of person providing oath or affirmation), as manager who is personally known to me or who has produced _____ (type of identification) as identification.

STAMP/SEAL

BRIAN GILMORE
State of Florida-Notary Public
Commission # GG 235143
My Commission Expires
July 04, 2022

Signature of Notary Public

CP\08-COA-00115\155
REV 3/24/14

BOAT DOCK EXTENSION APPLICATION SUBMITTAL CHECKLIST

Required public hearing(s) will not be scheduled until the boat dock extension application package has been deemed by staff to be complete.

_____ Pre-application notes/minutes (Call 389-5013 to schedule a pre-application meeting)

✓ Completed application

✓ Completed Owner/Agent affidavit, signed and notarized

✓ Site plan, drawn to scale, illustrating all of the following:

- ✓ Location map
- ✓ Lot dimensions and land contour of subject property
- ✓ Riparian line(s)
- ✓ Required dock setbacks
- ✓ Configuration and dimensions of decking, boatlifts, boat mooring areas of the (a) existing, (b) proposed, and (c) adjacent boat docking facilities.
- ✓ Water depth survey, completed by a professional Florida engineer, licensed marine contractor, registered surveyor, or other person deemed to be qualified by the Community Development Director or his designee, using the format attached to the application form.

✓ Permit number and Certificate of Completion date for the original construction of existing boat docking facility, if applicable

N/A Resolution number and date of previous boat dock extension requests, if applicable

_____ Application fee (checks should be made payable to "City of Marco Island") in the amount of $1,500.

PUBLIC NOTICE REQUIREMENT: In addition to the fees required herein, all costs of newspaper notices and required notices for public petitions shall be paid in full prior to a scheduled public hearing. If such payment is not received prior to a scheduled public hearing, the petition will be continued and rescheduled. Any additional cost associated with a rescheduled item shall also be paid in full prior to the public hearing. Advertising for public hearings shall be prepared by staff and submitted to the newspapers as required in the Marco Island Land Development Code (LDC). If an application is filed for which a fee is not listed herein, staff shall assess the fee based upon actual time spent reviewing the petition.
Marco Island Code of Ordinances Section 30-8(a). Amended 10/17/2005

As the authorized agent/applicant for this petition, I attest that all of the information indicated on this checklist is included in this submittal package. I understand that failure to include all necessary submittal information may result in the delay of processing this petition.

I understand that, in addition to approval of this dock extension, a building permit is required prior to commencement of construction. I also understand that if the City of Marco Island Planning Board approves this dock extension, an affected property owner may file an appeal within 14 days of the hearing. If I proceed with construction during this time, I do so at my own risk.

_____ 7/14/21

Signature of Petitioner or Agent — Date

ZACHARY W. LOMBARDO, ESQ.
AS AGENT OF PETITIONER

ATTACHMENT 1

Site Information and Factors for Boat Docking Facility Extension Petition

Below is the site information and factor analysis for the Boat Docking Facility Extension Petition for 986 Sundrop, LLC, for the property at 986 Sundrop Court. For reference, exhibits are included and are referenced as Exhibits A, B, and C.

Team:

- Jurisdiction: City of Marco Island
- Engineer: Turrell, Hall & Associates
- Builder: Collier Seawall and Dock
- Surveyor: Court Gregory Surveying, Inc.
- Legal Counsel: Woodward, Pires & Lombardo, P.A.

Site Information:

- 986 Sundrop Court, Marco Island, FL 34145
- Property ID: 56942480004
- Subdivision: Marco Beach Unit 4; Block: 127; Lot 14
- Width of Waterway: 2,785 ft (Calculated from aerial photography)
- Width of Navigable Channel: Not applicable (Proposed dock is not inside channel) *Exh. A, p. 7.*
- Total Property Water Frontage: 193 ft
- Total Proposed Protrusion: 40 ft
- Setbacks provided: 27 ft
- Setbacks required: 15 ft, maximum
- Vessel: 1 vessel that is 130 ft in length

Zoning and Land Use:

- The Subject Property and all surrounding properties are zoned RSF-3. There is no lot to the North, instead it is open water. There are lots to the West, East, and South. The Subject Property and the West and South lots are single-family dwellings and the lot to the East is vacant. The Subject Property and the West and South lots have a current boat docking facility protrusion of roughly 20 to 25 feet.

1. **Does the proposed boat docking facility meet the other standards (setbacks, height, etc.) set forth in Ordinance O3-?**

Yes. The height limitations and setbacks are met. *Exh. A, p. 4.* Additionally, state and federal permits have been applied for and this dock will not be constructed without the issuance thereof, which will require adherence to setbacks of 25 feet, which is significantly greater than the setbacks required by the City of Marco Island. The state Department of Environmental Permit number is 0402850-001. The federal Army Corps of Engineers Permit number is SAJ-2021-01295. Further, due to this dock's proposed location, a submerged land lease is being applied for with the State of Florida.

2. **Is there sufficient water depth where the proposed vessel(s) is to be located (as a general guide, -4 feet mean low water is deemed to be sufficient) to allow for safe mooring of the vessel?**

Yes. There is sufficient water depth. The depth on the vessel-side of the dock is -7.7 feet at the shallowest, which is 3.7 feet deeper than what is listed as the general guide of sufficiency. The depth surrounding the proposed dock, on the non-vessel side, is -5.3 feet at the shallowest, which is 1.3 feet deeper than what is listed as the general guide of sufficiency. *Exh. A, p. 5.*

3. **Are there any special conditions related to the subject property or waterway which justify the proposed dimensions and location of the proposed boat docking facility?**

Yes. There are special conditions related to the subject property and waterway.

Conditions related to the subject property:

- Unlike the vast majority of waterfront lots within the City of Marco Island, this property is not on a canal. Instead, it is on the Marco River. *Exh. A., p. 3.*
- The lot is not a side or a corner lot along a narrow waterway, instead the lot is a peninsular lot that sits on a waterway such that the lot's riparian lines extend outwards from the lot in an increasing triangle. Pursuant to section 54-111(a)(1) of the Land Development Code, the combination of a boat docking facility and a moored vessel can by right extend 30 feet out into the waterway. *Exhibit B*.

Conditions related to the subject waterway:

- Unlike the canals that make up the vast majority of waterways in the City of Marco Island, the Marco River is wider and deeper. Canals in Marco, as shown in the diagrams incorporated in the City Code are often 100 feet wide or less. The Marco River, where this lot is located, is over 2,700 feet wide.

4. **Does the proposed boat docking facility and moored vessel protrude greater than 25% of the width of the navigable waterway and is a minimum of 50% of the waterway width between dock structures/moored vessel(s) on the opposite side of the waterway maintained in order to ensure reasonable waterway width for navigability?**

The boat docking facility and moored vessel do not protrude greater than 25% of the waterway and there is more than 50% of the width of the waterway between the vessel and the other side of the waterway. The waterway is over 2,785 feet

wide, which is over 27 times the width of most canals in the City of Marco. The dock extends under 1.4% into the waterway leaving over 98.6% of the waterway available. *Exh. A., p. 3.* Because the dock is not within the navigable channel, the dock does not impact navigability.

5. **Is the proposed dock of minimal dimensions necessary in order to adequately secure the moored vessel while providing reasonable access to the boat for routine maintenance without the use of excessive deck area?**

Yes. The proposed dock is of minimal dimensions necessary in order to adequately secure the moored vessel. *Exh. A, p. 4.* The current dock wraps around the corners of the property. This dock will not do that.

6. **Is the proposed structure of minimal dimensions and located (designed) to minimize the impact of view to the channel by surrounding property owners.**

Yes. The proposed dock, unlike the current dock, will have no dock elements that extend around the corner of the property. This leaves the view of the surrounding properties completely unobstructed. *Exh. A, pp. 3–4.* This is an improvement from what is currently on the property and improves the current view for the surrounding properties. *Exh. A, p. 2.*

7. **Is the moored vessel in excess of 50% of the length of the waterfrontage such that the addition of a dock structure will increase the impact on or negatively impact the view to the waterway by surrounding property owners? (in the case of multi-family developments and public marinas, the 50 percent provision may be exceeded).**

The proposed moored vessel will be greater than 50% of the length of the waterfrontage, but it will not increase the impact on or negatively impact the view to the waterway by surrounding property owners. This is because the surrounding property owners are adjacent to this property at angles, as opposed to being on the same line, and because this property is not on a canal. *Exh. A, p. 3.* In fact, as noted above, the views will be improved.

This is not a multi-family development or a public marina.

8. **Will the proposed location and design of the boat docking facility and moored vessel(s) be such that it may infringe upon the use of neighboring properties, including any existing dock structures?**

No. The proposed location and design of the boat docking facility and moored vessel will not infringe upon the use of neighboring properties, including existing dock structures.

10. **Regarding existing benthic organisms in the vicinity of the proposed extension:**

a. **Are seagrasses located within 200 feet of the proposed dock?**

No. There are no seagrasses located within 200 feet of the proposed dock.

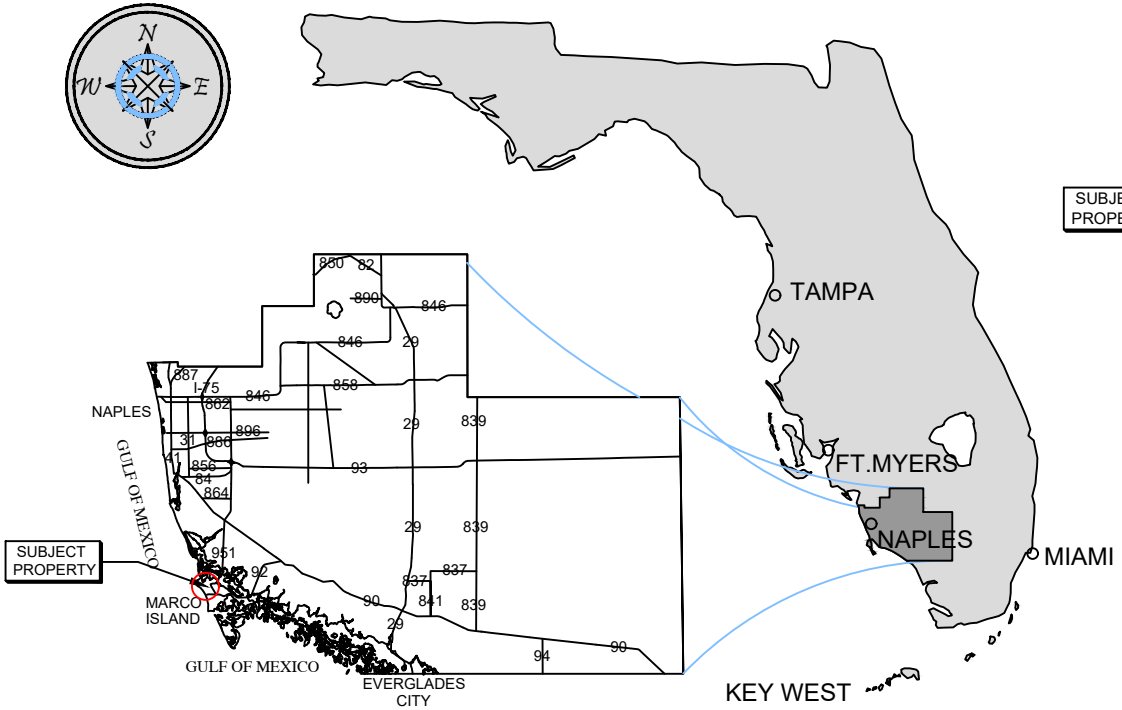
b. **Is the proposed dock subject to the manatee protection requirements in Sec. 10 of Ordinance 00-04?**

Section 10 of Ordinance 00-04 is not applicable to this application. Nevertheless, a manatee mortality map is included as Exhibit C for information purposes only.

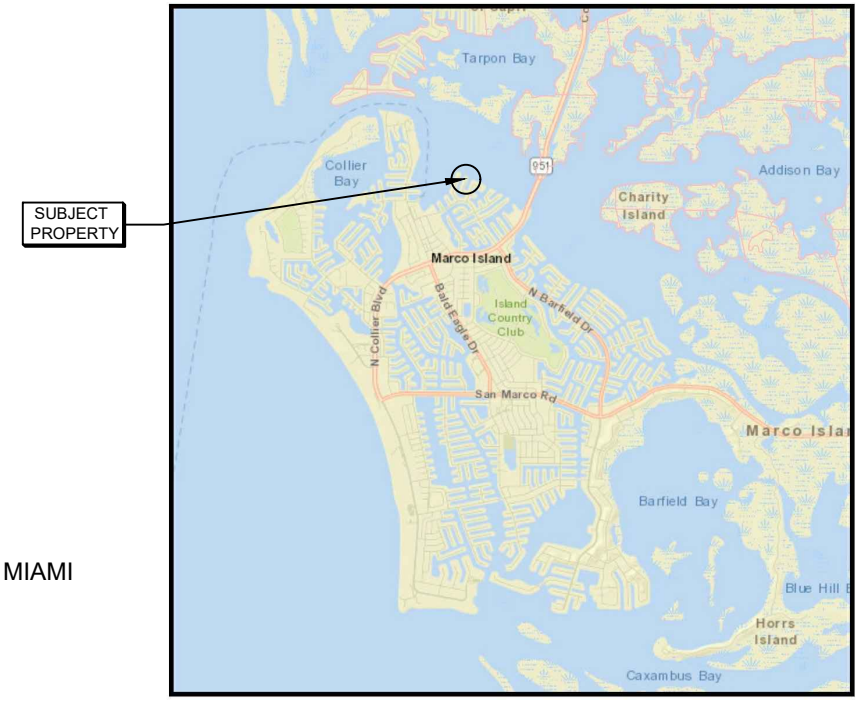
Exhibit A

p:\21038.00 curtis-986 sundrop ct\CAD\PERMIT-STATE\21038-STATE.dwg LOCATION MAP 5/27/2021

STATE OF FLORIDA



COLLIER COUNTY



VICINITY MAP

COUNTY AERIAL

SITE ADDRESS:

<> 986 SUNDROP CT
MARCO ISLAND, FL 34145

<> LATITUDE: N 25.965590
<> LONGITUDE: W -81.719405

NOTES:

<> THESE DRAWINGS ARE FOR PERMITTING PURPOSES ONLY AND ARE NOT INTENDED FOR CONSTRUCTION USE.

Turrell, Hall & Associates, Inc.
Marine & Environmental Consulting
3584 Exchange Ave. Naples, FL 34104-3732
Email: tuna@thanaples.com Phone: (239) 643-0166 Fax: (239) 643-6632

986 SUNDROP CT

LOCATION MAP

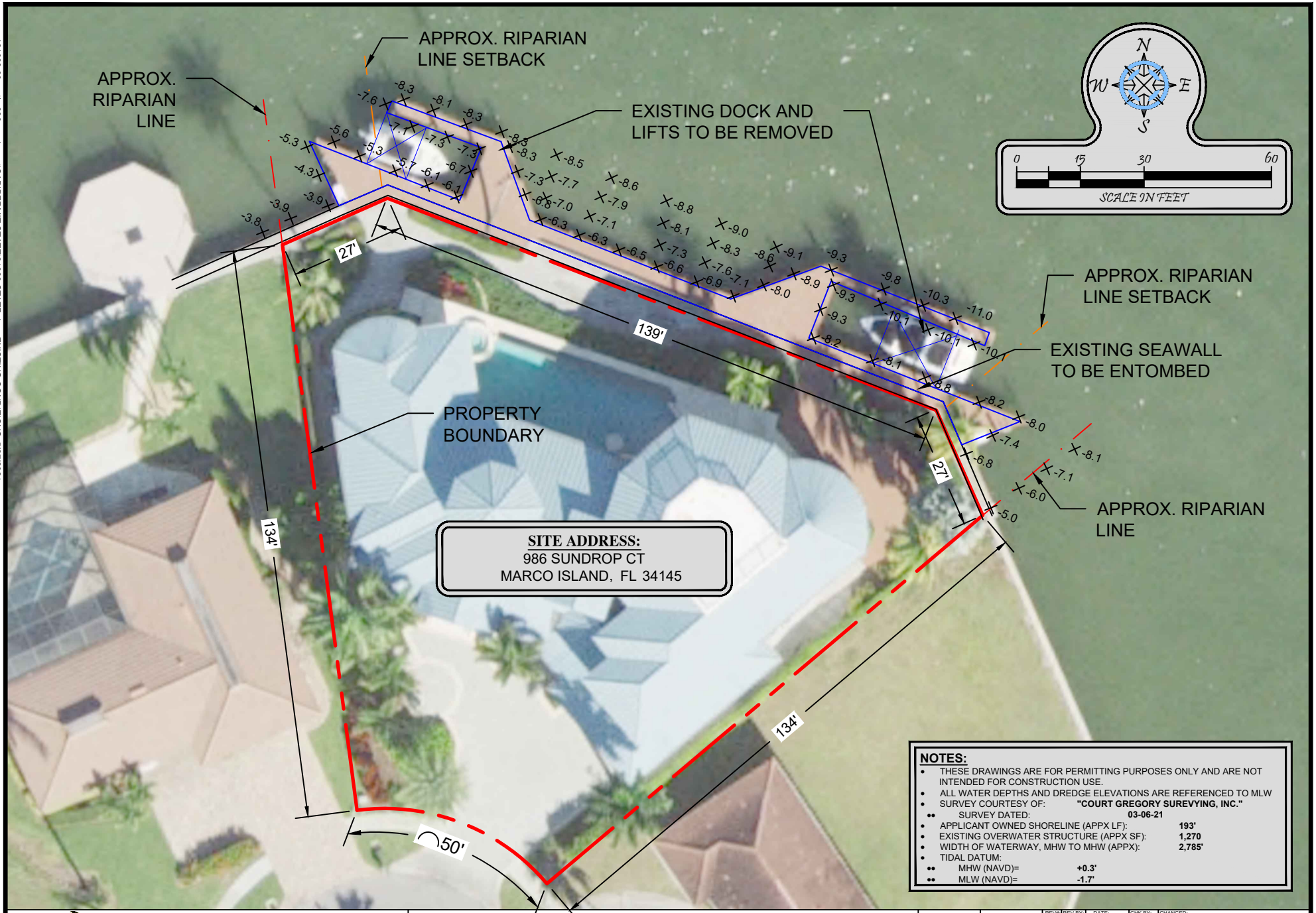
RY NO. 5875

THESE DRAWINGS ARE FOR PERMITTING PURPOSES ONLY AND ARE NOT INTENDED FOR CONSTRUCTION USE.

		REV#	REV BY:	DATE:	CHK BY:	CHANGED:
DESIGNED:	JR	1.	-	-	-	-
DRAWN BY:	RMJ	2.	-	-	-	-
CREATED:	04-06-21	3.	-	-	-	-
JOB NO.:	21038.00	4.	-	-	-	-
SHEET NO.:	01 OF 06	5.	-	-	-	-

SECTION- 16 TOWNSHIP- 52 S RANGE- 26 E

p:\21038.00 curtis-986 sundrop ct\CAD\PERMIT-STATE\21038-STATE.dwg EXISTING CONDITIONS 5/27/2021



NOTES:

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- ALL WATER DEPTHS AND DREDGE ELEVATIONS ARE REFERENCED TO MLW
- SURVEY COURTESY OF: **"COURT GREGORY SUREVYING, INC."**
  - SURVEY DATED: **03-06-21**
- APPLICANT OWNED SHORELINE (APPX LF): **193'**
- EXISTING OVERWATER STRUCTURE (APPX SF): **1,270**
- WIDTH OF WATERWAY, MHW TO MHW (APPX): **2,785'**
- TIDAL DATUM:
  - MHW (NAVD)= **+0.3'**
  - MLW (NAVD)= **-1.7'**

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EXISTING CONDITIONS

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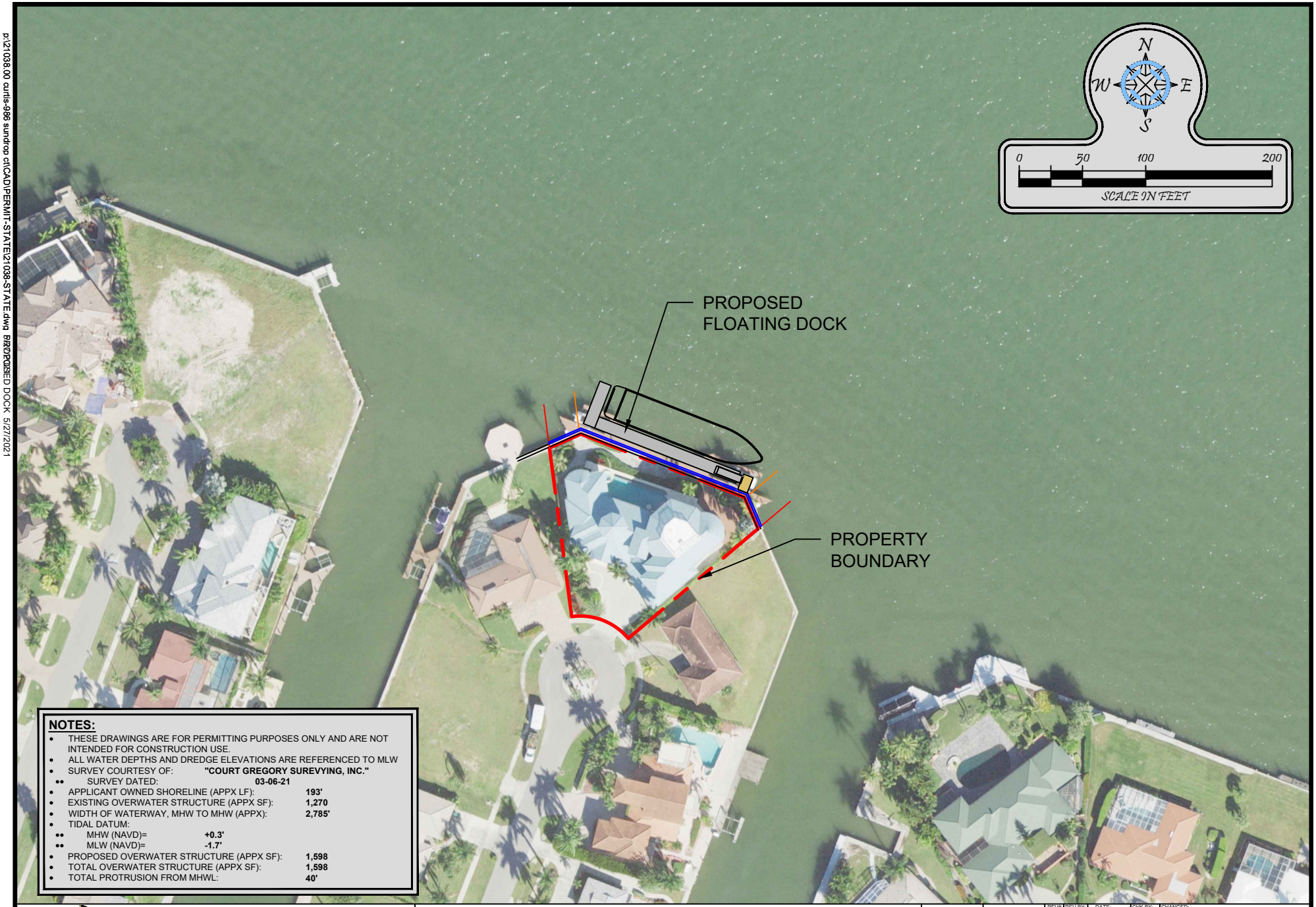
SHEET NO.:	02 OF 06	5.	-	-	-	-

SECTION- 16 TOWNSHIP- 52S RANGE- 26E

p:\21038.00 curtis-986 sundrop ct\CAD\PERMIT-STATE\21038-STATE.dwg BRADPROPOSED DOCK 5/27/2021



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- PROPOSED OVERWATER STRUCTURE (APPX SF): **1,598**
- TOTAL OVERWATER STRUCTURE (APPX SF): **1,598**
- TOTAL PROTRUSION FROM MHWL: **40'**

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986 SUNDROP CT

PROPOSED DOCK

RY NO. 5875

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		REV#	REV BY:	DATE:	CHK BY:	CHANGED:
DESIGNED:	JR	1.	-	-	-	-
DRAWN BY:	RMJ	2.	-	-	-	-
CREATED:	05-27-21	3.	-	-	-	-
JOB NO.:	21038.00	4.	-	-	-	-
SHEET NO.:	03 OF 06	5.	-	-	-	-

SECTION- 16 TOWNSHIP- 52 S RANGE- 26 E

p:\21038.00 curtis-986 sundrop ct\CAD\PERMIT-STATE\21038-STATE.dwg BY:RMJ PROPOSED DOCK WITH DIMENSIONS 5/27/2021

APPROX. RIPARIAN LINE SETBACK

APPROX. RIPARIAN LINE

PROPOSED FLOATING DOCK (1,494 SF)

10'

40'

36'

26'

130' X 26' VESSEL

BB 06

AA 06

10'

120'

130'

PROPOSED 6' X 20' GANGWAY

8'

13'

EXISTING SEAWALL

PROPERTY BOUNDARY

PROPOSED FIXED ACCESS DOCK (104 SF)

NEW VINYL SEAWALL (TO BE PLACED 18" FROM FACE OS EXISTING SEAWALL)

APPROX. RIPARIAN LINE SETBACK

APPROX. RIPARIAN LINE

N W E S

0 10 20 40

SCALE IN FEET

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986 SUNDROP CT

PROPOSED DOCK WITH DIMENSIONS

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DRAWN BY:	RMJ	2.	-	-	-	-
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JOB NO.:	21038.00	4.	-	-	-	-
SHEET NO.:	04 OF 06	5.	-	-	-	-

SECTION- 16 TOWNSHIP- 52 S RANGE- 26 E

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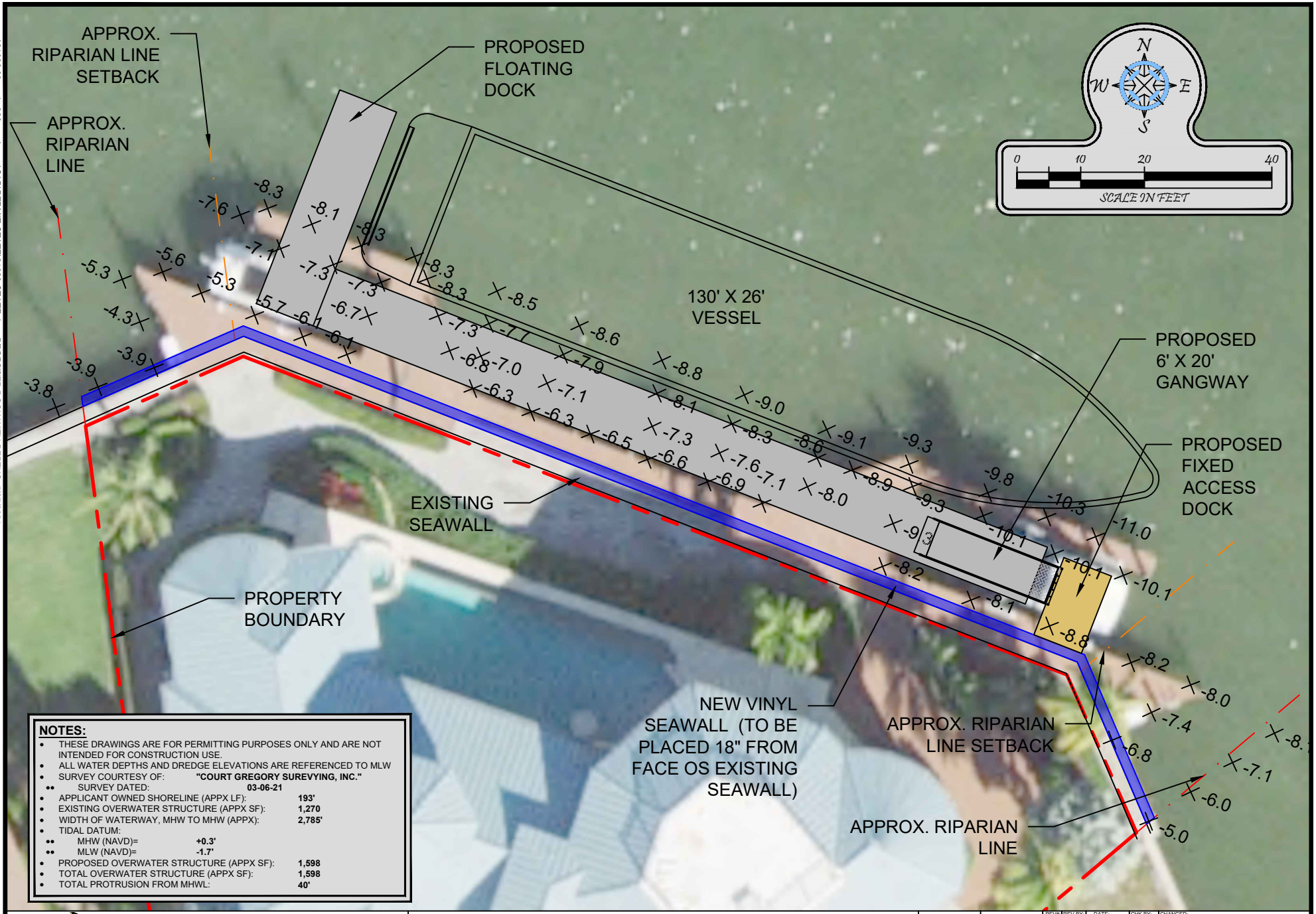

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986 SUNDROP CT

PROPOSED DOCK WITH DEPTHS

RY NO. 5875

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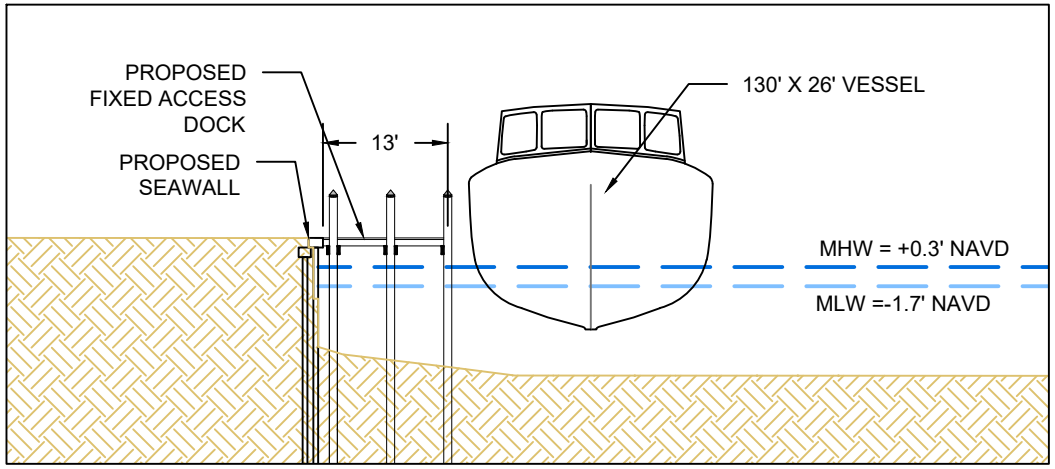
		REV#	REV BY:	DATE:	CHK BY:	CHANGED:
DESIGNED:	JR	1.	-	-	-	-
DRAWN BY:	RMJ	2.	-	-	-	-
CREATED:	04-06-21	3.	-	-	-	-
JOB NO.:	21038.00	4.	-	-	-	-
SHEET NO.:	05 OF 06	5.	-	-	-	-

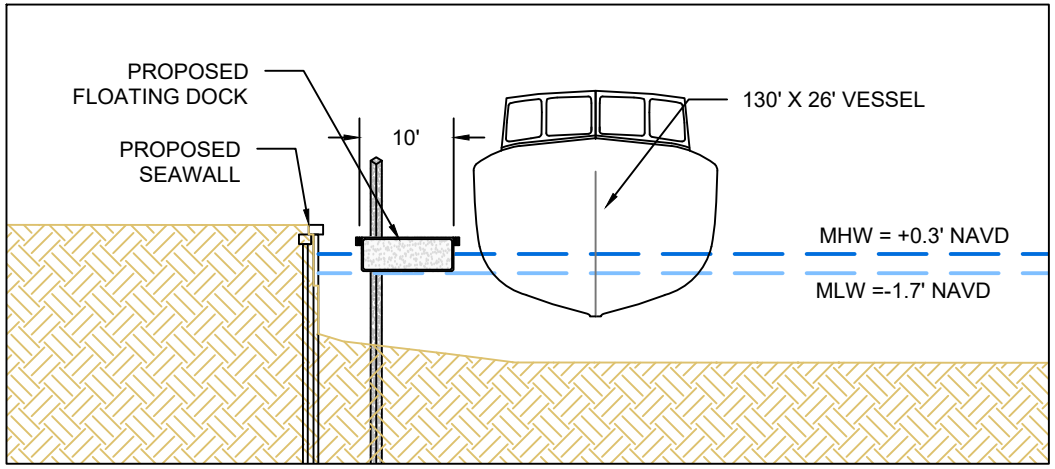
SECTION- 16 TOWNSHIP- 52 S RANGE- 26 E

p:\21038.00 curtis-986 sundrop ct\CAD\PERMIT-STATE\21038-STATE.dwg CROSS SECTIONS 5/27/2021



CROSS SECTION AA

SCALE: 1" = 20'



CROSS SECTION BB

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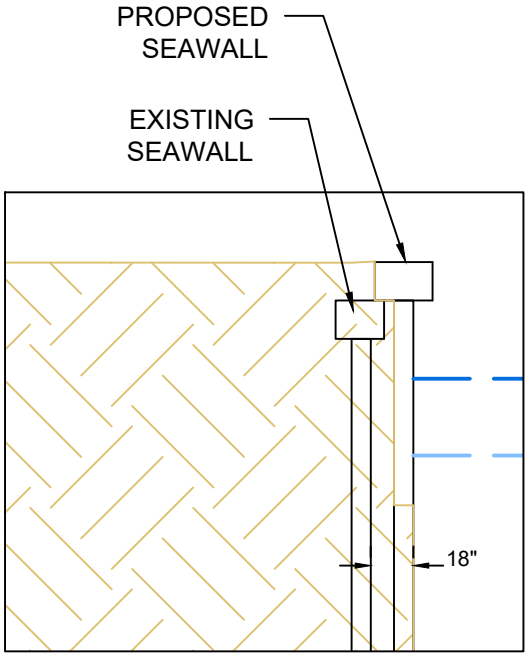

TYPICAL SEAWALL CROSS SECTION

SCALE: 1" = 5'

Turrell, Hall & Associates, Inc.
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986 SUNDROP CT

CROSS SECTIONS

RY NO. 5875

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SECTION- 16 TOWNSHIP- 52 S RANGE- 26 E

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Email: tuna@thanaples.com Phone: (239) 643-0166 Fax: (239) 643-6632

986 SUNDROP CT
CHANNEL NAVIGATION MAP

DRAWN BY:	RMJ	REVISION:	SCALE:	1 "=1,000 '
CREATED:	05-27-21	N/A	FILE PATH:	
JOB NO.:	21038	N/A	P:\21038.00 Curtis-986 Sundrop Ct\ GIS\21038-ChannelMap.mxd	
SHEET:	01 OF 01	N/A		

SECTION-16 TOWNSHIP-52S RANGE-26E

Exhibit B

PROTRUSION LIMITATIONS FOR BOAT DOCKING FACILITIES
(Waterway Intersections and Bay Areas)

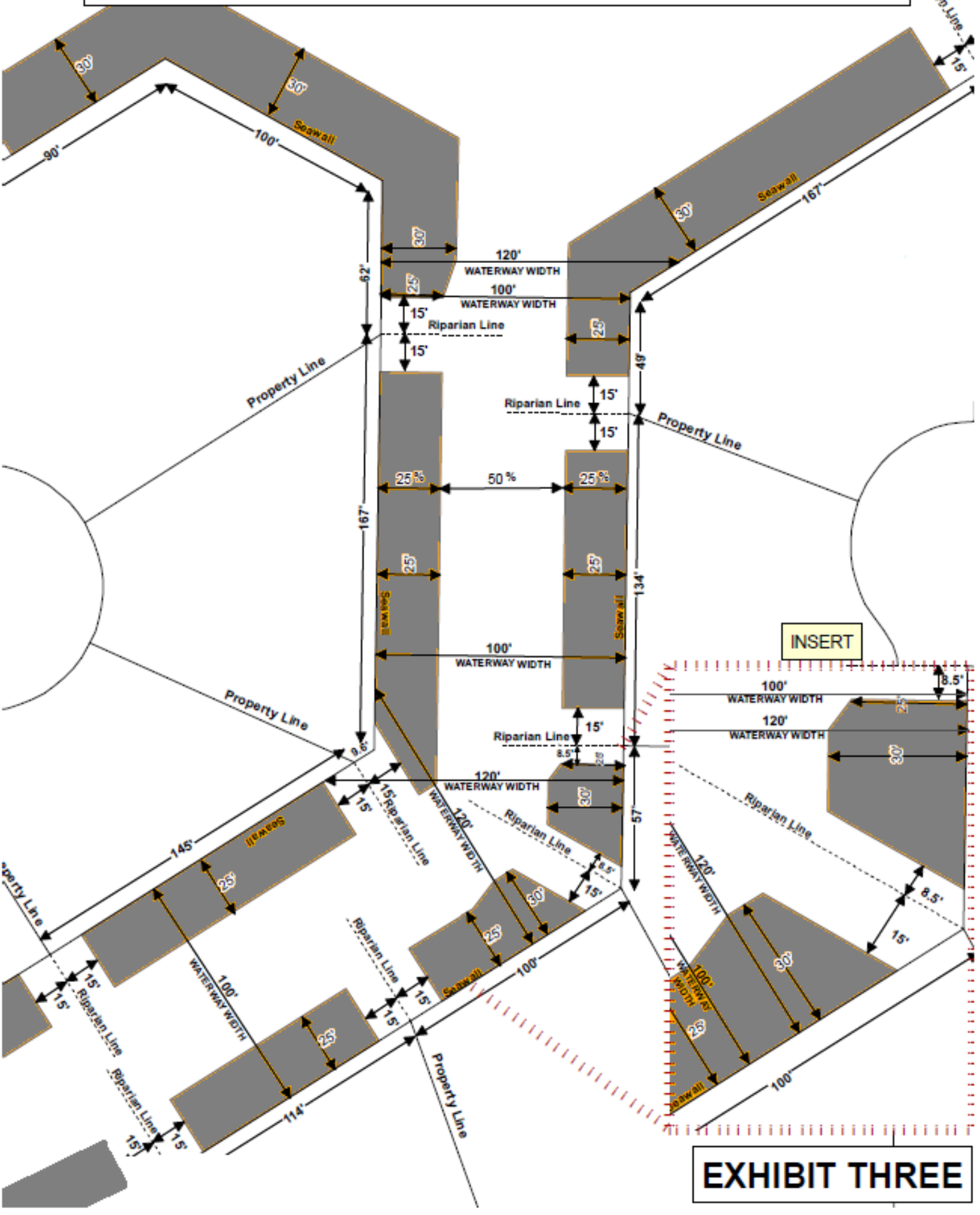
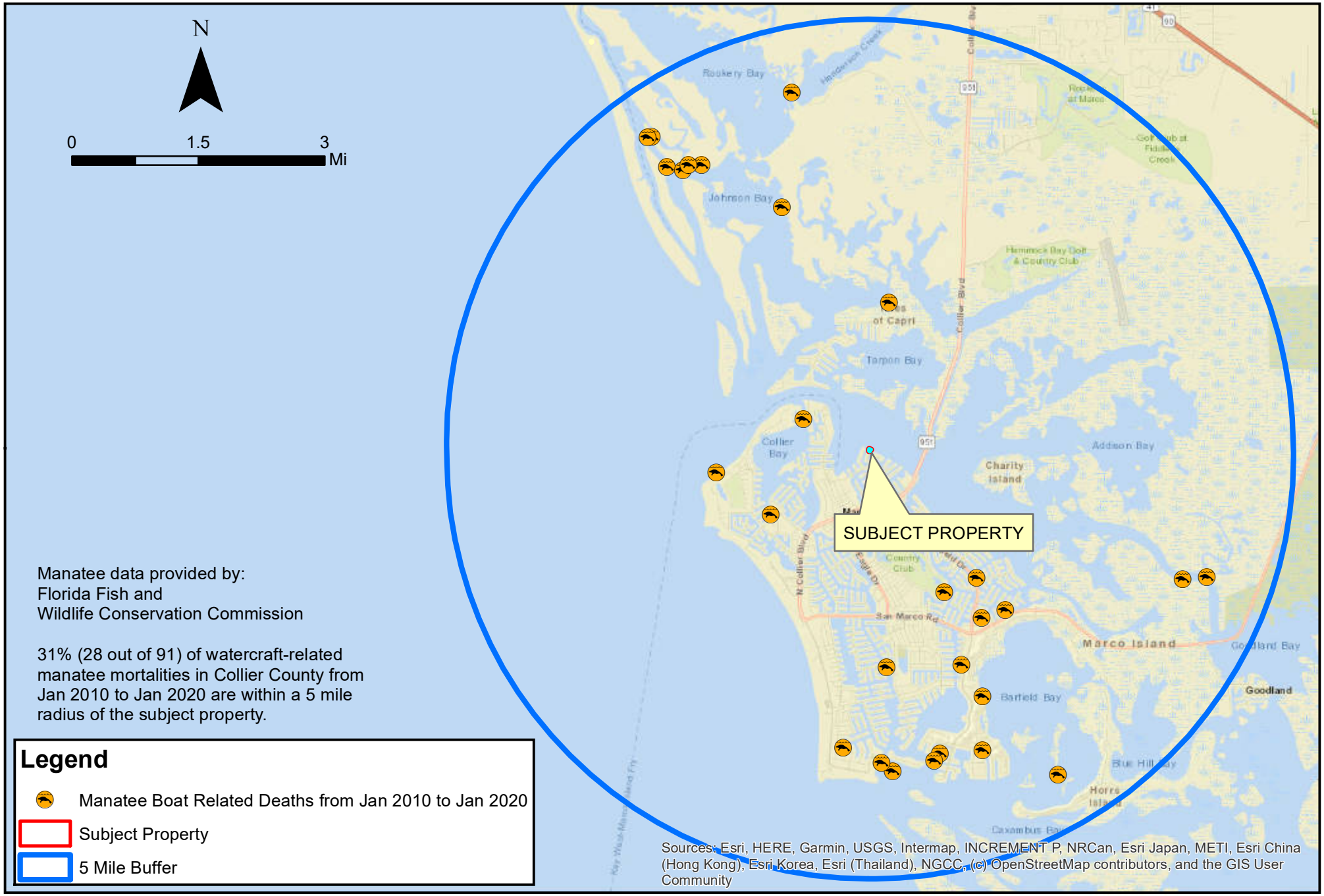


EXHIBIT THREE

Exhibit C



Manatee data provided by:
Florida Fish and
Wildlife Conservation Commission

31% (28 out of 91) of watercraft-related manatee mortalities in Collier County from Jan 2010 to Jan 2020 are within a 5 mile radius of the subject property.

Legend

- Manatee Boat Related Deaths from Jan 2010 to Jan 2020
- Subject Property
- 5 Mile Buffer

Turrell, Hall & Associates, Inc.
Marine & Environmental Consulting
3484 Exchange Ave. Suite B. Naples, FL 34104-3732
Email: tuna@thanaples.com Phone: (239) 643-0166 Fax: (239) 643-6632

986 SUNDROP CT
MANATEE MORTALITY MAP

DRAWN BY:	RMJ	REVISION:	SCALE:	1 "=7,920 '
CREATED:	06-01-21	N/A	FILE PATH:	P:\21038.00 Curtis-986 Sundrop Ct\GIS\21038-ChannelMap.mxd
JOB NO.:	21038	N/A		
SHEET:	01 OF 01	N/A		

SECTION- 16 TOWNSHIP- 52S RANGE-26E

ATTACHMENT 2

Additional Requirements

Permit number and certificate of completion date for the original construction of any existing *boat docking* facility, if applicable.

The current, existing boat docking facility was built by a prior owner under permit number 003759. The certification of completion date was June 19, 2001.

Resolution number and date of previous *boat dock* extension, protrusion or encroachment into the riparian setback if applicable.

Not applicable.

Compliance with Land Development Code

This application is consistent with the land development code of the City of Marco Island.

Compliance with Comprehensive Plan

This application is consistent with the comprehensive plan of the City of Marco Island.

Specifically, the following applicable objectives are satisfied:

- Objectives 1.1 and 1.6 of the Future Land Use Element, as well as the entire Future Land Use Element is met because the proposed use will remain the same. The current use is consistent with the designation for the Subject Property shown on the future land use map as "low density residential".
    - This application does not seek to increase the density or the necessary levels of service at the Subject Property.
- The Transportation Element does not apply.
- The Housing Element does not apply.
- The Infrastructure Element does not apply.
- Objectives 1.5 and 2.2 of the Conservation and Coastal Management Element, as well as the entire Conservation and Coastal Management Element is met because an Environmental Resource Permit is being applied for with the Department of Environmental Protection.

- The Parks and Open Space Element does not apply.
- The Intergovernmental Cooperation Element does not apply.
- The Capital Improvements Element does not apply.

Exhibit 3

Planning Board Staff Report

Meeting Date: September 3, 2021

TO: Marco Island Planning Board

FROM: Daniel J. Smith, AICP – Director of Community Affairs

DATE: August 24,2021

RE: Boat Dock Extension: 21-000177, 986 Sundrop Court. – Request to extend a dock to 40-feet

PROJECT DESCRIPTION

Mr. Zach Lombardo has submitted a request, on behalf of 986 Sundrop LLC, to extend a boat dock 10 feet beyond the allowed 30 feet for a total of 40 feet at 986 Sundrop Court per Boat Docking Facilities Code Sec. 54-115. Attached are the application, responses to the criteria, and plans for review and consideration.

APPLICANT:

Mr. Zachary W. Lombardo, Esq.
Woodward, Pires & Lombardo, P.A.
3200 Tamiami Trail N., Suite 200
Naples, FL 34103

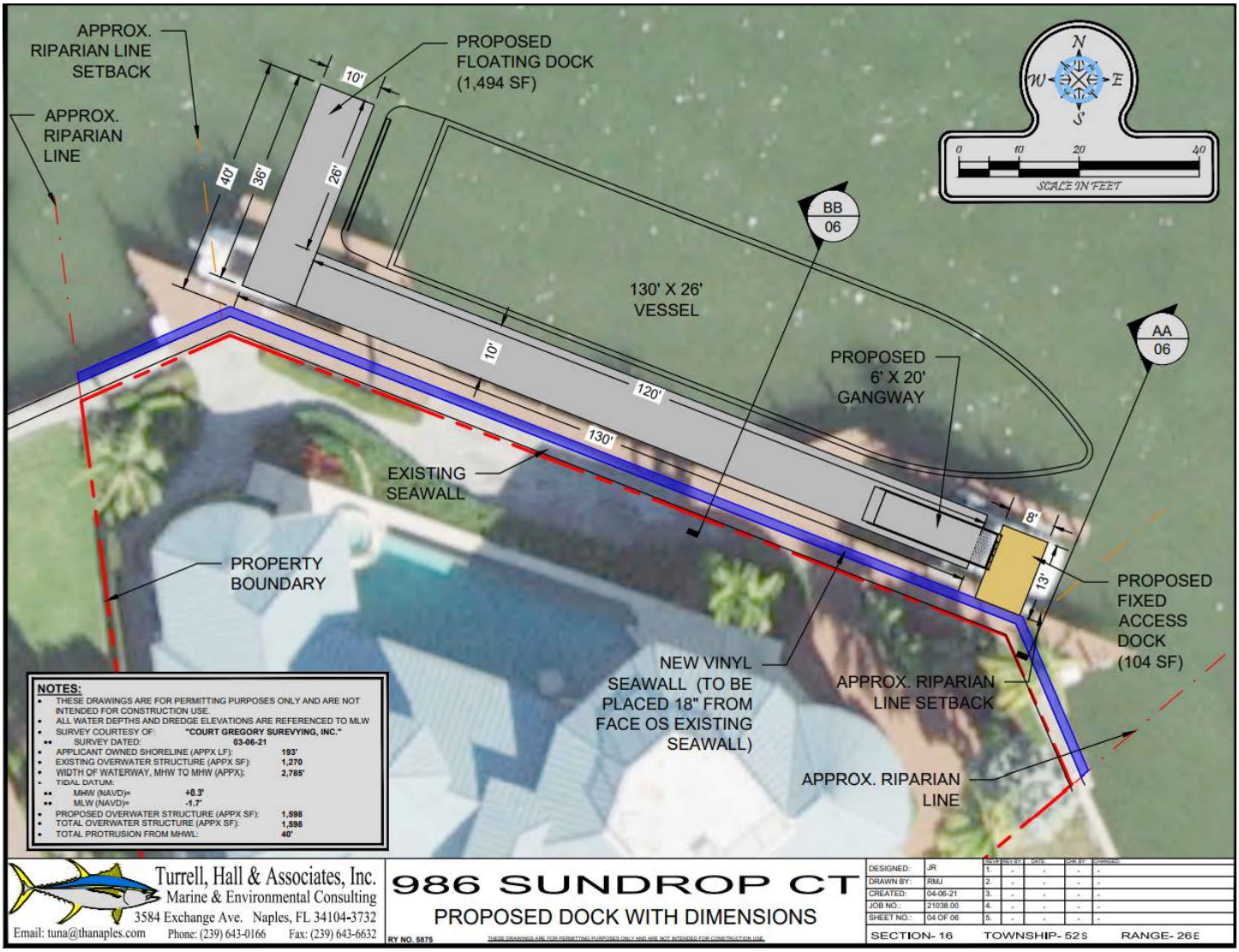
OWNERS:

986 Sundrop LLC
985 Sundrop Court
Marco Island, FL 34145

PROJECT ADDRESS AND LEGAL DESCRIPTION:

985 Sundrop Court
Marco Island, FL 34145
Marco Beach, Unit 4, Block 127, Lot 14
Property ID: 56942480004

ZONING AND AERIAL MAPS:



STAFF ANALYSIS:

Staff has received two objections (attached) from the neighbors on both sides of the subject property. Their main point of objection is the proposed vessel will obstruct their views and in particular one neighbor's view of the Marco bridge. When considering this request, we review the criteria, which considers neighbors' views. The proposed objection appears to stem from the vessel itself and not the dock extension. Keeping in mind that a dock and vessel can be located along any point of this portion of the seawall, certain locations could potentially obstruct particular views of adjacent neighbors without a requested dock extension. We are not unsympathetic to the neighbors' concerns, but our charge is to review the request against the City's codes and Comprehensive Plan.

In reviewing the City's current 2009 Comprehensive Plan, we find the proposed request is not inconsistent with the City's Comprehensive Plan. Docks are an allowed accessory use to single family and the City's codes provide for a dock extension request with certain criteria outlined.

Below is the criteria, Sec. 54-115.(f). 1-10, used to review for a boat dock protrusion:

1. **Whether or not the proposed docking facility meets the other standards set forth in this article?**

   The proposed dock exceeds the setback requirements as set forth in this article.

2. **Whether or not the water depth where the proposed vessel(s) is to be located is sufficient (as a general guide, four feet mean low water is deemed to be sufficient) to allow for safe mooring of the vessel, thereby necessitating the extension requested?**

   There is sufficient water depth with or without the additional 10-foot protrusion.

3. **Whether or not there are special conditions related to the subject property or waterway which justify the proposed dimensions and location of the proposed boat docking facility?**

   The lot is at the end of a cul-de-sac abutting the open water of the Marco River. It is not a traditionally shaped lot with four lot lines. The lot contains six separate lot lines, with the rear lot line having 3 separate lot lines: an angled 27-foot length, a straight 139 foot length, and another angled 27 feet length. In addition, the location of the lot along the Marco River is more conducive to the protrusion into the adjacent water than other lots on Marco Island.

4. **Whether or not the proposed boat docking facility and moored vessel(s) protrude greater than 25 percent of the width of the navigable waterway, and whether or not a minimum of 50 percent of the waterway width between boat docking facilities and moored vessel(s) on the opposite side of the waterway is maintained in order to ensure reasonable waterway width for navigation?**

   The proposed boat docking facility and moored vessel will not protrude greater than 25% of the width of the navigable waterway and more than a minimum of 50% of the waterway width is open for navigation.

5. **Whether or not the proposed boat docking facility is of the minimum dimensions necessary in order to adequately secure the moored vessel while providing reasonable access to the boat for routine maintenance without the use of excessive deck area?**

   While Staff is not versed in the maintenance of vessels, the applicant has indicated that dimensions are the minimum necessary to adequately moor the vessel.

6. **Whether or not the proposed boat docking facility is of minimal dimensions and located to minimize the impact of view to the channel by surrounding property owners?**

   The City has received objections from two neighbors saying their views will be impacted. They are on each side of the subject property. Based upon staff's review, the neighbors will maintain views of the Marco River. However, certain views important to the neighbors could be partially obstructed.

7. **Whether or not the proposed vessel(s) is in excess of 50 percent of the length of the water frontage on the subject property such that the extension of the boat docking facility may adversely impact the view to the channel by surrounding property owners?**

   The total waterfrontage is 193 feet, and the proposed dock will span 139 feet, well in excess of 50% of the water frontage. As stated above, views of the Marco River will be maintained. However, certain views important to the neighbors could be partially obstructed.

8. **Whether or not the proposed location and design of the boat docking facility and moored vessel(s) in combination such that it may infringe upon the use of neighboring properties, including any existing boat docking facilities?**

   The proposed location, design and extra 10 feet of dock does not appear to infringe upon the use of neighboring properties. The neighboring properties are currently single family. One has a dock and the other has room for a dock should they so choose to construct one.

9. **Whether or not the seagrasses are located within 200 feet of the proposed boat docking facility?**

There are no seagrass beds within 200 feet.

10. Whether or not the proposed dock subject to the manatee protection requirements set forth in section 54-117 of the City's Boat Docking Facilities Code?

This proposal is not subject to the manatee protection requirements since this is not a multi-slip dock with 10 or more slips nor is it a marina.

STAFF RECOMMENDATION AND FINDINGS:

Staff recommends the Planning Board approve this request with the following findings:

1. The proposed dock exceeds the setback requirements as set forth in this article.
2. The lot is at the end of a cul-de-sac abutting the open water of the Marco River. It is not a traditionally shape lot with four lot lines. It contains six separate lot lines, with the rear lot line having 3 separate lot lines: an angled 27-foot length, a straight 139 foot length, and another angled 27 feet length. In addition, the location of the lot is more conducive to the protrusion into the adjacent water than other lots on Marco Island.
3. The proposed boat docking facility and moored vessel will not protrude greater than 25% of the width of the navigable waterway and more than a minimum of 50% of the waterway width is open for navigation.
4. The applicant has indicated that dimensions are the minimum necessary to adequately moor the vessel.
5. Views of the Marco River will be maintained. However, certain views important to the neighbors could be partially obstructed.
6. The proposed location, design and extra 10 feet of dock does not appear to infringe upon the use of neighboring properties. The neighboring properties are currently single family. One has a dock and the other has room for a dock should they so choose to construct one.
7. There are no seagrass beds within 200 feet.
8. This proposal is not subject to the manatee protection requirements since this is not a multi-slip dock with 10 or more slips nor is it a marina.

Daniel J. Smith, AICP

Director of Community Affairs

Exhibit 4

City of Marco Island Florida

51 Bald Eagle Drive
Marco Island, Florida
cityofmarcoisland.com

Meeting Agenda - Final

Planning Board

Chair: Jason Bailey
Vice-Chair: Larry Honig

Board Members: Geoff Fahringer,
Nanette Finkle, Mike Hogan,
Nanette Rivera, David Vergo

Staff Liaison: Daniel Smith
Planning Board Attorney: David N. Tolces

Friday, September 3, 2021	**9:00 AM**	**Community Room**

NOTE: ANY PERSON WHO DECIDES TO APPEAL A DECISION OF THIS BOARD WILL NEED A RECORD OF THE PROCEEDINGS PERTAINING THERETO, AND THEREFORE MAY NEED TO ENSURE THAT A VERBATIM RECORD OF THE PROCEEDINGS IS MADE, WHICH RECORD INCLUDES THE TESTIMONY AND EVIDENCE UPON WHICH THE APPEAL IS TO BE BASED, NEITHER THE CITY OF MARCO ISLAND NOR THE PLANNING BOARD SHALL BE RESPONSIBLE FOR PROVIDING THE RECORD.

(1) CALL TO ORDER

(2) ROLL CALL

(3) PLEDGE OF ALLEGIANCE

(4) APPROVAL OF THE AGENDA

(5) COMMUNITY FORUM/PUBLIC COMMENT (TIME APPROXIMATELY 9:05 A.M.)

(6) BOARD ABSENCES

(7) APPROVAL OF MINUTES

ID 21-1761 Approval of the Planning Board Meeting Minutes of August 6, 2021

Attachments: Meeting Minutes

(8) STAFF COMMUNICATIONS

(9) OLD BUSINESS

(10) NEW BUSINESS

ID 21-1758 RESOLUTION - Boat Dock Extension (BD-21-000177) Request to extend a dock to 40-feet at a property located at 986 Sundrop Ct., Marco Island, FL 34145

Attachments:

- Resolution
- Staff Report
- Application
- Attachment 1 - Site Information
- Exhibit A - Site Plans
- Exhibit B - Protrusion Limitations
- Exhibit C - Manatee Mortality Map
- Attachment 2 - Additional Requirements
- Letter of Objection - 980 Sundrop Ct
- Letter of Objection - 983 Sundrop Ct

(11) BOARD COMMUNICATIONS

(12) ADJOURN

NOTE: TWO OR MORE CITY COUNCILORS OR OTHER COMMITTEE MEMBERS MAY BE PRESENT

CITY OF MARCO ISLAND
PLANNING BOARD

RESOLUTION NO. 21-_____

A RESOLUTION OF THE PLANNING BOARD OF THE CITY OF MARCO ISLAND, FLORIDA, APPROVING A SPECIAL PERMIT FOR A BOAT DOCK EXTENSION 40-FEET FROM THE PROPERTY LINE FOR 986 SUNDROP COURT, MARCO ISLAND; MAKING FINDINGS; APPROVING THE BOAT DOCK EXTENSION; PROVIDING FOR FAILURE TO OBTAIN OTHER DEVELOPMENT PERMITS; PROVIDING FOR FAILURE TO COMPLY WITH APPROVAL; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, Section 54-115 of the of the Marco Island Waterways and Beaches Code relates to special permits to address issues related to the maximum protrusion lengths of a docking system; and

WHEREAS, the Owner/Developer submitted a boat dock extension plan for the Development of a boat dock extension for 986 Sundrop Court, Marco Island, Florida; and

WHEREAS, the City of Marco Island staff has reviewed and recommended approval of BD-21-000177; and

WHEREAS, the proposed dock meets all other City requirements, including side-yard riparian setbacks; and

WHEREAS, the dock and associated vessels will not protrude more than 25% of the total width of the waterway and will leave more than 50% of the waterway width open for safe navigation, considering that the proposed location sits on an open body of water

WHEREAS, the lot is at the end of a cul-de-sac abutting the open water of the Marco River. The subject lot is not a traditionally shape lot with four lot lines. The lot contains six separate lot lines, with the rear lot line having 3 separate lot lines: an angled 27-foot length, a straight 139 foot length, and another angled 27 feet length. In addition, the location of the lot is more conducive to the protrusion into the adjacent open water than other lots on Marco Island.; and

WHEREAS, the proposed location, design and extra 10 feet does not appear to infringe upon the use of neighboring properties. The neighboring properties are currently single family. One neighboring property has a dock, and the other neighboring property has room for a dock should they so choose to construct one; and

WHEREAS, views of the Marco River will be maintained; however, certain views important to the neighbors could be partially obstructed; and

WHEREAS, the applicant has indicated that dimensions are the minimum necessary to adequately moor the vessel; and

WHEREAS, the contractor states that there are no seagrass beds in the immediate area of the dock; and

WHEREAS, this dock does not fall under regulations on Manatee protection zones since it is a single-family zoned lot; and

WHEREAS, the dock and moored vessels (including motor) will not protrude into the adjacent open water beyond the permitted protrusion of forty feet (40) feet; and

NOW, THEREFORE, BE IT RESOLVED BY THE PLANNING BOARD OF THE CITY OF MARCO ISLAND, FLORIDA:

SECTION 1. Adoption. The Owner/Developer's special permit for the boat dock extension as set forth on the Boat Dock Extension Plans on the Subject Property is hereby approved.

SECTION 2. Failure to Obtain Other Permits. That issuance of this approval by the City does not in any way create any right on the part of the Owner/Developer to obtain a permit from a state or federal agency and does not create any liability on the part of the City for issuance of the approval if the Owner/Developer fails to obtain the requisite approvals or fulfill the obligations imposed by a state or federal agency or undertakes actions that result in the violation of state or federal law. All applicable state and federal permits must be obtained before commencement of the Development on the Subject Property. This condition is included pursuant to Section 166.033, Florida Statutes, as amended.

SECTION 3. Failure to Adhere to Resolution. That failure to adhere to the approval terms and conditions contained in this Resolution shall be considered a violation of this Resolution and the City Code, and persons found violating this Resolution shall be subject to the penalties prescribed by the City Code, including but not limited to the revocation of any of the approval(s) granted in this Resolution and any other approvals conditioned on this approval. The Owner/Developer understands and acknowledges that it must comply with all other applicable requirements of the City Code before it may commence construction or operation, and that the foregoing approval in this Resolution may be revoked by the City at any time upon a determination that the Owner/Developer is in non-compliance with the City Code.

SECTION 4. Effective Date. That this Resolution shall take effect immediately upon adoption.

ADOPTED BY THE PLANNING BOARD OF THE CITY OF MARCO ISLAND, this ___ day of _____, 2021.

CITY OF MARCO ISLAND, FLORIDA

By: _____
Jason Bailey, Chair

ATTEST:

By:_____
Laura M. Litzan, City Clerk

Reviewed for legal sufficiency:

By: _____
David N. Tolces, Assistant City Attorney

Planning Board Staff Report

Meeting Date: September 3, 2021

TO: Marco Island Planning Board

FROM: Daniel J. Smith, AICP – Director of Community Affairs

DATE: August 24,2021

RE: Boat Dock Extension: 21-000177, 986 Sundrop Court. – Request to extend a dock to 40-feet

PROJECT DESCRIPTION

Mr. Zach Lombardo has submitted a request, on behalf of 986 Sundrop LLC, to extend a boat dock 10 feet beyond the allowed 30 feet for a total of 40 feet at 986 Sundrop Court per Boat Docking Facilities Code Sec. 54-115. Attached are the application, responses to the criteria, and plans for review and consideration.

APPLICANT:

Mr. Zachary W. Lombardo, Esq.
Woodward, Pires & Lombardo, P.A.
3200 Tamiami Trail N., Suite 200
Naples, FL 34103

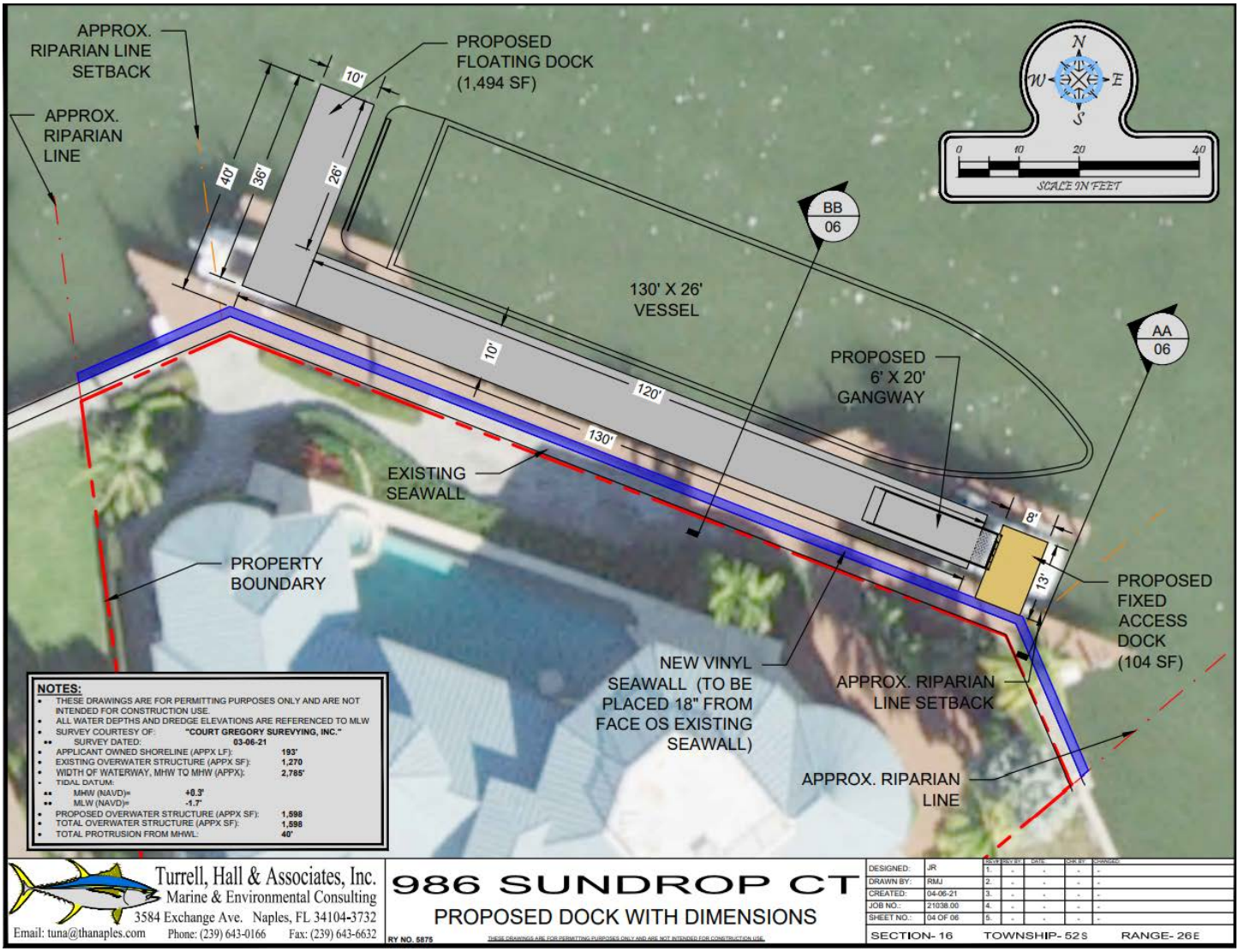
OWNERS:

986 Sundrop LLC
985 Sundrop Court
Marco Island, FL 34145

PROJECT ADDRESS AND LEGAL DESCRIPTION:

985 Sundrop Court
Marco Island, FL 34145
Marco Beach, Unit 4, Block 127, Lot 14
Property ID: 56942480004

ZONING AND AERIAL MAPS:



STAFF ANALYSIS:

Staff has received two objections (attached) from the neighbors on both sides of the subject property. Their main point of objection is the proposed vessel will obstruct their views and in particular one neighbor's view of the Marco bridge. When considering this request, we review the criteria, which considers neighbors' views. The proposed objection appears to stem from the vessel itself and not the dock extension. Keeping in mind that a dock and vessel can be located along any point of this portion of the seawall, certain locations could potentially obstruct particular views of adjacent neighbors without a requested dock extension. We are not unsympathetic to the neighbors' concerns, but our charge is to review the request against the City's codes and Comprehensive Plan.

In reviewing the City's current 2009 Comprehensive Plan, we find the proposed request is not inconsistent with the City's Comprehensive Plan. Docks are an allowed accessory use to single family and the City's codes provide for a dock extension request with certain criteria outlined.

Below is the criteria, Sec. 54-115.(f). 1-10, used to review for a boat dock protrusion:

1. **Whether or not the proposed docking facility meets the other standards set forth in this article?**

   The proposed dock exceeds the setback requirements as set forth in this article.

2. **Whether or not the water depth where the proposed vessel(s) is to be located is sufficient (as a general guide, four feet mean low water is deemed to be sufficient) to allow for safe mooring of the vessel, thereby necessitating the extension requested?**

   There is sufficient water depth with or without the additional 10-foot protrusion.

3. **Whether or not there are special conditions related to the subject property or waterway which justify the proposed dimensions and location of the proposed boat docking facility?**

   The lot is at the end of a cul-de-sac abutting the open water of the Marco River. It is not a traditionally shaped lot with four lot lines. The lot contains six separate lot lines, with the rear lot line having 3 separate lot lines: an angled 27-foot length, a straight 139 foot length, and another angled 27 feet length. In addition, the location of the lot along the Marco River is more conducive to the protrusion into the adjacent water than other lots on Marco Island.

4. **Whether or not the proposed boat docking facility and moored vessel(s) protrude greater than 25 percent of the width of the navigable waterway, and whether or not a minimum of 50 percent of the waterway width between boat docking facilities and moored vessel(s) on the opposite side of the waterway is maintained in order to ensure reasonable waterway width for navigation?**

   The proposed boat docking facility and moored vessel will not protrude greater than 25% of the width of the navigable waterway and more than a minimum of 50% of the waterway width is open for navigation.

5. **Whether or not the proposed boat docking facility is of the minimum dimensions necessary in order to adequately secure the moored vessel while providing reasonable access to the boat for routine maintenance without the use of excessive deck area?**

   While Staff is not versed in the maintenance of vessels, the applicant has indicated that dimensions are the minimum necessary to adequately moor the vessel.

6. **Whether or not the proposed boat docking facility is of minimal dimensions and located to minimize the impact of view to the channel by surrounding property owners?**

   The City has received objections from two neighbors saying their views will be impacted. They are on each side of the subject property. Based upon staff's review, the neighbors will maintain views of the Marco River. However, certain views important to the neighbors could be partially obstructed.

7. **Whether or not the proposed vessel(s) is in excess of 50 percent of the length of the water frontage on the subject property such that the extension of the boat docking facility may adversely impact the view to the channel by surrounding property owners?**

   The total waterfrontage is 193 feet, and the proposed dock will span 139 feet, well in excess of 50% of the water frontage. As stated above, views of the Marco River will be maintained. However, certain views important to the neighbors could be partially obstructed.

8. **Whether or not the proposed location and design of the boat docking facility and moored vessel(s) in combination such that it may infringe upon the use of neighboring properties, including any existing boat docking facilities?**

   The proposed location, design and extra 10 feet of dock does not appear to infringe upon the use of neighboring properties. The neighboring properties are currently single family. One has a dock and the other has room for a dock should they so choose to construct one.

9. **Whether or not the seagrasses are located within 200 feet of the proposed boat docking facility?**

There are no seagrass beds within 200 feet.

10. Whether or not the proposed dock subject to the manatee protection requirements set forth in section 54-117 of the City's Boat Docking Facilities Code?

This proposal is not subject to the manatee protection requirements since this is not a multi-slip dock with 10 or more slips nor is it a marina.

STAFF RECOMMENDATION AND FINDINGS:

Staff recommends the Planning Board approve this request with the following findings:

1. The proposed dock exceeds the setback requirements as set forth in this article.
2. The lot is at the end of a cul-de-sac abutting the open water of the Marco River. It is not a traditionally shape lot with four lot lines. It contains six separate lot lines, with the rear lot line having 3 separate lot lines: an angled 27-foot length, a straight 139 foot length, and another angled 27 feet length. In addition, the location of the lot is more conducive to the protrusion into the adjacent water than other lots on Marco Island.
3. The proposed boat docking facility and moored vessel will not protrude greater than 25% of the width of the navigable waterway and more than a minimum of 50% of the waterway width is open for navigation.
4. The applicant has indicated that dimensions are the minimum necessary to adequately moor the vessel.
5. Views of the Marco River will be maintained. However, certain views important to the neighbors could be partially obstructed.
6. The proposed location, design and extra 10 feet of dock does not appear to infringe upon the use of neighboring properties. The neighboring properties are currently single family. One has a dock and the other has room for a dock should they so choose to construct one.
7. There are no seagrass beds within 200 feet.
8. This proposal is not subject to the manatee protection requirements since this is not a multi-slip dock with 10 or more slips nor is it a marina.

Daniel J. Smith, AICP

Director of Community Affairs

PF-11

City of Marco Island
Community Development Department
50 Bald Eagle Drive
Marco Island, FL 34145
Phone: 239-389-5000 or FAX: 239-393-0266

BOAT DOCKING FACILITY EXTENSION PETITION

Petition number: **BD-**_____ Date Received: _____

Planner: _____

ABOVE TO BE COMPLETED BY STAFF

Property Owner(s): 986 SUNDROP LLC

Owner's Address: _____

Telephone: _____ Fax: _____

Agent's Name: Zachary W. Lombardo, Esq. - Woodward, Pires & Lombardo, P.A.

Agent's Address: 3200 Tamiami Trail N., Suite 200, Naples, FL 34103

Telephone: (239) 649-6555 Fax: (239) 649-7342

Site Information

Address: 986 Sundrop Court Property ID #: 56942480004

Subdivision: Marco Beach Unit 4 Block: 127 Lot(s): 14

Width of Waterway: 2,785 ft; measured from ☐ plat ☐ survey ☐ visual estimate

Width of Nav. Channel: N/A ft; measured from ☐ plat ☐ survey ☐ visual estimate

Total property water frontage: 193 ft Total proposed protrusion: 40 ft

Setbacks provided: 27 ft Setbacks required: 15 ft, maximum ft

Number and length of vessels to use facility: 1. 130 ft 2. _____ ft 3. _____ Ft

Description of project (# of slips, boatlifts, deck square footage, etc.)

See Attachment 1.

Zoning and Land Use

Property	Zoning	Land Use	Protrusion of Existing Dock Facility
Subject	RSF-3	Single-Family Dwelling	Roughly 20-25 ft
N	N/A	Water	N/A
S	RSF-3	Single-Family Dwelling	Roughly 20-25 ft
E	RSF-3	Single-Family Dwelling	None
W	RSF-3	Single-Family Dwelling	Roughly 20-25 ft

The following criteria, (pursuant to Ordinance 03-) shall be used as a guide by staff in determining its recommendation to The City of Marco Island Planning Board in its decision to approve or deny a particular dock extension request. Please provide a ***narrative*** response to the listed criteria and/or questions. Attach additional pages if necessary.

1. **Does the proposed boat docking facility meet the other standards (setbacks, height, etc.) set forth in Ordinance 03-?**

   See Attachment 1.

2. **Is there sufficient water depth where the proposed vessel(s) is to be located (as a general guide, -4 feet mean low water is deemed to be sufficient) to allow for safe mooring of the vessel?**

   See Attachment 1.

3. **Are there any special conditions related to the subject property or waterway which justify the proposed dimensions and location of the proposed boat docking facility?**

See Attachment 1.

4. **Does the proposed boat docking facility and moored vessel protrude greater than 25% of the width of the navigable waterway and is a minimum of 50% of the waterway width between dock structures/moored vessel(s) on the opposite side of the waterway maintained in order to ensure reasonable waterway width for navigability?**

See Attachment 1.

5. **Is the proposed dock of minimal dimensions necessary in order to adequately secure the moored vessel while providing reasonable access to the boat for routine maintenance without the use of excessive deck area?**

See Attachment 1.

6. **Is the proposed structure of minimal dimensions and located (designed) to minimize the impact of view to the channel by surrounding property owners?**

   See Attachment 1.

7. **Is the moored vessel in excess of 50% of the length of the waterfrontage such that the addition of a dock structure will increase the impact on or negatively impact the view to the waterway by surrounding property owners? (In the case of multi-family developments and public marinas, the 50 percent provision may be exceeded).**

   See Attachment 1.

8. **Will the proposed location and design of the boat docking facility and moored vessel(s) be such that it may infringe upon the use of neighboring properties, including any existing dock structures?**

   See Attachment 1.

10. **Regarding existing benthic organisms in the vicinity of the proposed extension:**

    a. **Are seagrasses located within 200 feet of the proposed dock?**

       See Attachment 1.

b. Is the proposed dock subject to the manatee protection requirements in Sec 10 of Ordinance 00-04?

See Attachment 1.

AFFIDAVIT OF AUTHORIZATION

FOR PETITION NUMBERS(S) 986 Sundrop Court Boat dock extension

I, David B. Curtis (print name), as Manager (title, if applicable) of 986 Sundrop, LLC (company, if applicable), swear or affirm under oath, that I am the (choose one) owner [ ] applicant [✔] contract purchaser [ ] and that:

1. I have full authority to secure the approval(s) requested and to impose covenants and restrictions on the referenced property as a result of any action approved by the County in accordance with this application and the Land Development Code;
2. All answers to the questions in this application and any sketches, data or other supplementary matter attached hereto and made a part of this application are honest and true;
3. I have authorized the staff of Collier County to enter upon the property during normal working hours for the purpose of investigating and evaluating the request made through this application; and that
4. The property will be transferred, conveyed, sold or subdivided subject to the conditions and restrictions imposed by the approved action.
5. We/I authorize Zachary W. Lombardo, Esq. & Woodward, Pires & Lombardo, P.A. to act as our/my representative in any matters regarding this petition including 1 through 2 above.

**Notes:*

- *If the applicant is a corporation, then it is usually executed by the corp. pres. or v. pres.*
- *If the applicant is a Limited Liability Company (L.L.C.) or Limited Company (L.C.), then the documents should typically be signed by the Company's "Managing Member."*
- *If the applicant is a partnership, then typically a partner can sign on behalf of the partnership.*
- *If the applicant is a limited partnership, then the general partner must sign and be identified as the "general partner" of the named partnership.*
- *If the applicant is a trust, then they must include the trustee's name and the words "as trustee".*
- *In each instance, first determine the applicant's status, e.g., individual, corporate, trust, partnership, and then use the appropriate format for that ownership.*

Under penalties of perjury, I declare that I have read the foregoing Affidavit of Authorization and that the facts stated in it are true.

Signature

April 30, 2021
Date

STATE OF FLORIDA
COUNTY OF COLLIER

The foregoing instrument was sworn to (or affirmed) and subscribed before me on April 30, 2021 (date) by David B. Curtis (name of person providing oath or affirmation), as manager who is personally known to me or who has produced _____ (type of identification) as identification.

STAMP/SEAL

BRIAN GILMORE
State of Florida-Notary Public
Commission # GG 235143
My Commission Expires
July 04, 2022

Signature of Notary Public

BOAT DOCK EXTENSION APPLICATION SUBMITTAL CHECKLIST

Required public hearing(s) will not be scheduled until the boat dock extension application package has been deemed by staff to be complete.

_____ Pre-application notes/minutes (Call 389-5013 to schedule a pre-application meeting)

✓ Completed application

✓ Completed Owner/Agent affidavit, signed and notarized

✓ Site plan, drawn to scale, illustrating all of the following:

- ✓ Location map
- ✓ Lot dimensions and land contour of subject property
- ✓ Riparian line(s)
- ✓ Required dock setbacks
- ✓ Configuration and dimensions of decking, boatlifts, boat mooring areas of the (a) existing, (b) proposed, and (c) adjacent boat docking facilities.
- ✓ Water depth survey, completed by a professional Florida engineer, licensed marine contractor, registered surveyor, or other person deemed to be qualified by the Community Development Director or his designee, using the format attached to the application form.

✓ Permit number and Certificate of Completion date for the original construction of existing boat docking facility, if applicable

N/A Resolution number and date of previous boat dock extension requests, if applicable

_____ Application fee (checks should be made payable to "City of Marco Island") in the amount of $1,500.

PUBLIC NOTICE REQUIREMENT: In addition to the fees required herein, all costs of newspaper notices and required notices for public petitions shall be paid in full prior to a scheduled public hearing. If such payment is not received prior to a scheduled public hearing, the petition will be continued and rescheduled. Any additional cost associated with a rescheduled item shall also be paid in full prior to the public hearing. Advertising for public hearings shall be prepared by staff and submitted to the newspapers as required in the Marco Island Land Development Code (LDC). If an application is filed for which a fee is not listed herein, staff shall assess the fee based upon actual time spent reviewing the petition.
Marco Island Code of Ordinances Section 30-8(a). Amended 10/17/2005

As the authorized agent/applicant for this petition, I attest that all of the information indicated on this checklist is included in this submittal package. I understand that failure to include all necessary submittal information may result in the delay of processing this petition.

I understand that, in addition to approval of this dock extension, a building permit is required prior to commencement of construction. I also understand that if the City of Marco Island Planning Board approves this dock extension, an affected property owner may file an appeal within 14 days of the hearing. If I proceed with construction during this time, I do so at my own risk.

Signature of Petitioner or Agent

7/14/21
Date

ZACHARY W. LOMBARDO, ESQ
AS AGENT OF PETITIONER

EST. 1971

WOODWARD, PIRES & LOMBARDO, P.A.

ATTORNEYS AT LAW

MARK J. WOODWARD
Board Certified: Real Estate Law and in Condominium & Planned Development Law

ANTHONY P. PIRES, JR.
Board Certified: City, County, and Local Government Law

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ANTHONY J. DIMORA
Licensed in FL and OH

LENORE T. BRAKEFIELD

CRAIG R. WOODWARD
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Board Certified: Real Estate Law

KENNETH V. MUNDY

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CAMERON G. WOODWARD

ROSS E. SCHULMAN
Licensed in FL and NY

F. SCOTT PAUZAR, III

REPLY TO:

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NAPLES, FL 34103
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239-649-7342 FAX

606 BALD EAGLE DRIVE
SUITE 500
P.O. BOX ONE
MARCO ISLAND, FL 34146
239-394-5161
239-642-6402 FAX

WWW.WPL-LEGAL.COM

July 14, 2021

By Email

City of Marco Island
Community Development Department
gmhelp@cityofmarcoisland.com

Re: 986 Sundrop Court Boat Docking Facility Extension Petition

To the Community Development Department:

This firm, as indicated in the enclosed Owner/Agent affidavit, represents 986 Sundrop, LLC.

Enclosed, as the completed Boat Docking Facility Extension Petition for 986 Sundrop Court, please find:

- The completed application;
- Attachment 1 to the completed application, Site Information and Factors for Boat Docking Facility Extension Petition, with Exhibits,
    - The Exhibits contain the Site Plan, drawn to scale, and meeting the criteria specified in the Application;
- Attachment 2 to the completed application, Additional Requirements,
    - This attachment contains the permit number and the certificate of completion date for the original construction of the existing boat docking facility; and
- The completed Owner/Agent affidavit, signed and notarized.

If you have any questions, please do not hesitate to contact our office at (239) 629-6555. If further information is required or would be helpful, please let us know.

Sincerely,

Zachary W. Lombardo, Esq.

ATTACHMENT 1

Site Information and Factors for Boat Docking Facility Extension Petition

Below is the site information and factor analysis for the Boat Docking Facility Extension Petition for 986 Sundrop, LLC, for the property at 986 Sundrop Court. For reference, exhibits are included and are referenced as Exhibits A, B, and C.

Team:

- Jurisdiction: City of Marco Island
- Engineer: Turrell, Hall & Associates
- Builder: Collier Seawall and Dock
- Surveyor: Court Gregory Surveying, Inc.
- Legal Counsel: Woodward, Pires & Lombardo, P.A.

Site Information:

- 986 Sundrop Court, Marco Island, FL 34145
- Property ID: 56942480004
- Subdivision: Marco Beach Unit 4; Block: 127; Lot 14
- Width of Waterway: 2,785 ft (Calculated from aerial photography)
- Width of Navigable Channel: Not applicable (Proposed dock is not inside channel) *Exh. A, p. 7.*
- Total Property Water Frontage: 193 ft
- Total Proposed Protrusion: 40 ft
- Setbacks provided: 27 ft
- Setbacks required: 15 ft, maximum
- Vessel: 1 vessel that is 130 ft in length

Zoning and Land Use:

- The Subject Property and all surrounding properties are zoned RSF-3. There is no lot to the North, instead it is open water. There are lots to the West, East, and South. The Subject Property and the West and South lots are single-family dwellings and the lot to the East is vacant. The Subject Property and the West and South lots have a current boat docking facility protrusion of roughly 20 to 25 feet.

1. **Does the proposed boat docking facility meet the other standards (setbacks, height, etc.) set forth in Ordinance O3-?**

Yes. The height limitations and setbacks are met. *Exh. A, p. 4.* Additionally, state and federal permits have been applied for and this dock will not be constructed without the issuance thereof, which will require adherence to setbacks of 25 feet, which is significantly greater than the setbacks required by the City of Marco Island. The state Department of Environmental Permit number is 0402850-001. The federal Army Corps of Engineers Permit number is SAJ-2021-01295. Further, due to this dock's proposed location, a submerged land lease is being applied for with the State of Florida.

2. **Is there sufficient water depth where the proposed vessel(s) is to be located (as a general guide, -4 feet mean low water is deemed to be sufficient) to allow for safe mooring of the vessel?**

Yes. There is sufficient water depth. The depth on the vessel-side of the dock is -7.7 feet at the shallowest, which is 3.7 feet deeper than what is listed as the general guide of sufficiency. The depth surrounding the proposed dock, on the non-vessel side, is -5.3 feet at the shallowest, which is 1.3 feet deeper than what is listed as the general guide of sufficiency. *Exh. A, p. 5.*

3. **Are there any special conditions related to the subject property or waterway which justify the proposed dimensions and location of the proposed boat docking facility?**

Yes. There are special conditions related to the subject property and waterway.

Conditions related to the subject property:

- Unlike the vast majority of waterfront lots within the City of Marco Island, this property is not on a canal. Instead, it is on the Marco River. *Exh. A., p. 3.*
- The lot is not a side or a corner lot along a narrow waterway, instead the lot is a peninsular lot that sits on a waterway such that the lot's riparian lines extend outwards from the lot in an increasing triangle. Pursuant to section 54-111(a)(1) of the Land Development Code, the combination of a boat docking facility and a moored vessel can by right extend 30 feet out into the waterway. *Exhibit B.*

Conditions related to the subject waterway:

- Unlike the canals that make up the vast majority of waterways in the City of Marco Island, the Marco River is wider and deeper. Canals in Marco, as shown in the diagrams incorporated in the City Code are often 100 feet wide or less. The Marco River, where this lot is located, is over 2,700 feet wide.

4. **Does the proposed boat docking facility and moored vessel protrude greater than 25% of the width of the navigable waterway and is a minimum of 50% of the waterway width between dock structures/moored vessel(s) on the opposite side of the waterway maintained in order to ensure reasonable waterway width for navigability?**

The boat docking facility and moored vessel do not protrude greater than 25% of the waterway and there is more than 50% of the width of the waterway between the vessel and the other side of the waterway. The waterway is over 2,785 feet

wide, which is over 27 times the width of most canals in the City of Marco. The dock extends under 1.4% into the waterway leaving over 98.6% of the waterway available. *Exh. A., p. 3.* Because the dock is not within the navigable channel, the dock does not impact navigability.

5. **Is the proposed dock of minimal dimensions necessary in order to adequately secure the moored vessel while providing reasonable access to the boat for routine maintenance without the use of excessive deck area?**

Yes. The proposed dock is of minimal dimensions necessary in order to adequately secure the moored vessel. *Exh. A, p. 4.* The current dock wraps around the corners of the property. This dock will not do that.

6. **Is the proposed structure of minimal dimensions and located (designed) to minimize the impact of view to the channel by surrounding property owners.**

Yes. The proposed dock, unlike the current dock, will have no dock elements that extend around the corner of the property. This leaves the view of the surrounding properties completely unobstructed. *Exh. A, pp. 3–4.* This is an improvement from what is currently on the property and improves the current view for the surrounding properties. *Exh. A, p. 2.*

7. **Is the moored vessel in excess of 50% of the length of the waterfrontage such that the addition of a dock structure will increase the impact on or negatively impact the view to the waterway by surrounding property owners? (in the case of multi-family developments and public marinas, the 50 percent provision may be exceeded).**

The proposed moored vessel will be greater than 50% of the length of the waterfrontage, but it will not increase the impact on or negatively impact the view to the waterway by surrounding property owners. This is because the surrounding property owners are adjacent to this property at angles, as opposed to being on the same line, and because this property is not on a canal. *Exh. A, p. 3.* In fact, as noted above, the views will be improved.

This is not a multi-family development or a public marina.

8. **Will the proposed location and design of the boat docking facility and moored vessel(s) be such that it may infringe upon the use of neighboring properties, including any existing dock structures?**

No. The proposed location and design of the boat docking facility and moored vessel will not infringe upon the use of neighboring properties, including existing dock structures.

10. **Regarding existing benthic organisms in the vicinity of the proposed extension:**

a. **Are seagrasses located within 200 feet of the proposed dock?**

No. There are no seagrasses located within 200 feet of the proposed dock.

b. **Is the proposed dock subject to the manatee protection requirements in Sec. 10 of Ordinance 00-04?**

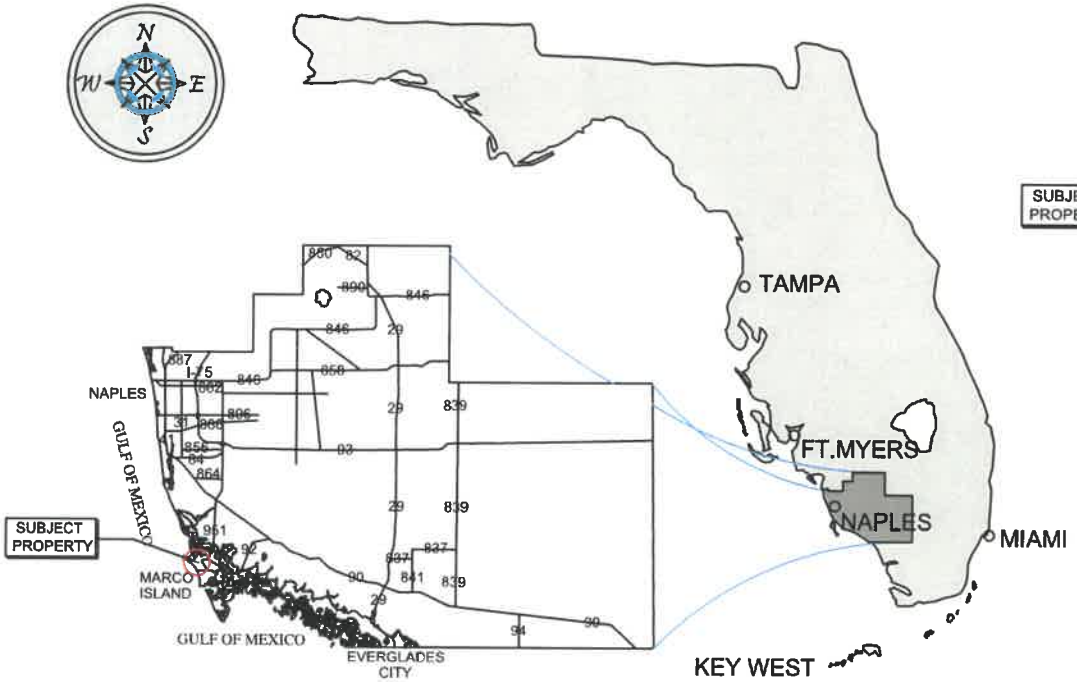
Section 10 of Ordinance 00-04 is not applicable to this application. Nevertheless, a manatee mortality map is included as Exhibit C for information purposes only.

986 Sundrop, LLC
Woodward, Pires & Lombardo, P.A.

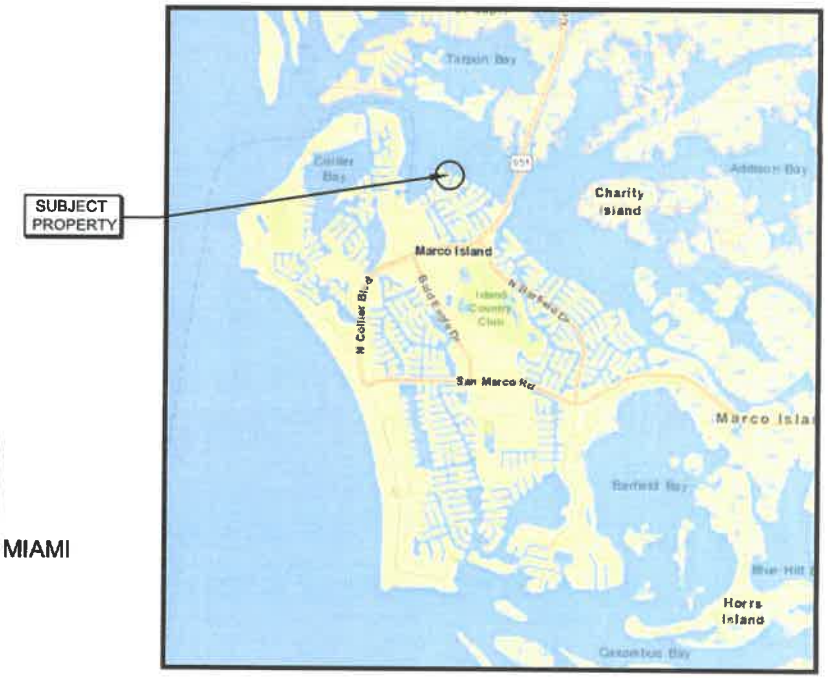
Exhibit A

p:\21038.00 curtis-986 sundrop ct\CAD\PERMIT-STATE\21038-STATE.dwg LOCATION MAP 5/27/2021

STATE OF FLORIDA



COLLIER COUNTY



VICINITY MAP

SITE ADDRESS:
<> 986 SUNDROP CT
MARCO ISLAND, FL 34145

<> LATITUDE: N 25.965590
<> LONGITUDE: W -81.719405

NOTES:
<> THESE DRAWINGS ARE FOR PERMITTING PURPOSES ONLY AND ARE NOT INTENDED FOR CONSTRUCTION USE.

COUNTY AERIAL

Turrell, Hall & Associates, Inc.
Marine & Environmental Consulting
3584 Exchange Ave. Naples, FL 34104-3732
Email: tuna@thanaples.com Phone: (239) 643-0166 Fax: (239) 643-6632

986 SUNDROP CT

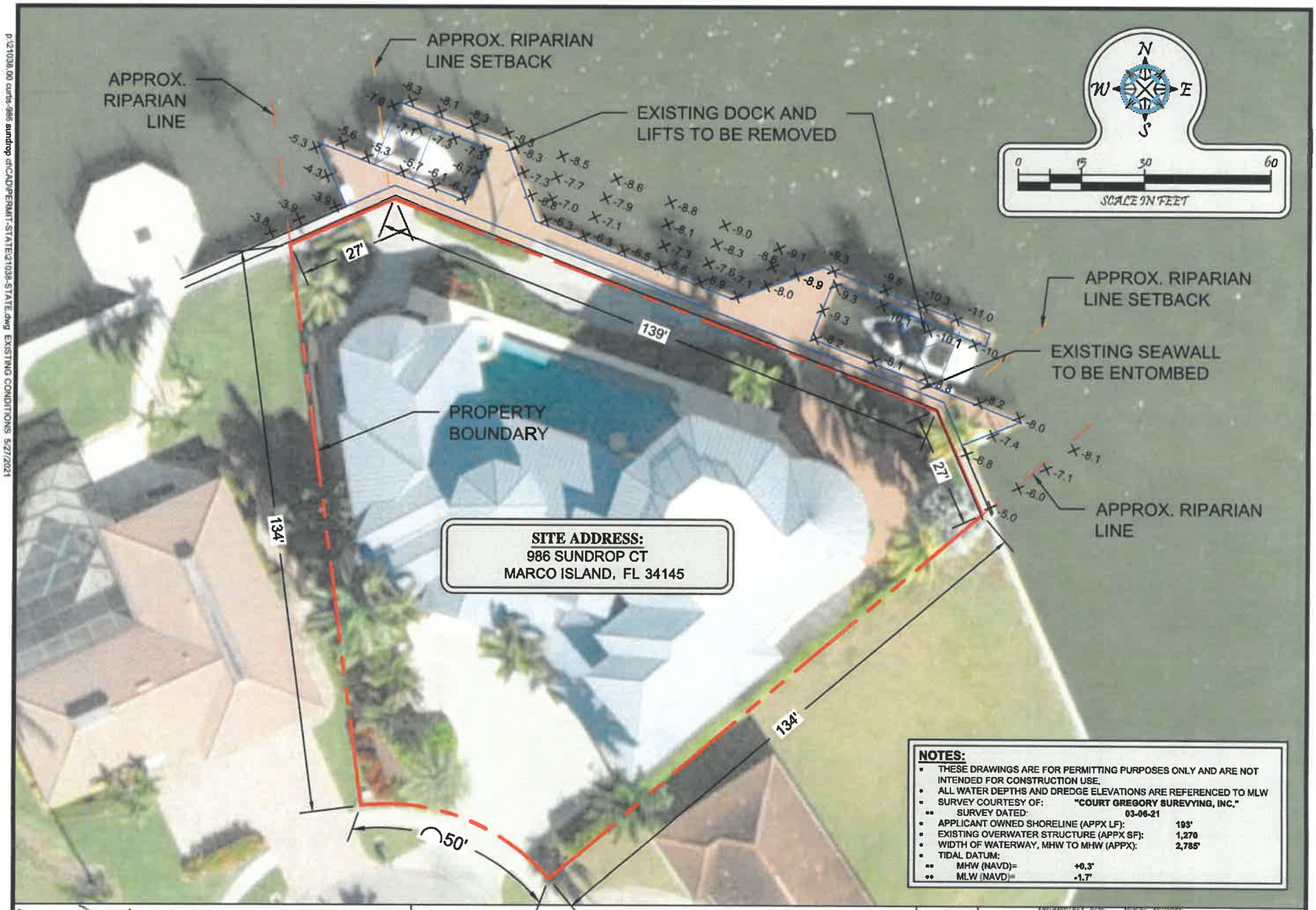
LOCATION MAP

RY NO. 5875

THESE DRAWINGS ARE FOR PERMITTING PURPOSES ONLY AND ARE NOT INTENDED FOR CONSTRUCTION USE.

		REV.	BY	DATE	CK. BY	CHANGED
DESIGNED:	JR	1.	-	-	-	-
DRAWN BY:	RMJ	2.	-	-	-	-
CREATED:	04-06-21	3.	-	-	-	-
JOB NO.:	21038.00	4.	-	-	-	-
SHEET NO.:	01 OF 06	5.	-	-	-	-

SECTION- 16 TOWNSHIP- 52S RANGE- 26E



NOTES:

- THESE DRAWINGS ARE FOR PERMITTING PURPOSES ONLY AND ARE NOT INTENDED FOR CONSTRUCTION USE.
- ALL WATER DEPTHS AND DREDGE ELEVATIONS ARE REFERENCED TO MLW
- SURVEY COURTESY OF: "COURT GREGORY SUREVYING, INC."
  - SURVEY DATED: 03-06-21
- APPLICANT OWNED SHORELINE (APPX LF): 193'
- EXISTING OVERWATER STRUCTURE (APPX SF): 1,270
- WIDTH OF WATERWAY, MHW TO MHW (APPX): 2,785'
- TIDAL DATUM:
  - MHW (NAVD)= +0.3'
  - MLW (NAVD)= -1.7'

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986 SUNDROP CT

EXISTING CONDITIONS

RY NO. 5875

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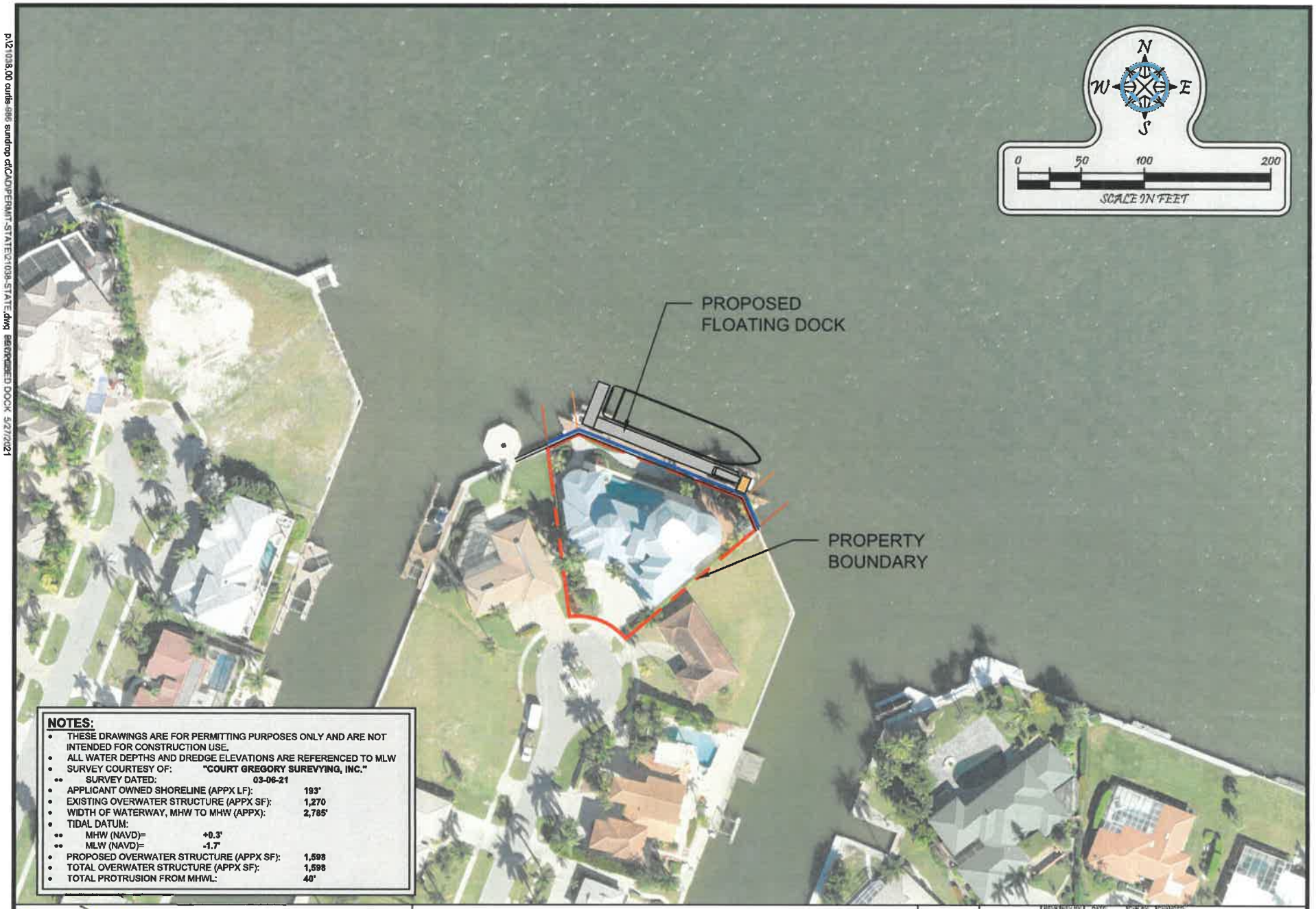
		REV.	REVISION	DATE	PER BY	CHANGES
DESIGNED:	JR	1.	-	-	-	-
DRAWN BY:	RMJ	2.	-	-	-	-
CREATED:	04-06-21	3.	-	-	-	-
JOB NO.:	21038.00	4.	-	-	-	-
SHEET NO.:	02 OF 08	5.	-	-	-	-

SECTION- 16 TOWNSHIP- 52S RANGE- 26E

p:\21038.00 curtis-986 sundrop ct\CAD\PERMIT-STATE\21038-STATE.dwg EXISTING CONDITIONS 5/27/2021



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- EXISTING OVERWATER STRUCTURE (APPX SF): 1,270
- WIDTH OF WATERWAY, MHW TO MHW (APPX): 2,785'
- TIDAL DATUM:
  - MHW (NAVD)= +0.3'
  - MLW (NAVD)= -1.7'
- PROPOSED OVERWATER STRUCTURE (APPX SF): 1,598
- TOTAL OVERWATER STRUCTURE (APPX SF): 1,598
- TOTAL PROTRUSION FROM MHWL: 40'

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Marine & Environmental Consulting
3584 Exchange Ave. Naples, FL 34104-3732
Email: tuna@thanaples.com Phone: (239) 643-0166 Fax: (239) 643-6632

986 SUNDROP CT

PROPOSED DOCK

PY NO. 5875

THESE DRAWINGS ARE FOR PERMITTING PURPOSES ONLY AND ARE NOT INTENDED FOR CONSTRUCTION USE.

		REV	REV BY	DATE	CHK BY	COMMENT
DESIGNED:	JR	1.	-	-	-	-
DRAWN BY:	RMJ	2.	-	-	-	-
CREATED:	05-27-21	3.	-	-	-	-
JOB NO.:	21038.00	4.	-	-	-	-
SHEET NO.:	03 OF 08	5.	-	-	-	-

SECTION- 16 TOWNSHIP- 52S RANGE- 26E

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p:\21038.00 curtis-986 sundrop ct\CAD\PERMIT-STATE\21038-STATE.dwg BB2PROPOSED DOCK WITH DIMENSIONS 5/27/2021

APPROX. RIPARIAN LINE SETBACK

APPROX. RIPARIAN LINE

PROPOSED FLOATING DOCK (1,494 SF)

10'

40'

36'

26'

N

W

E

S

0 10 20 40

SCALE IN FEET

BB 06

130' X 26' VESSEL

AA 06

PROPOSED 6' X 20' GANGWAY

10'

120'

130'

EXISTING SEAWALL

8'

13'

PROPERTY BOUNDARY

PROPOSED FIXED ACCESS DOCK (104 SF)

NEW VINYL SEAWALL (TO BE PLACED 18" FROM FACE OS EXISTING SEAWALL)

APPROX. RIPARIAN LINE SETBACK

APPROX. RIPARIAN LINE

NOTES:

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  - SURVEY DATED: 03-06-21
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- TOTAL OVERWATER STRUCTURE (APPX SF): 1,598
- TOTAL PROTRUSION FROM MHWL: 40'

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Email: tuna@thanaples.com Phone: (239) 643-0166 Fax: (239) 643-6632

986 SUNDROP CT

PROPOSED DOCK WITH DIMENSIONS

RY NO. 5875

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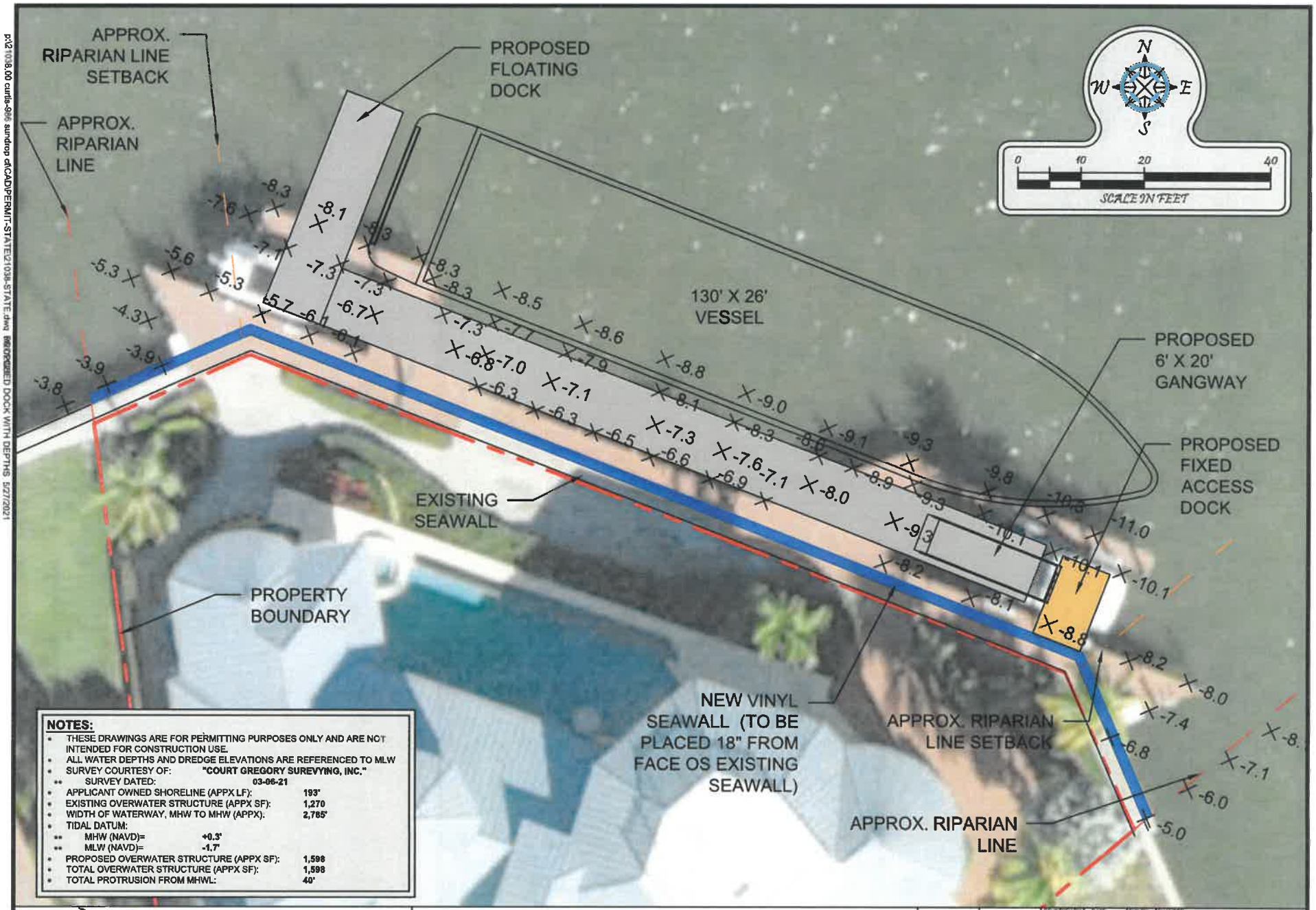
		REV.	REV BY	DATE	CHK BY	CHANGES
DESIGNED:	JR	1.	-	-	-	-
DRAWN BY:	RMJ	2.	-	-	-	-
CREATED:	04-06-21	3.	-	-	-	-
JOB NO.:	21038.00	4.	-	-	-	-
SHEET NO.:	04 OF 06	5.	-	-	-	-

SECTION- 16 TOWNSHIP- 52S RANGE- 26E



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- WIDTH OF WATERWAY, MHW TO MHW (APPX). 2,765'
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  - MLW (NAVD)= -1.7'
- PROPOSED OVERWATER STRUCTURE (APPX SF): 1,598
- TOTAL OVERWATER STRUCTURE (APPX SF): 1,598
- TOTAL PROTRUSION FROM MHWL: 40'

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986 SUNDROP CT

PROPOSED DOCK WITH DEPTHS

RY NO. 5875

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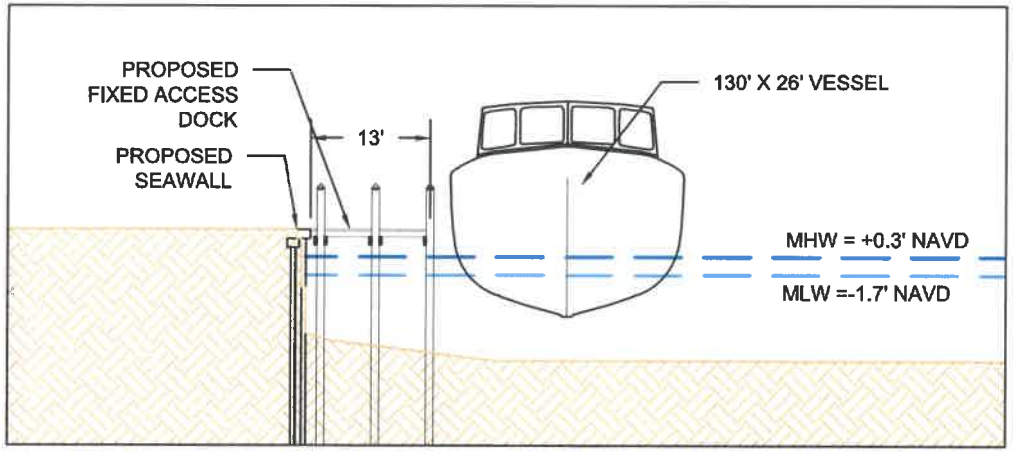
		SCALE	REVISED	DATE	DRN BY	CHANGES
DESIGNED:	JR	1.	-	-	-	-
DRAWN BY:	RMJ	2.	-	-	-	-
CREATED:	04-06-21	3.	-	-	-	-
JOB NO.:	21038.00	4.	-	-	-	-
SHEET NO.:	05 OF 06	5.	-	-	-	-

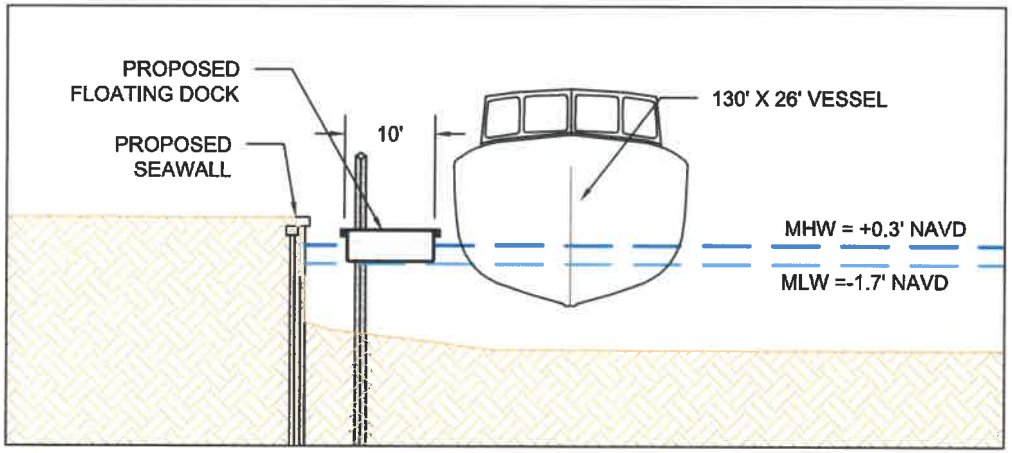
SECTION- 16 TOWNSHIP- 52 S RANGE- 26 E

p:\21038.00 curtis-986 sundrop d\CAD\PERMIT-STATE\21038-STATE.dwg 986 PROPOSED DOCK WITH DEPTHS 5/27/2021



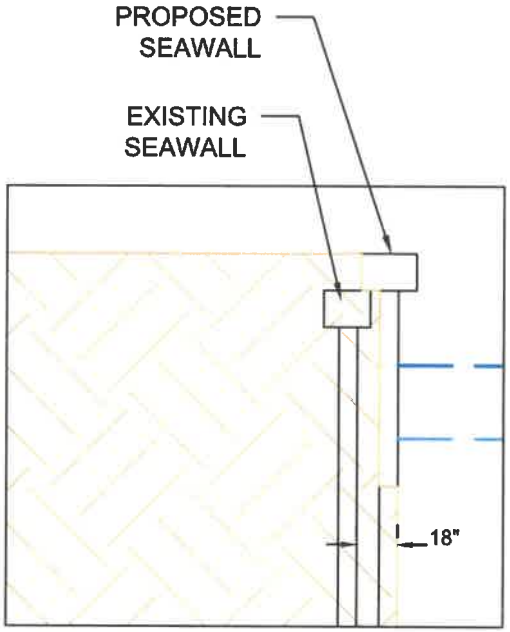
CROSS SECTION AA

SCALE: 1" = 20'



CROSS SECTION BB

SCALE: 1" = 20'



TYPICAL SEAWALL CROSS SECTION

SCALE: 1" = 5'

Turrell, Hall & Associates, Inc.
Marine & Environmental Consulting
3584 Exchange Ave. Naples, FL 34104-3732
Email: tuna@thanaples.com Phone: (239) 643-0166 Fax: (239) 643-6632

RY NO. 5875

986 SUNDROP CT

CROSS SECTIONS

THESE DRAWINGS ARE FOR PERMITTING PURPOSES ONLY AND ARE NOT INTENDED FOR CONSTRUCTION USE

		REVISION NO.	REVISED BY	DATE	CHK BY	REVISED
DESIGNED:	JR	1.	-	-	-	-
DRAWN BY:	RMJ	2.	-	-	-	-
CREATED:	04-06-21	3.	-	-	-	-
JOB NO.:	21038.00	4.	-	-	-	-
SHEET NO.:	06 OF 06	5.	-	-	-	-

SECTION- 16 TOWNSHIP- 52 S RANGE- 26 E

p:\21038.00 curtis-986 sundrop ct\CAD\PERMIT-STATE\21038-STATE.dwg CROSS SECTIONS 5/27/2021

Turrell, Hall & Associates, Inc.
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Email: tuna@thanaples.com Phone: (239) 643-0166 Fax: (239) 643-6632

986 SUNDROP CT
CHANNEL NAVIGATION MAP

DRAWN BY:	RMJ	REVISION:	SCALE:	1"=1,000'
CREATED:	05-27-21	N/A	FILE PATH:	
JOB NO.:	21038	N/A	P:\21038.00 Curtis-986 Sundrop Ct\GIS\21038-ChannelMap.mxd	
SHEET:	01 OF 01	N/A		

SECTION- 16 TOWNSHIP- 52S RANGE-26E

986 Sundrop, LLC
Woodward, Pires & Lombardo, P.A.

Exhibit B

PROTRUSION LIMITATIONS FOR BOAT DOCKING FACILITIES
(Waterway Intersections and Bay Areas)

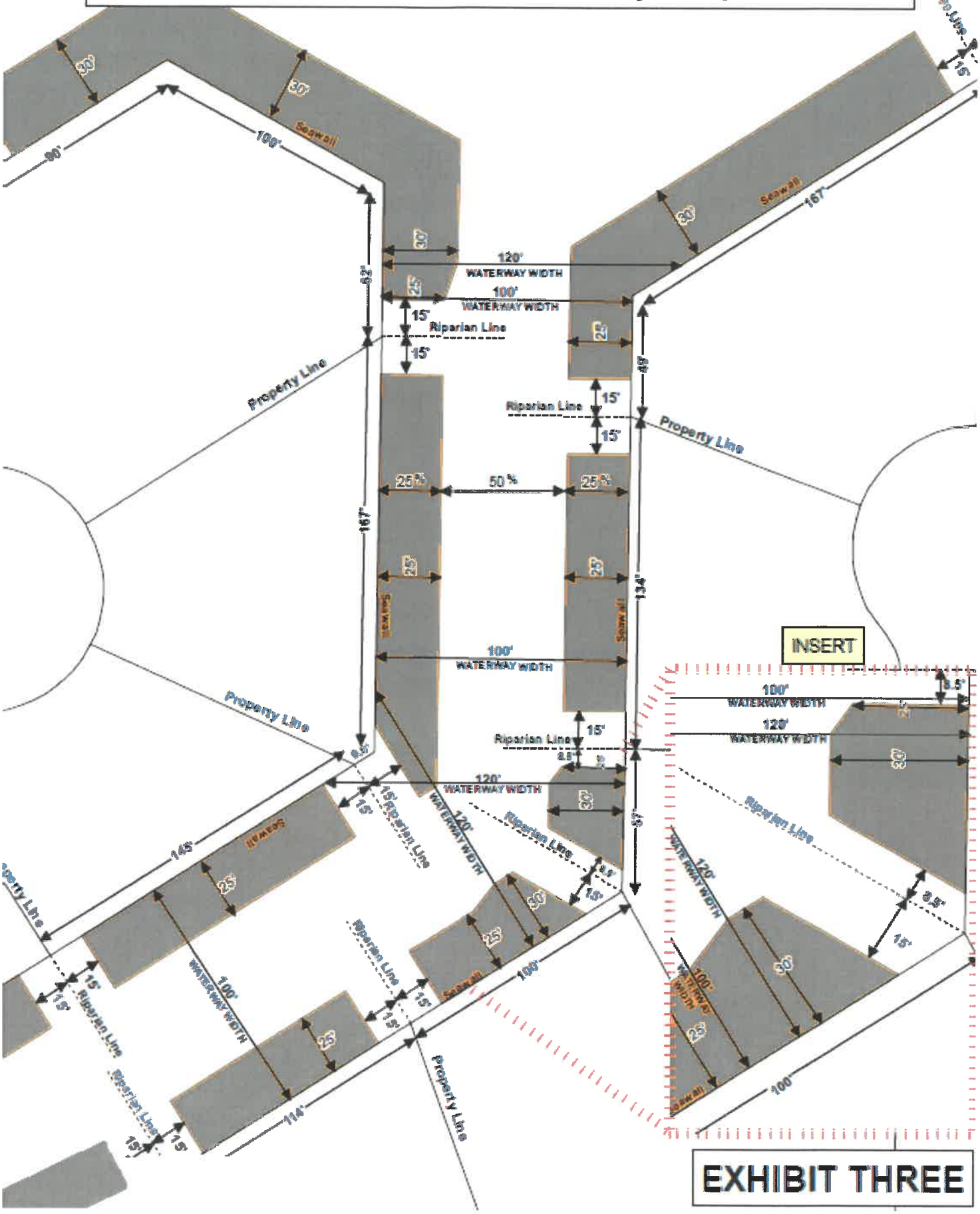
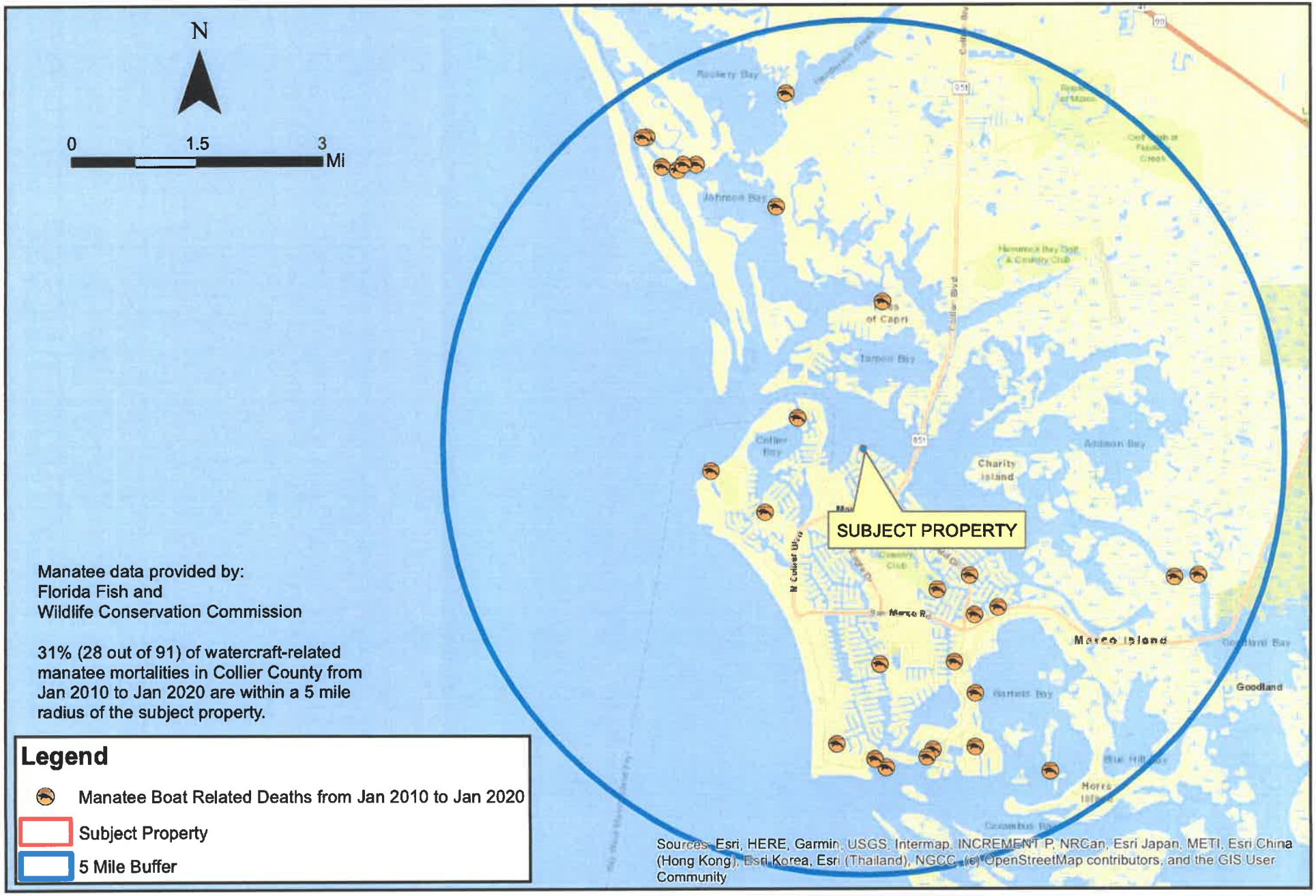


EXHIBIT THREE

986 Sundrop, LLC
Woodward, Pires & Lombardo, P.A.

Exhibit C



Turrell, Hall & Associates, Inc.
Marine & Environmental Consulting
3484 Exchange Ave. Suite B. Naples, FL 34104-3732
Email: tuna@thanaples.com Phone: (239) 643-0166 Fax: (239) 643-6632

986 SUNDROP CT
MANATEE MORTALITY MAP

DRAWN BY:	RMJ	REVISION:	SCALE:	1"=7,920'
CREATED:	06-01-21	N/A	FILE PATH:	
JOB NO.:	21038	N/A	P:\21038.00 Curtis-986 Sundrop Ct\GIS\21038-ChannelMap.mxd	
SHEET:	01 OF 01	N/A		

SECTION- 16 TOWNSHIP- 52S RANGE-26E

ATTACHMENT 2

Additional Requirements

Permit number and certificate of completion date for the original construction of any existing *boat docking* facility, if applicable.

The current, existing boat docking facility was built by a prior owner under permit number 003759. The certification of completion date was June 19, 2001.

Resolution number and date of previous *boat dock* extension, protrusion or encroachment into the riparian setback if applicable.

Not applicable.

Compliance with Land Development Code

This application is consistent with the land development code of the City of Marco Island.

Compliance with Comprehensive Plan

This application is consistent with the comprehensive plan of the City of Marco Island.

Specifically, the following applicable objectives are satisfied:

- Objectives 1.1 and 1.6 of the Future Land Use Element, as well as the entire Future Land Use Element is met because the proposed use will remain the same. The current use is consistent with the designation for the Subject Property shown on the future land use map as "low density residential".
    - This application does not seek to increase the density or the necessary levels of service at the Subject Property.
- The Transportation Element does not apply.
- The Housing Element does not apply.
- The Infrastructure Element does not apply.
- Objectives 1.5 and 2.2 of the Conservation and Coastal Management Element, as well as the entire Conservation and Coastal Management Element is met because an Environmental Resource Permit is being applied for with the Department of Environmental Protection.

- The Parks and Open Space Element does not apply.
- The Intergovernmental Cooperation Element does not apply.
- The Capital Improvements Element does not apply.

LETTER OF OBJECTION

Gary & Lorraine McBride
Property Owners of:
980 Sundrop Court
Marco Island, FL 34145

July 25, 2021

VIA CERTIFIED MAIL

Marco Island Planning Board
Building Services Division
50 Bald Eagle Dr.
Marco Island, FL 34145

Re: Objection to Boat Dock Extension Application for 986 Sundrop Ct., Marco Island, FL, 34145, Folio No. 56942480004 – Reference No. BD-21-000177

To Board Members Swartz, Bailey, Vergo, Honig, Fahringer, Rivera, and Hogan:

We are homeowners of 980 Sundrop Court, Marco Island, FL 34145 and have lived at this property peacefully for years. This house was purchased by our family in the 90s and we have long enjoyed the views of the famous Marco Bridge, Marco River, and surrounding waterways. This stands to be significantly interrupted by petitioner's proposed dock extension to accommodate his 130-foot mega-yacht.

Chapter 54, Article IV of the Marco Island Code of Ordinances regulates boat docking facilities on Marco Island. § 54-110 only permits boat docking facilities when they comply with the criteria set forth in the statute. When a property owner seeks a boat dock extension, protrusion, or encroachment, he is not automatically entitled to a permit. The property owner bears the burden of special justification for an exemption. *See* § 54-115(b)(1) ("Petitioner must demonstrate justification for extension, protrusion or encroachment into the riparian setback requested and/or special conditions relative to the subject property").

The City Council expressly stated one of the purposes of its enactment of the statute regulating boat docking facilities: "It is the intent and purpose of this article to provide for…the use and view of the waterway by surrounding property owners." § 54-100. The Council expressly ensured that a permit for a boat dock facility might not issue when the views of surrounding property owners were encumbered.

Here, the application set forth by petitioner 986 Sundrop Court, Marco Island, FL 34145, Folio No. 56942480004 – Reference No. BD-21-000177 asks for an exemption to the criteria set forth in the statute – something petitioner is not automatically entitled to by right. Petitioner has not carried his burden to demonstrate that any special condition of the property justifies an exemption. *See* § 54-115(b)(1) (petitioner must show "special conditions relative to the subject property"); *see also* § 54-115(f)(3) (mandating the planning board consider "whether there are special conditions related to the subject property or waterway which justify the proposed dimensions and location of the proposed boat docking facility"). Petitioner wants a grand dock for his mega-yacht. However, a desire to have such a dock to facilitate a mega-yacht is not a

sufficient justification. If the statute allowed an exemption whenever a property owner had a large boat, the burden of the petitioner would almost always be met and this interpretation would render § 54-115(b)(1)'s special justification requirement futile, something the Council did not intend. Importantly, the statute requires "special conditions *related to the subject property*." *See* § 54-115(f)(3). Petitioner has identified no special condition of his property requiring such a grand dock that exceeds the standard limit by 15 feet. Petitioner does not demonstrate that other docking facilities in Marco Island are unable to house his mega-yacht and, even if other facilities were not so able, this circumstance would still not carry his burden.

In addition to failing to carry his burden, the Board must also consider the effect the proposed boat docking facility and mega-yacht would have on our view as surrounding property owners. *See* § 54-115(f)(6) (mandating the planning board consider "whether or not the proposed boat docking facility is of minimal dimensions and located to minimize the impact of view to the channel by surrounding property owners"); *see also* § 54-115(f)(7) (mandating the planning board consider the "adverse[] impact [to] the view to the channel by surrounding property owners" due to a proposed vessel that is in excess of 50 percent of the length of the water frontage). Our view would be diminished because the proposed dock with its associated mega-yacht (that is in excess of 50 percent of the length of the water frontage) would take away the view from our house and from our own dock. *See generally* § 54-115 (acknowledging harm to surrounding property owners' views in general, not limited to views from their houses). We have lived at this property for decades and bought the property in part because of its view of the Marco Island Bridge and the associated waterways. This proposed dock with its 130-foot long, 26-foot wide mega-yacht would substantially limit the view from our property, especially from our dock, which our late mother had built to ensure we would be able to see the Bridge from our property. The Council has indicated that limitations on surrounding property owners' views is a sufficient reason in and of itself to deny a permit, and we ask the Board to recognize the prejudice that would be caused to us (and others) from this proposed boat docking facility and the associated mega-yacht. *See* § 54-115(f)(7) (recognizing that the adverse impact of a proposed vessel, in addition to the dock itself, on surrounding property owners' views).

We respectfully ask the Board to deny the permit. We are not difficult neighbors; we are merely trying to preserve the view we have worked so hard to enjoy and have enjoyed for so many years. It is in the public interest that the views of peaceful property owners are not trampled by mega-yachts and their docks.

Sincerely,

Lorraine Kay McBride

Gary Lee McBride

McBride
980 Sundrop CT
Marco Island, FL 34145

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RECEIVED
AUG 16 2021
CITY OF MARCO ISLAND

Marco Island Planning Board
50 Bald Eagle DR
Marco Island FL 34145

34145-352850

ADDENDUM TO:
MCBRIDE LETTER OF OBJECTION

Gary & Lorraine McBride
Property Owners of:
980 Sundrop Court
Marco Island, FL 34145

August 25, 2021

VIA ELECTRONIC MAIL

Marco Island Planning Board
50 Bald Eagle Dr.
Marco Island, FL 34145

Re: Addendum to Objection to Boat Dock Extension Application for 986 Sundrop Ct., Marco Island, FL, 34145, Folio No. 56942480004 – Reference No. BD-21-000177

To the Planning Board Members:

This addendum is to provide additional support in objection to the application set forth by petitioner 986 Sundrop Court, Marco Island, FL 34145, Folio No. 56942480004 – Reference No. BD-21-000177 seeking an exemption from the standard dimensional requirements of § 54-111 to build a dock that would house a 130-foot long mega-yacht.

First, petitioner makes the argument that because the boat dock would be at the end of a 2000-foot channel (the Marco River), it should be able to do build a dock for a mega-yacht. It claims this is a "special condition relative to the subject property" in line with § 54-115(b)(1). The problem with this argument is that it goes too far. This would allow any owner of a property at the end of a canal to build whatever kind of boat dock he or she pleases. When the City Council adopted this statute, the canals existed, yet they did not make any legislative exemption for lots at the end of canals. They enacted the dimensional requirements of § 54-111 for all proposed boat docks on the island. They provided a failsafe in § 54-115 if a specific lot had a strange or unique circumstance that required it to have an exemption. Even then, the presumption is that all property owners must comply with § 54-111 for a boat docking facility. That petitioner has a property at the end of a canal is not enough to carry his burden that there is a "*special* condition related to the subject property or waterway which justif[ies] the proposed dimensions and location of the proposed boat docking facility." § 54-115(f)(3) (emphasis added). If petitioner thinks property owners at the end of canals on larger waterways should be allowed to build the docks of their choosing, it should suggest a legislative amendment to the Boat Docking Facilities Code.

Second, we emphasize the point that our views will be diminished. *See* Exhibit A (photographs showing current views). The dock and associated mega-yacht would encumber this view of the Bridge and the waters under and near the Bridge. *See* § 54-115(f)(7) (mandating the Board consider the views that may be adversely affected from significantly large vessels). In passing the Code, the City Council expressly mandated the Planning Board take into serious

account the diminished views of surrounding property owners, especially from abnormally large vessels greater than 50% of the length of the water frontage. *See id.* The Code does not limit what views are important enough for recognition, but rather it recognizes that all diminished views from the surrounding property owners' property should be considered, even if it is not a total view loss. *See* § 54-100 ("It is the intent and purpose of this article to provide for…the use and view of the waterway by surrounding property owners."). In this case, *both* directly surrounding property owners strenuously object on the grounds that their views will be diminished. Other property owners likely object as well, but, because it is summer time when many residents are up north, we have not been able to get in touch with all the property owners within 300 feet. It is likely that the notices sent to these property owners informing them about this meeting are sitting at the Post Office because many property owners are up north.

Third, our property values will be diminished by this obstruction of our view. *See* Mauricio Rodriguez, Ph.D., *Quantifying the Value of a View in Single-Family Housing Markets,* at 603, http://sbuweb.tcu.edu/mrodriguez/research/viewppr.pdf (conducting a multiple regression analysis and finding "a good view adds about 8% to the value of a single-family house"); *The Day, How much value does a good view add to your home?,* https://www.theday.com/article/20141205/BIZ04/312059990 ("Water views are considered particularly valuable, with the site suggesting that these can increase a home's value anywhere from 15 percent to 80 percent."); Marilyn Lewis, MarketWatch, "*This is how much a home's view is worth*" https://www.marketwatch.com/story/this-is-how-much-a-homes-view-is-worth-2018-05-09 (discussing how unobstructed views are desired and how obstructions and risks that views are unprotected decrease property values). Not only will our view be obstructed, but it will be obstructed by an unsightly mega-yacht. The Planning Board should not approve the request because doing so would be diminishing our property values, which is not respectful of our rights. *See* § 30-2 (explaining that the purpose of the land development code is to "respect [the] rights of private property owners"); § 54-115(j-k) (explaining that Chapter 54 should be read consistently with the standards in Chapter 30).

Fourth, there is a conflict with the 2009 Comprehensive Plan, Section V (Conservation & Coastal Management Element), Goal 3 because there is a risk of property loss if a hurricane hits the island with a mega-yacht directly beside our property and our boat dock.

Fifth, the Marco Island City Council, in both the 2009 Comprehensive Plan and proposed 2021 Comprehensive Plan, has stated that it desires to have a small-town feel. These words should not merely be adjectives in a dormant document, but should be brought into reality, here and now. Allowing a mega-yacht to be sheltered at private property rather than at a marina is the antithesis of a small-town feel. Marco Island is not the French Riviera and, as the City Council has recognized, it should not so become.

Sixth, we emphasize that it is the burden of petitioner to prove justification for the boat dock extension. *See* § 54-115(b)(1) ("Petitioner *must* demonstrate justification…") (emphasis added). It is not our burden. If there are equal arguments on both sides, the application must not be granted as the burden has not been carried.

For all of the foregoing reasons, we humbly request that the Board deny the application.

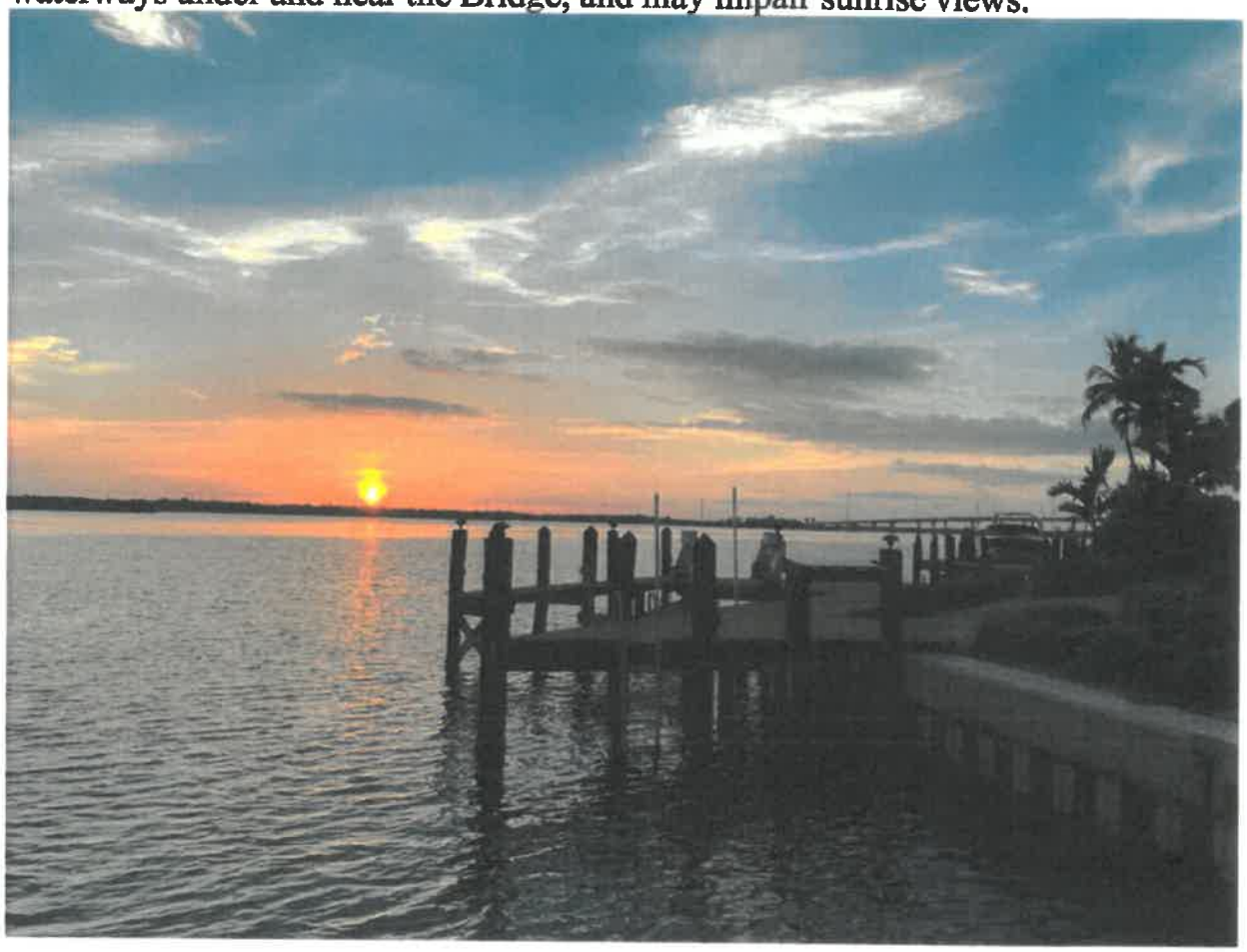
Sincerely,

Lorraine K. McBride

Gary L. McBride

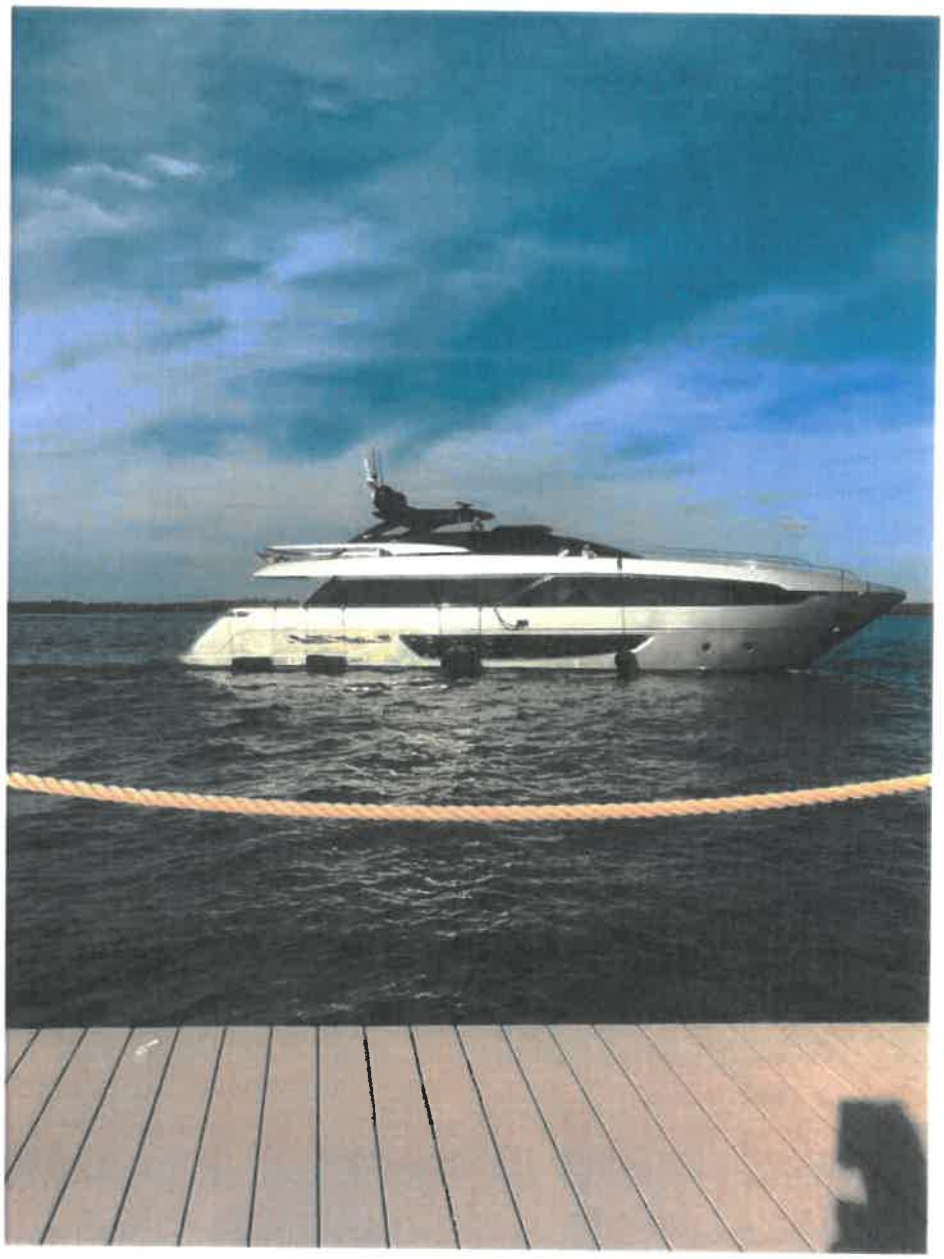
EXHIBIT A

Photograph 1: The view looking towards the Marco Bridge and surrounding waterways. The proposed yacht would adversely affect our view of the Bridge, the waterways under and near the Bridge, and may impair sunrise views.



Photograph 2: The current view from the pool deck. We see the current boat, but it does not significantly diminish our view. A mega-yacht would block a significant portion of outward and rightward views.

Photograph 3: The petitioner's current yacht, which is being replaced with a larger mega-yacht.



LETTER OF OBJECTION

Rajani Thangavelu
Property Owner of:
983 Sundrop Court
Marco Island, FL 34145

August 20, 2021

Marco Island Planning Board
50 Bald Eagle Dr.
Marco Island, FL 34145

Re: Objection to Boat Dock Extension Application for 986 Sundrop Ct., Marco Island, FL, 34145, Folio No. 56942480004 – Reference No. BD-21-000177

To Board Members Finkle, Bailey, Vergo, Honig, Fahringer, Rivera, and Hogan:

I am the original homeowner of 983 Sundrop Court, Marco Island, FL 34145 since 1975 and have lived at this property peacefully for years. I write to object to the proposed dock extension application by petitioner 986 Sundrop Court, Marco Island, FL 34145, Folio No. 56942480004 – Reference No. BD-21-000177.

The dock and associated mega-yacht will significantly trample my view, especially the left view from my property, which looks out to the Marco River. My old mother, aged 99, seated in her wheel chair, enjoys watching the view of Marco River from the house, including the dolphins and boats that go by. She often would count the number of boats passing by. Her ability to do this would be encumbered by this proposed boat dock which extends unreasonably beyond the permitted limit. My property value will also be significantly affected. I refer the Board to the reasons in the McBride (Lorraine Kay McBride and Gary Lee McBride of 980 Sundrop Ct. owners) Letter of Objection (dated July 25, 2021), which sets out statutory reasons why the Board should not grant the permit.

Most importantly, allowing a mega-yacht on the end of a canal is not what Marco Island is, and the Board should not give its stamp of approval for a change to the character of the island. It is the very purpose of the Board, as listed on its website, "to enhance the quality of life for residents and visitors on Marco Island while managing growth and development and protecting the island's tropical *small town character*." (emphasis added). To maintain the island's small town character, the Board should deny the application for a dock to house a mega-yacht.

Sincerely,

Rajani Thangavelu

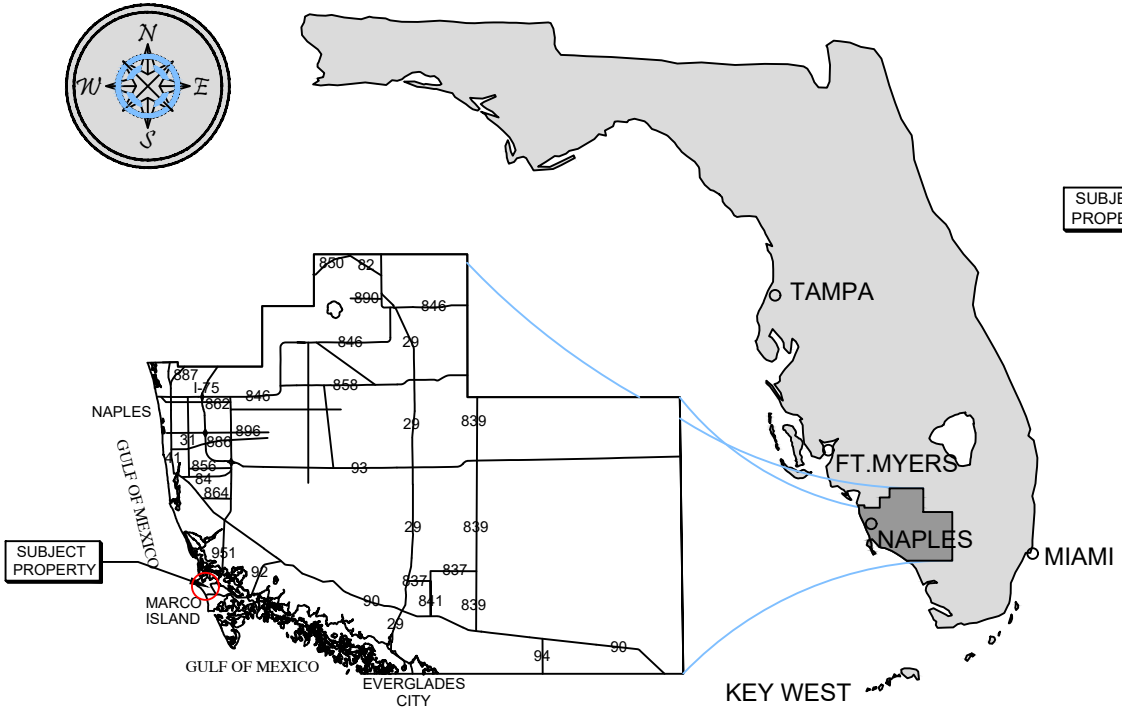
Rajani Thangavelu

917 587 7997

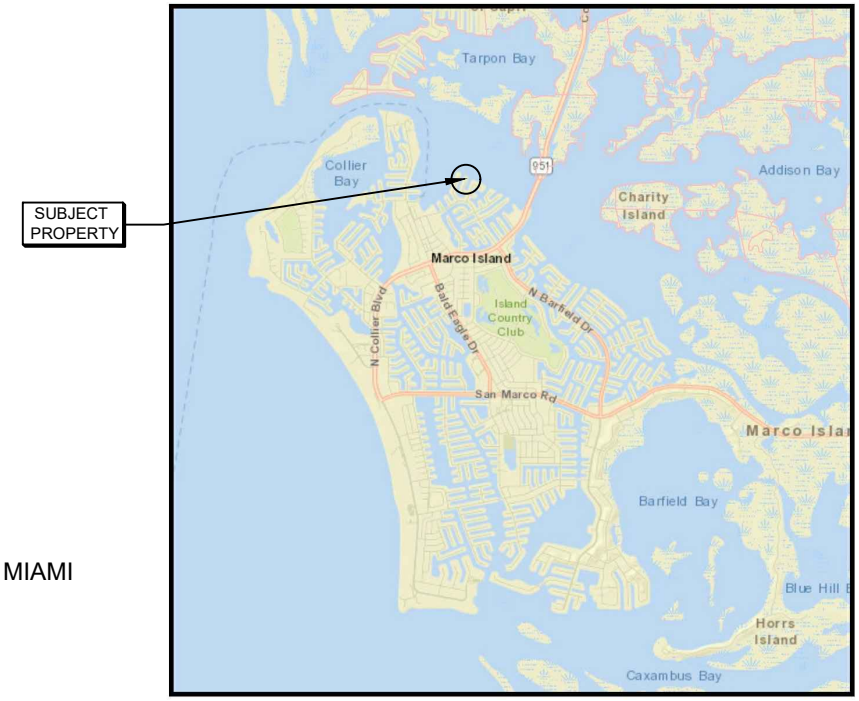
Exhibit 5

p:\21038.00 curtis-986 sundrop ct\CAD\PERMIT-CITY\21038-CITY.dwg LOCATION MAP 9/23/2021

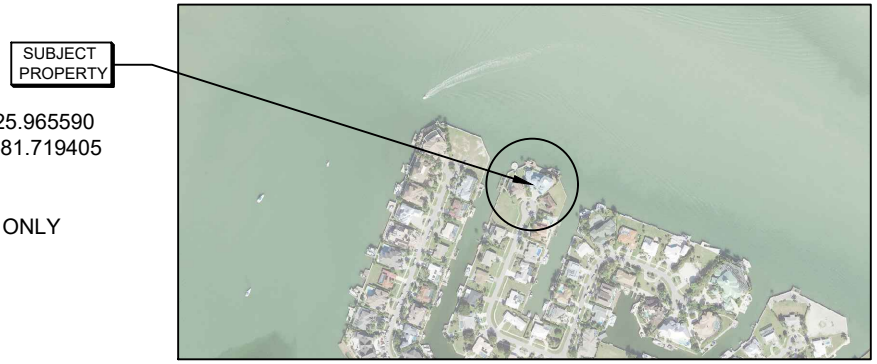
STATE OF FLORIDA



COLLIER COUNTY



VICINITY MAP



COUNTY AERIAL

SITE ADDRESS:

<> 986 SUNDROP CT
MARCO ISLAND, FL 34145

<> LATITUDE: N 25.965590
<> LONGITUDE: W -81.719405

NOTES:

<> THESE DRAWINGS ARE FOR PERMITTING PURPOSES ONLY AND ARE NOT INTENDED FOR CONSTRUCTION USE.

Turrell, Hall & Associates, Inc.
Marine & Environmental Consulting
3584 Exchange Ave. Naples, FL 34104-3732
Email: tuna@thanaples.com Phone: (239) 643-0166 Fax: (239) 643-6632

986 SUNDROP CT

LOCATION MAP

RY NO. 5875

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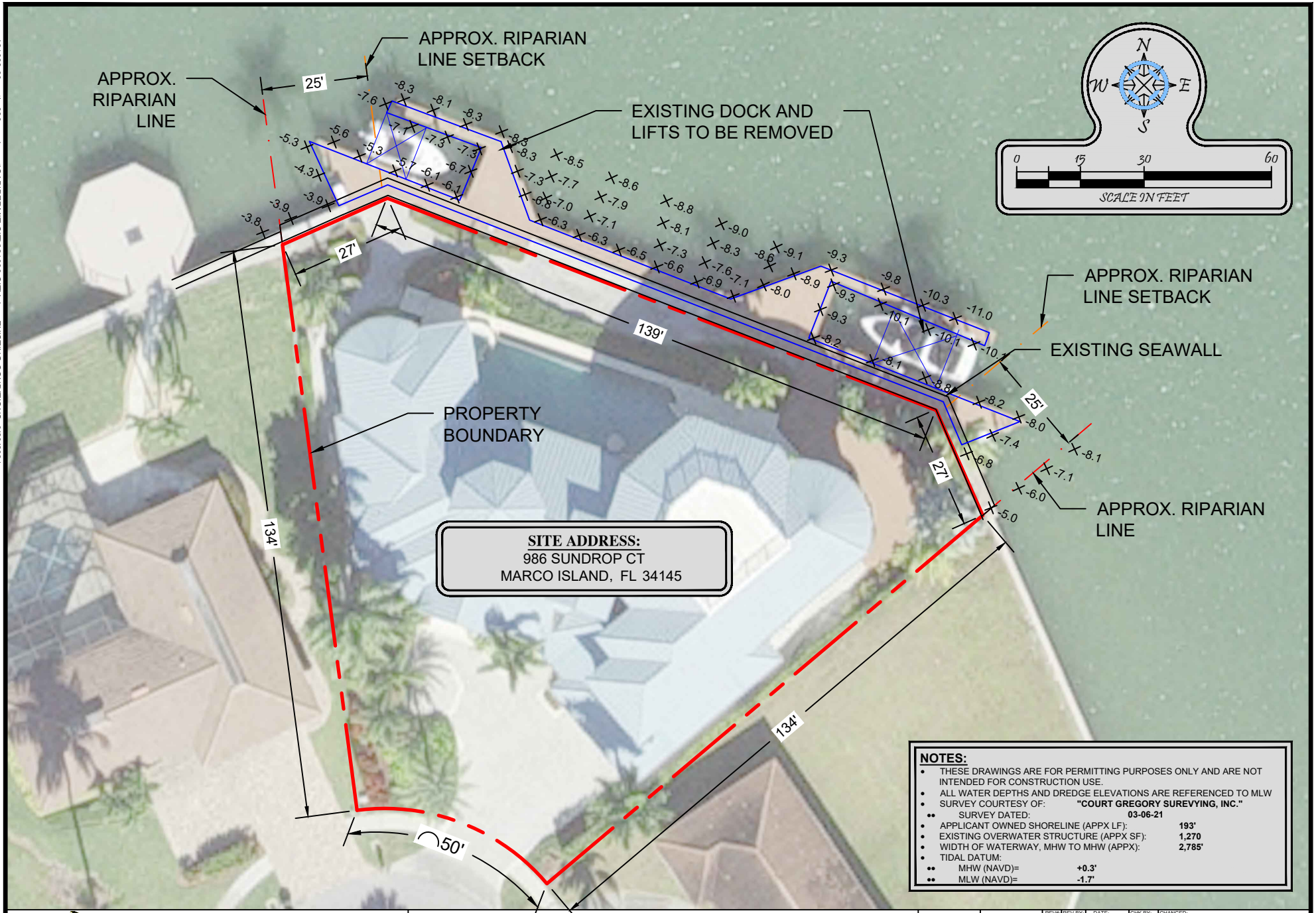
		REV#	REV BY:	DATE:	CHK BY:	CHANGED:
DESIGNED:	JR	1.	-	-	-	-
DRAWN BY:	RMJ	2.	-	-	-	-
CREATED:	09-23-21	3.	-	-	-	-
JOB NO.:	21038.00	4.	-	-	-	-
SHEET NO.:	01 OF 07	5.	-	-	-	-

SECTION- 16 TOWNSHIP- 52 S RANGE- 26 E

p:\21038.00 curtis-986 sundrop ct\CAD\PERMIT-CITY\21038-CITY.dwg EXISTING CONDITIONS 9/23/2021



NOTES:

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- ALL WATER DEPTHS AND DREDGE ELEVATIONS ARE REFERENCED TO MLW
- SURVEY COURTESY OF: **"COURT GREGORY SUREVYING, INC."**
  - SURVEY DATED: **03-06-21**
- APPLICANT OWNED SHORELINE (APPX LF): **193'**
- EXISTING OVERWATER STRUCTURE (APPX SF): **1,270**
- WIDTH OF WATERWAY, MHW TO MHW (APPX): **2,785'**
- TIDAL DATUM:
  - MHW (NAVD)= **+0.3'**
  - MLW (NAVD)= **-1.7'**

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986 SUNDROP CT

EXISTING CONDITIONS

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SECTION- 16 TOWNSHIP- 52S RANGE- 26E

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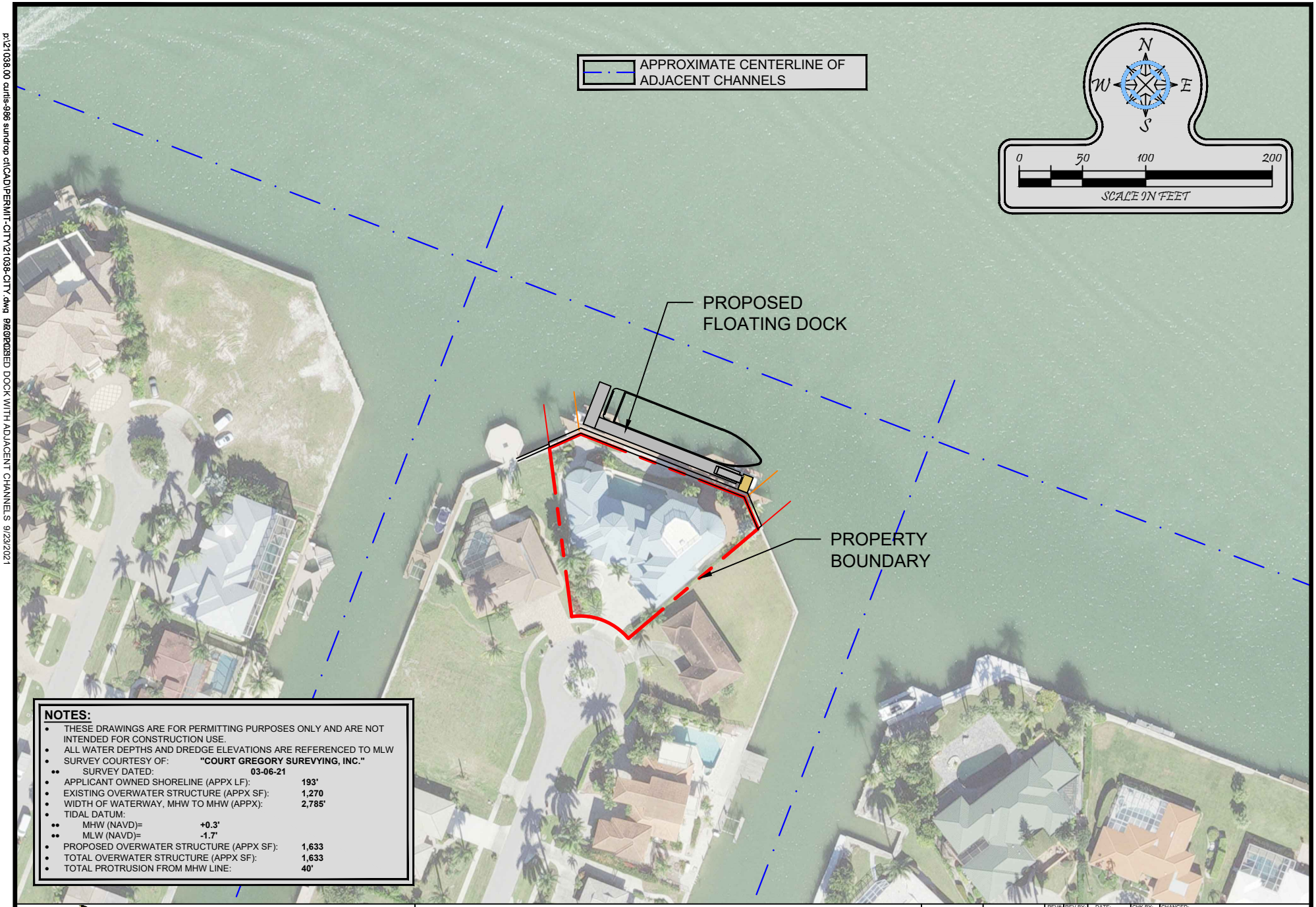

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- TIDAL DATUM:
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  - MLW (NAVD)= **-1.7'**
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- TOTAL OVERWATER STRUCTURE (APPX SF): **1,633**
- TOTAL PROTRUSION FROM MHW LINE: **40'**

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986 SUNDROP CT

PROPOSED DOCK WITH ADJACENT CHANNELS

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SECTION- 16 TOWNSHIP- 52 S RANGE- 26 E

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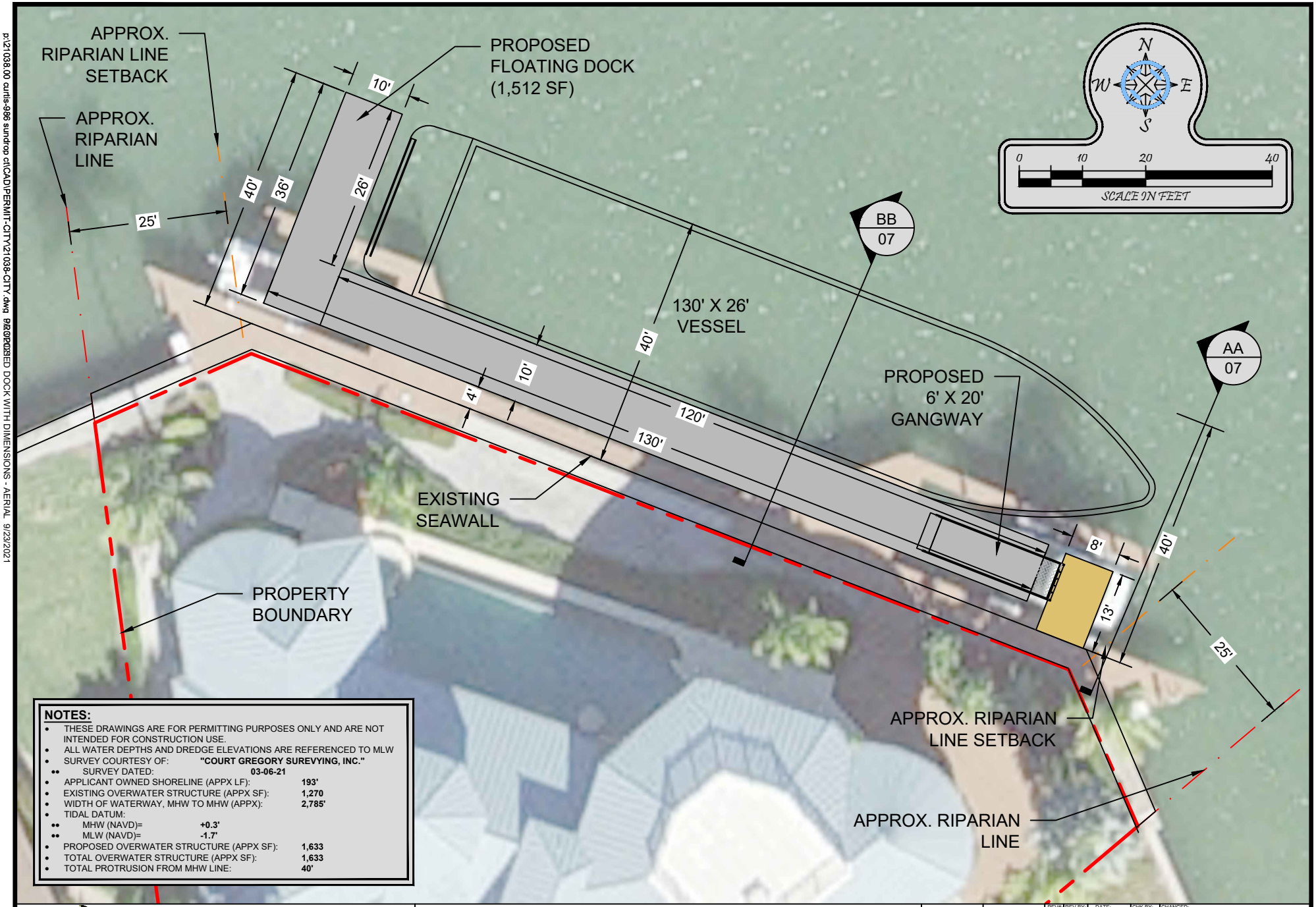

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986 SUNDROP CT

PROPOSED DOCK WITH DIMENSIONS - AERIAL

RY NO. 5875

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SECTION- 16 TOWNSHIP- 52 S RANGE- 26 E

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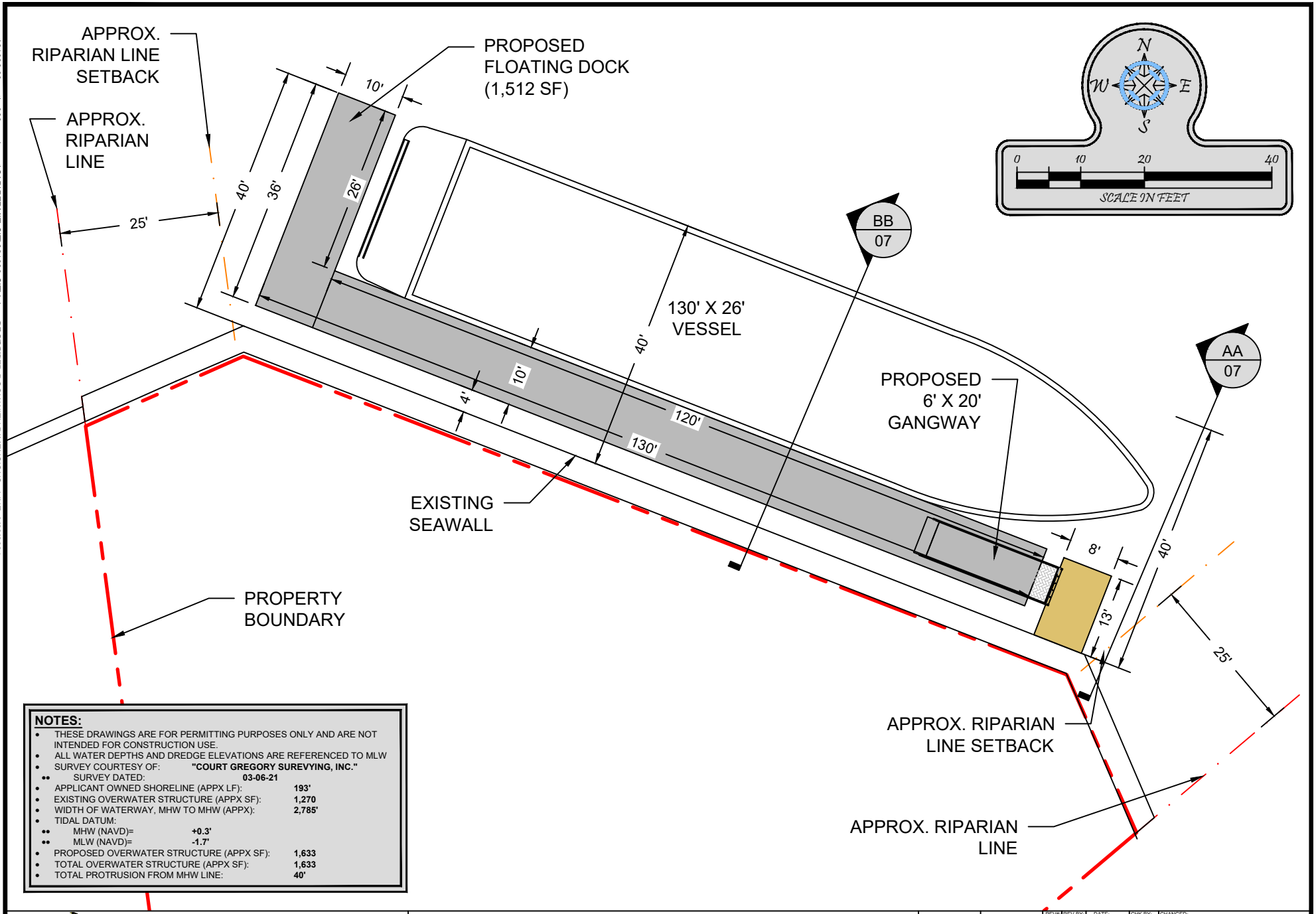

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986 SUNDROP CT

PROPOSED DOCK WITH DIMENSIONS - LINE

RY NO. 5875

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SECTION- 16 TOWNSHIP- 52 S RANGE- 26 E

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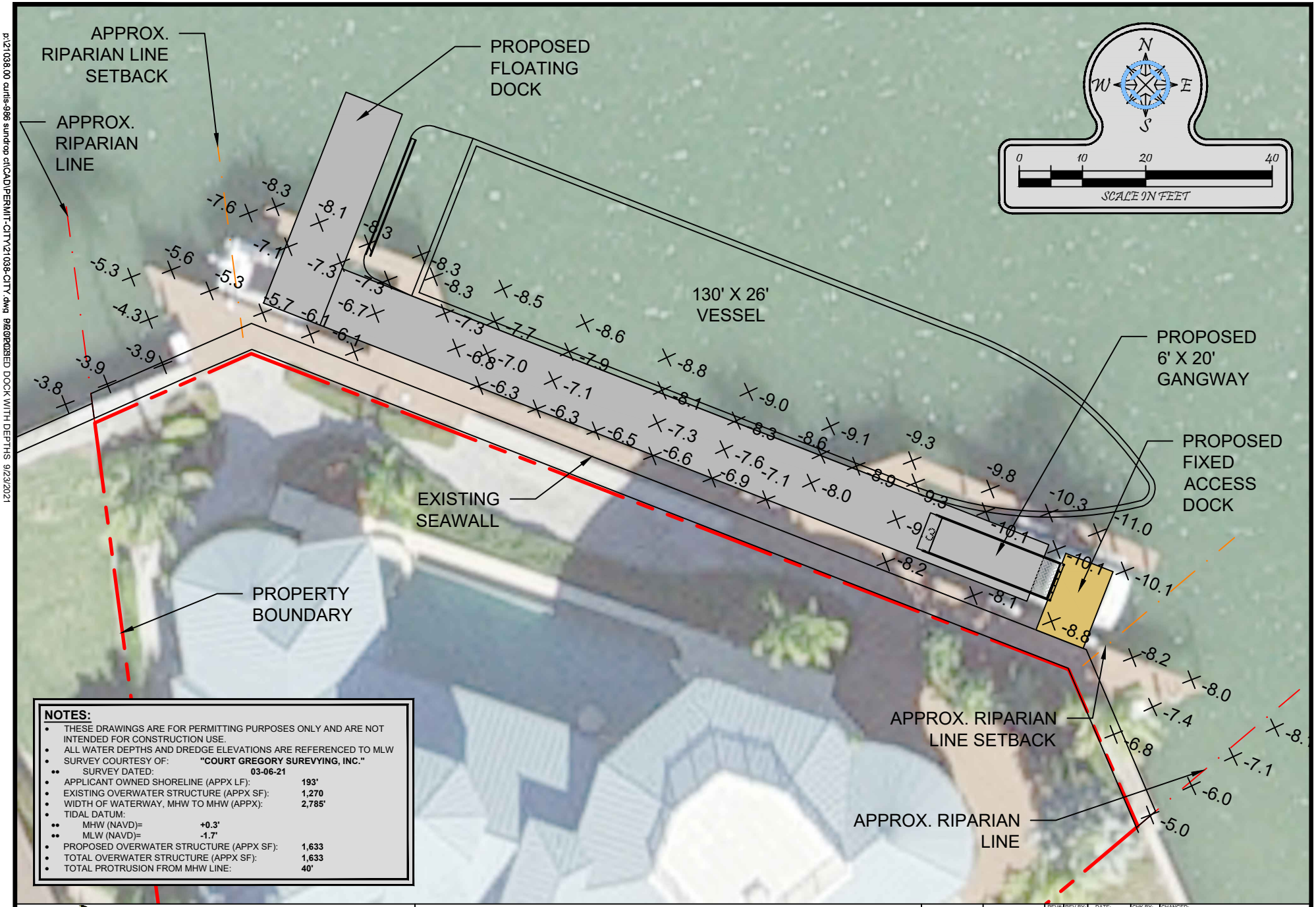


NOTES:

- THESE DRAWINGS ARE FOR PERMITTING PURPOSES ONLY AND ARE NOT INTENDED FOR CONSTRUCTION USE.
- ALL WATER DEPTHS AND DREDGE ELEVATIONS ARE REFERENCED TO MLW
- SURVEY COURTESY OF: **"COURT GREGORY SUREVYING, INC."**
  - SURVEY DATED: **03-06-21**
- APPLICANT OWNED SHORELINE (APPX LF): **193'**
- EXISTING OVERWATER STRUCTURE (APPX SF): **1,270**
- WIDTH OF WATERWAY, MHW TO MHW (APPX): **2,785'**
- TIDAL DATUM:
  - MHW (NAVD)= **+0.3'**
  - MLW (NAVD)= **-1.7'**
- PROPOSED OVERWATER STRUCTURE (APPX SF): **1,633**
- TOTAL OVERWATER STRUCTURE (APPX SF): **1,633**
- TOTAL PROTRUSION FROM MHW LINE: **40'**

Turrell, Hall & Associates, Inc.
Marine & Environmental Consulting
3584 Exchange Ave. Naples, FL 34104-3732
Email: tuna@thanaples.com Phone: (239) 643-0166 Fax: (239) 643-6632

986 SUNDROP CT

PROPOSED DOCK WITH DEPTHS

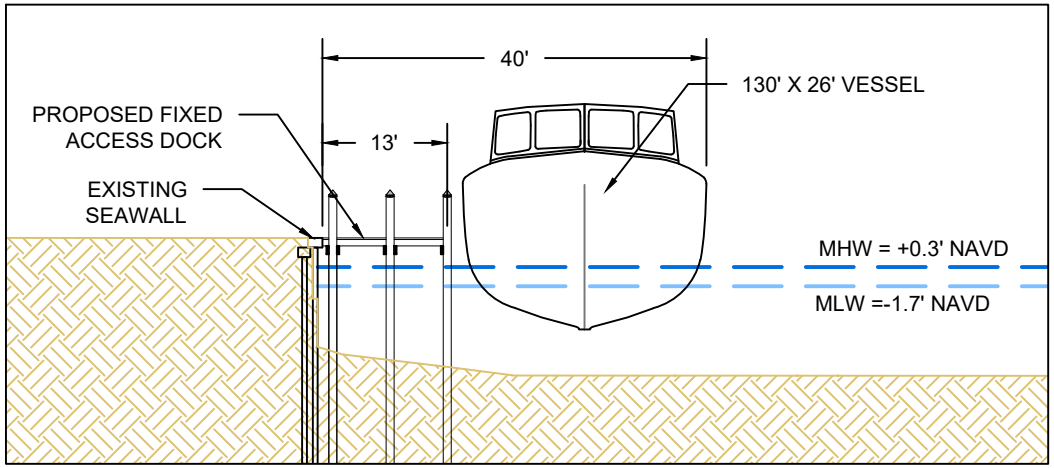
RY NO. 5875

THESE DRAWINGS ARE FOR PERMITTING PURPOSES ONLY AND ARE NOT INTENDED FOR CONSTRUCTION USE.

		REV#	REV BY:	DATE:	CHK BY:	CHANGED:
DESIGNED:	JR	1.	-	-	-	-
DRAWN BY:	RMJ	2.	-	-	-	-
CREATED:	09-17-21	3.	-	-	-	-
JOB NO.:	21038.00	4.	-	-	-	-
SHEET NO.:	06 OF 07	5.	-	-	-	-

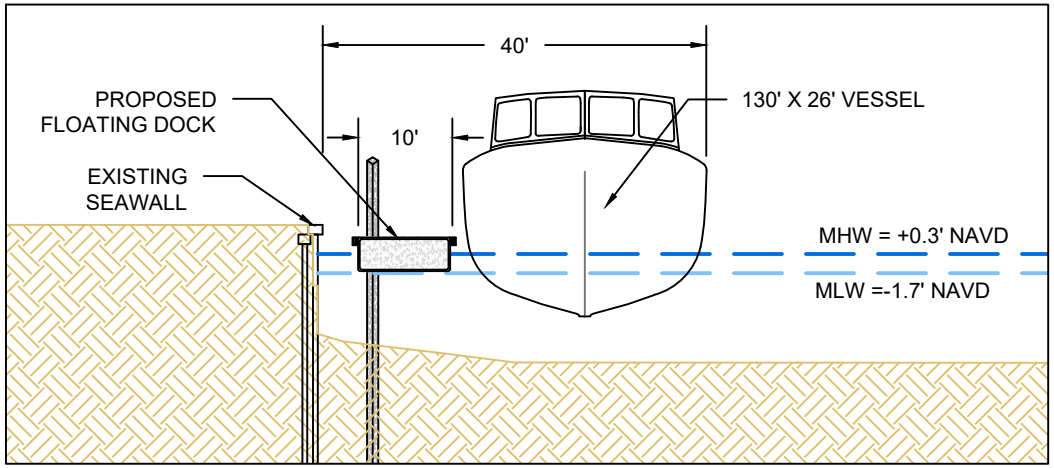
SECTION- 16 TOWNSHIP- 52 S RANGE- 26 E

p:\21038.00 curtis-986 sundrop ct\CAD\PERMIT-CITY\21038-CITY.dwg CROSS SECTIONS 9/23/2021



CROSS SECTION AA

SCALE: 1" = 20'



CROSS SECTION BB

SCALE: 1" = 20'

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986 SUNDROP CT

CROSS SECTIONS

RY NO. 5875

THESE DRAWINGS ARE FOR PERMITTING PURPOSES ONLY AND ARE NOT INTENDED FOR CONSTRUCTION USE.

		REV#	REV BY:	DATE:	CHK BY:	CHANGED:
DESIGNED:	JR	1.	-	-	-	-
DRAWN BY:	RMJ	2.	-	-	-	-
CREATED:	09-23-21	3.	-	-	-	-
JOB NO.:	21038.00	4.	-	-	-	-
SHEET NO.:	07 OF 07	5.	-	-	-	-

SECTION- 16 TOWNSHIP- 52 S RANGE- 26 E

Exhibit 6

CITY OF MARCO ISLAND
PLANNING BOARD

RESOLUTION 21-46

A RESOLUTION OF THE PLANNING BOARD OF THE CITY OF MARCO ISLAND, FLORIDA, DENYING A SPECIAL PERMIT FOR A BOAT DOCK EXTENSION 40-FEET FROM THE PROPERTY LINE FOR 986 SUNDROP COURT, MARCO ISLAND; MAKING FINDINGS; ; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, Section 54-115 of the of the Marco Island Waterways and Beaches Code relates to special permits to address issues related to the maximum protrusion lengths of a docking system; and

WHEREAS, 986 Sundrop, LLC, (the "Owner/Developer") submitted a boat dock extension plan for the Development of a boat dock extension for 986 Sundrop Court, Marco Island, Florida (the "Subject Property"); and

WHEREAS, the City of Marco Island staff reviewed and recommended approval of BD-21-000177; and

WHEREAS, on September 3, 2021, the Marco Island Planning Board held a public hearing regarding the request for the boat dock extension; and

WHEREAS, the Planning Board considered evidence and testimony presented by City staff, the Owner/Developer, and members of the public; and

WHEREAS, following a consideration of all testimony and evidence, including the file related to the application, the Planning Board denied the application for the boat dock extension by a vote of four (4) to three (3).

NOW, THEREFORE, BE IT RESOLVED BY THE PLANNING BOARD OF THE CITY OF MARCO ISLAND, FLORIDA:

SECTION 1. Adoption. The Owner/Developer's special permit for the boat dock extension as set forth on the Boat Dock Extension Plans on the Subject Property is hereby denied as the Owner/Developer's Boat Dock Extension Application does not meet the criteria as provided in Section 54-115 of the City of Marco Island Code of Ordinances, as follows:

1. There are no special conditions related to the subject property or adjacent waterway that justify the proposed docking facility.

2. That the proposed dock is not of minimal dimension and located to minimize impacts of the view to the channel by neighboring property owners.
3. That the proposed boat dock extension does not meet the objective as contained in the City's Comprehensive Plan to promote development that is consistent with the City's small town charm; and
4. That there may be other options available to adequately secure the vessel that may not require such an extension request.

SECTION 2. Effective Date. That this Resolution shall take effect immediately upon adoption.

ADOPTED BY THE PLANNING BOARD OF THE CITY OF MARCO ISLAND, this 3rd day of September 2021.

ATTEST:

_____
Laura Litzan, City Clerk

CITY OF MARCO ISLAND, FLORIDA

By: _____
Jason Bailey, Chair

Approved as to form and legal sufficiency:

_____
David N. Tolces, Assistant City Attorney

Exhibit 7

1
2
3 TRANSCRIPT OF EXCERPT OF PROCEEDINGS
4 CITY OF MARCO ISLAND, FLORIDA
5 PLANNING BOARD MEETING
6 SEPTEMBER 3, 2021
7
8 BOARD MEMBERS PRESENT:
9 JASON BAILEY, CHAIRMAN
LARRY HONIG, VICE-CHAIRMAN
10 NANETTE FINKLE
DAVID VERGO
11 GEOFF FAHRINGER
MIKE HOGAN
12 NANETTE RIVERA
13
14 ALSO PRESENT:
15 DANIEL SMITH, STAFF LIAISON
DAVID TOLCES, PLANNING BOARD ATTORNEY
16 SABINA SCHOLZ
MARY HOLDEN
17 ZACHARY LOMBARDO, ESQUIRE
18
19
20
21
22
23 TRANSCRIBED FROM DIGITAL VIDEO RECORDING
BY: JOYCE B. HOWELL
24
25

* * * * *

CHAIRMAN BAILEY: New business, boat dock extension, Sabina.

MS. SCHOLZ: Good morning, Sabina Scholz, Growth Management Department, City of Marco Island.

I will read this resolution into the record by title only. A resolution of the planning board of the City of Marco Island, Florida, approving a special permit for a boat dock extension 40 feet from the property line for 986 Sundrop Court, Marco Island; making findings; approving the boat dock extension; providing for failure to obtain other development permits; providing for failure to comply with approval; and providing an effective date.

CHAIRMAN BAILEY: Thank you. Hi, Mary.

MR. TOLCES: David Tolces, board attorney.

Before Ms. Holden makes her presentation, I think, one, we need to do any board disclosures and then we need to have everybody sworn in because this is a quasi-judicial matter.

CHAIRMAN BAILEY: Do you want to do the swearing in first?

MR. TOLCES: I'd be happy to.

For anybody in the audience today, if you're

1 going to testify in this matter, I respectfully
2 request that you stand and raise your right hand.
3 Do you swear or affirm that the testimony you
4 give will be the truth, the whole truth and nothing
5 but the truth, so help you God?
6 (Multiple responses.)
7 MR. TOLCES: Thank you very much.
8 CHAIRMAN BAILEY: And then we'll move on to ex
9 parte?
10 MR. TOLCES: Yes.
11 CHAIRMAN BAILEY: Fantastic. Each board
12 member, would you like to let us know if you've had
13 any communications, site visits, other disclosures,
14 conflicts, please?
15 Ms. Finkle?
16 MS. FINKLE: None.
17 MR. VERGO: No communications, but I am very
18 familiar with the address.
19 MR. HOGAN: No communications.
20 CHAIRMAN BAILEY: I've had some site visits on
21 a couple of the properties and some e-mails with a
22 couple of property owners.
23 VICE-CHAIRMAN HONIG: Site visit to the
24 subject property, to the two properties adjacent to
25 the subject property and to two subject properties

on Orange Court, conversations with the owners of the properties adjacent to the subject property, conversations with the attorney for the applicant or the attorney agent for the applicant and a conversation with the attorney for residents on Orange Court.

MR. FAHRINGER: No communication. I did a site visit on Sundrop and Laurel Court, both.

MS. RIVERA: I have not yet communications, but I visited both by land and by sea and looked at the adjacent properties as well.

CHAIRMAN BAILEY: Thank you. Mary?

MS. HOLDEN: Good morning. Before you is a petition for a boat dock extension. They are requesting an additional 10 feet from the allowed 30, since they're on a waterway over 100 feet.

And, again, this is about the boat dock extension so that staff reviews it with or against the criteria that is allowed in 54.115. We did do site visit. We did take into consideration the various comments that we have received, but primarily we reviewed the application itself against the criteria.

And based on our review, staff is recommending approval with the findings that are outlined in the

staff report and also the resolutions.

Also, before I forget, we want to enter the entire file into the record. So our attorney made sure we entered it all in for the record.

One thing I do want to point out is that an affected property owner who is not pleased with the Planning Board Commission does have the right to appeal to the City Council. The process is they file the appeal to the city manager within 14 days of the Planning Board decision. So I wanted to make everybody aware of that also.

I'm happy to answer any questions. I haven't really gone into detail because everything you have, and I know that there are folks here that want to speak on this application also.

CHAIRMAN BAILEY: Thank you.

MS. HOLDEN: Uh-huh.

CHAIRMAN BAILEY: Any questions for Mary from the Board?

VICE-CHAIRMAN HONIG: Yeah.

CHAIRMAN BAILEY: Larry?

VICE-CHAIRMAN HONIG: Sure. Thanks very much, Jason. A few questions for you, Mary.

MS. HOLDEN: Uh-huh.

VICE-CHAIRMAN HONIG: What did you say about

appeal? I missed the first part.

MS. HOLDEN: Affected properties, property owners, whether it's the applicant or --

VICE-CHAIRMAN HONIG: So either way, okay.

MS. HOLDEN: Correct.

VICE-CHAIRMAN HONIG: Great. And there was some confusion on my part, and it came up in a few of the e-mails that we received.

Are citizens able to call into this meeting to comment?

MS. HOLDEN: Yes, they are. Actually, we have the phone number up. I had requested that.

VICE-CHAIRMAN HONIG: Right.

MS. HOLDEN: So yes.

VICE-CHAIRMAN HONIG: Terrific. Thanks.

And the question of notice has come up in several of the e-mails we got. Was this matter properly noticed?

MS. HOLDEN: Yes, it was.

VICE-CHAIRMAN HONIG: Okay. And what was the rationale that you used in recommending the approval? You went through it a little bit at the end of your remarks just now, but could you --

MS. HOLDEN: The rationale is that this is -- we reviewed this for a boat dock extension. I -- a

boat dock can go there, can go up to 30 feet along that entire front at 30 feet.

They do meet the setbacks. They meet them by 25 plus feet on either side. So that whether or not they get a 10-foot boat dock extension, a boat can go there. A boat will -- will be there.

VICE-CHAIRMAN HONIG: Very helpful. So you were just going by the black letter?

MS. HOLDEN: Yes, sir.

VICE-CHAIRMAN HONIG: Okay. Thanks. Thank you.

CHAIRMAN BAILEY: Ms. Rivera?

MS. RIVERA: Yes, Mary. I have a quick question, and that is when I look at the drawings, in particular --

MS. HOLDEN: Uh-huh.

MS. RIVERA: -- this set, the only part of the dock that extends past the 30-foot allowable is this floating dock at the end?

MS. HOLDEN: Correct.

MS. RIVERA: So if that floating dock would have been designed to 30 feet instead of 40, which I think it's actually designed to 36 or something like that, or maybe 40, we wouldn't be hearing this?

MS. HOLDEN: If the boat -- the boat and dock cannot exceed 30 feet. So if they could make it so that that boat --

MS. RIVERA: So it's the beam plus?

MS. HOLDEN: It's the boat and the -- it's the dock and the vessel that cannot protrude more than 40 feet.

MS. RIVERA: Got it.

MS. HOLDEN: So if they reduce their overall dock along the retaining -- I'm sorry -- along the seawall, if they reduce that down to make it where the boat and dock did not protrude more than 30 feet, yes, they could do that.

MS. RIVERA: Okay. So given that last question, in one place, and I don't -- it could have been in the media instead of on the documents, that implied that the beam of a vessel of that size was 40 feet on its own or is this a 25-foot beam boat that they were --

MS. HOLDEN: That was in the media. And I apologize. I missed that episode. That is not part of this application. This is the dock. So I can't respond to that.

MS. RIVERA: Yeah. And I was focused on the dock.

MS. HOLDEN: Right.

MS. RIVERA: And only that one floating site, but if the boat and the dock, do you know what the beam of this one -- said 130 foot -- I mean, they can put a skiff there for all I know, you know.

MS. HOLDEN: I do not. You would -- you will want to ask that of the applicant.

MS. RIVERA: Okay. Thank you.

CHAIRMAN BAILEY: Geoff?

MR. FAHRINGER: Thank you. Mary, two questions. The losses of (indiscernible) Snyder on page 2 mention no home on Marco Island can be constructed more than 35 feet, at the bottom of the page.

Do we have --

CHAIRMAN BAILEY: That's 35 feet above base flood elevation to the midpoint of the roof, I think.

MS. HOLDEN: Correct.

MR. FAHRINGER: I'm assuming that's based on actual ordinances with the City.

MS. HOLDEN: Yes, that is in our Land Development Code.

MR. FAHRINGER: Right.

MS. HOLDEN: Uh-huh.

MR. FAHRINGER: Is there anything that -- regarding height requirements on temporary structures, like tents on the beach or, in this case, this boat, in our ordinances?

MS. HOLDEN: We -- we've never come across this question and in the year -- the three years that I've been here, I have never really been asked that nor researched it.

On the cuff, I don't believe we do.

MR. FAHRINGER: And my apologies. These are kind of obscure questions.

The other question I have in regards to hurricanes, I know the marinas on the island have requirements that boats of certain size must leave the marina if a category 1 or larger hurricane is going to impact us.

MS. HOLDEN: Uh-huh.

MR. FAHRINGER: Is there anything in our city ordinances or anything the waterways committee's ever had where any boats of a certain size on the island would be required to leave their home dock?

MS. HOLDEN: Again, I am not familiar with that. I can check. I can try and find an answer while the applicant is giving his presentation.

MR. FAHRINGER: My concern as a boater is if

1 we had a hurricane incident come through, a boat of
2 that size, tied to that dock, could become an issue
3 as far as a destructive force or not.
4 MS. HOLDEN: I agree. I can't argue that.
5 MR. FAHRINGER: Thank you.
6 CHAIRMAN BAILEY: Dave?
7 MR. VERGO: I know this is about the boat dock
8 extension, but as part of that boat dock extension
9 application, the applicant submitted a drawing of
10 the vessel.
11 MS. HOLDEN: Sure, they did.
12 MR. VERGO: Okay. And the beam that they
13 submitted was 26 feet. It's probably going to be
14 26 feet, 2 inches, actually.
15 You know, I consulted several experts and did
16 a little research on my own of a vessel of that
17 nature. And, you know, the thing is going to be
18 probably 50 foot tall from the bottom of the hull
19 to the top.
20 When you look at the dimensions of the said
21 vessel, that's, you know, 4,800 square feet, not
22 considering the different heights of the deck.
23 As far as the boat with the hurricane, you
24 have a boat of that value, it's not going to be
25 sitting there for a hurricane. They're going to

1 have the crew take the vessel elsewhere. I mean,
2 that's just common sense.
3 But I think, in this instance, that we do have
4 to consider the vessel that's going to be there
5 because, let's face it, the boat dock extension is
6 not for the 10-foot catwalk. It's for the width of
7 the vessel. They want to have a 10-foot seawall to
8 facilitate getting a crew of approximately seven
9 people in and out and the enormous amount of
10 maintenance that it takes just to have that boat
11 sitting at dock continually, the amount of people
12 that are going to be constantly going back and
13 forth to maintain that boat.
14 And, you know, Mary's right. If they wanted
15 to put -- just drive some pilings down into the
16 seawall and moor the boat to there, they could have
17 their boat there. There's nothing in ordinance
18 against that.
19 So this boat dock extension is merely a
20 convenience for this particular vessel.
21 CHAIRMAN BAILEY: Thanks, Dave.
22 Larry?
23 VICE-CHAIRMAN HONIG: Yeah, thanks, Jason. I
24 was going to wait to make some comments, but Dave
25 Vergo, as always, made some really important

1 comments and I think, out of respect for the
2 applicant and those who want to speak, I would like
3 to get some points out on the table for possible
4 rebuttal by various parties, if that's okay with
5 you, and then I have some questions for the city
6 attorney as well.
7 I think that everybody is aware of our
8 comprehensive plan and this body has worked really
9 hard on the comprehensive plan and City Council has
10 as well.
11 And words matter. And I brought just a couple
12 of them to read in the strategic vision, which was
13 put together by two City Councils and two city
14 managers and an outside consultant.
15 The first page, Marco Island's vision. Marco
16 Island is a great residential community with
17 small-town charm.
18 And then we went from the vision document,
19 strategy document, to the comprehensive plan on
20 which we worked, and there we all argued about
21 these and councils argued about them, but in the
22 end, small-town charm is characterized by Marco
23 Island's convenient coastal living, a balanced mix
24 of land uses. The City will manage growth to
25 enhance the community both fiscally and physically

1 and protect property values.
2 The City will protect single-family neighbors
3 particularly through the adoption of regulations,
4 processes and procedures that address the
5 transition of land use, comprehensive site design
6 standards and compatibility.
7 The City will evaluate current LDC regulations
8 to address opportunities to adopt more
9 comprehensive architectural and site design
10 regulations to ensure quality development and
11 redevelopment.
12 And, finally, protect existing and future
13 residential development from any encroachment of
14 uses that are potentially destructive to the
15 character and integrity of the residential
16 environment.
17 So we, as an island, have very few esthetic
18 dictates. We have a few. I've argued with you
19 about some of them, the wedding cake buildings, and
20 we've talked about that. We have very few. We
21 have some restrictions on neon signs. Two have
22 been grandfathered.
23 We have -- you take a lot of -- pay a lot of
24 attention to color and so on, but generally we use
25 other ways to enforce what we want and we use

1 dimensions, in general; setbacks, height and the
2 rest of it.
3 I have some slides I want to look at if --
4 Mario can you bring up my slide?
5 So we've all seen this. This is the maximum
6 height which was referred to. For principal
7 structures, 35 feet from the base flood elevation
8 to the mid -- midpoint mean roof height. And then
9 you can see the maximum height on that. So we're
10 all familiar with that. That's in residential
11 zones.
12 An important, I think, relevant number for
13 yachts is a nautical term, air draft. That's the
14 distance from the waterline to the highest point on
15 the vessel. This is an illustrative boat. You
16 could say you picked one that's ridiculous. Ours
17 is not going to have that. That's not the point.
18 I just wanted to indicate what an air draft means.
19 This is a 39-meter yacht, so it's 130 feet.
20 Similar in length to the applicant's proposed
21 vessel.
22 We know the property is 986, is the applicant.
23 There's the drawing to scale of where the yacht
24 would be and then the two subject properties on
25 either side.

1 I want to start with the 980 property, which
2 is the property to the left, to the west as you
3 face the applicant's house.
4 MR. TOLCES: Can I -- David Tolces.
5 Can I just make a request? Because the Board
6 members are to consider the application based upon
7 the evidence presented by City staff and the
8 applicant.
9 So what I would request is that before you go
10 into this, that you allow the applicant to make
11 their presentation and get all the evidence into
12 the record and then --
13 VICE-CHAIRMAN HONIG: Well, with respect, with
14 respect, the Chair ruled that I was allowed to do
15 this. So that's number one.
16 Number two, I did say that I would present
17 this and allow the applicant to respond, and I did
18 say that the reason I wanted to do this was because
19 this Board started having substantive discussions
20 and you did not stop it in any of those
21 discussions, so you're not going to stop it now.
22 I'm going to continue my slides. I'm almost
23 over. And then I'm going to do what I said, which
24 is to ask you some questions.
25 I realize that you would like to conduct the

1 meeting differently, but the meeting has already
2 been started and I do not like to be interrupted,
3 as everyone who has dealt with me understands.
4 You should have started at the beginning, not
5 now.
6 MR. TOLCES: No, I understand. But,
7 originally, it was just going to be questions of
8 City staff.
9 VICE-CHAIRMAN HONIG: That was never said --
10 it was never said that way. We've been conducting
11 these meetings for decades.
12 MR. TOLCES: Okay. That's my only comment. I
13 defer to the Chair and the Board. Thank you.
14 VICE-CHAIRMAN HONIG: I understand. With
15 respect, I would like to finish my presentation. I
16 have an open mind. I want to give the applicant a
17 chance to react to it.
18 And if we did it the other way, which was -- I
19 was willing to do, because I said that at the
20 beginning. If we did it the other way, and the
21 applicant makes a presentation, then I make a
22 presentation, then the applicant has to get up and
23 respond to my presentation which, in a way, I'm
24 actually being more fair to the applicant in this
25 regard.

1 MR. TOLCES: I just wanted to make sure we're
2 all on the same page.
3 VICE-CHAIRMAN HONIG: This is a view standing
4 in the lanai of the 980 and looking at -- that's
5 the applicant's house, the end of the applicant's
6 house in that diagram.
7 Here's an overlay of the boat that you just
8 saw if it were in that property. And I do
9 completely understand the riparian situation. We
10 have no right to look across a property owner's --
11 we have no right to -- what is across another
12 property owner's view. Totally understood.
13 I just wanted to say this is what would be
14 seen from that land.
15 UNIDENTIFIED MALE VOICE: But that's not the
16 boat.
17 VICE-CHAIRMAN HONIG: That's not the boat.
18 UNIDENTIFIED MALE VOICE: I have to interrupt
19 you again.
20 VICE-CHAIRMAN HONIG: Absolutely, that is not
21 the boat.
22 And then here's the property on the other
23 side. And, again, that's not the boat.
24 You can bring the slides down now. Thank you.
25 All these were photoshopped. These issues -- you

1 can take the slides down now, Mario.
2 These issues were discussed similarly and
3 extensively when the Yacht Club docks were
4 permitted. The purpose of those permits was to
5 allow for large vessels on Marco Island to be
6 parked there rather than on the -- on the other
7 waterways. And there was a lot of discussion about
8 riparian rights and the ability of adjacent
9 landowners to see the Jolley Bridge and to see into
10 the Marco River from their properties.
11 I would just make the point that size is a
12 function of distance. It depends on how close you
13 are and how far away you are.
14 Questions for the city attorney. And, here, I
15 will defer to you. If you'd rather not answer
16 these now and answer them later, but I do have
17 questions for you. Many of these are relevant to
18 -- all of these are relevant to the applicant's
19 submission and to the objection letters that we
20 had.
21 I just wanted to get the city attorney's view
22 on these.
23 MR. TOLCES: That's fine.
24 VICE-CHAIRMAN HONIG: Because I think they're
25 dispositive, or at least they are to me.

1 That in our code, in Section 54.115, it talks
2 about whether the -- this is a quote -- whether the
3 proposed dock is of minimal dimensions and located
4 to minimize the impact of view to the channel by
5 surrounding property owners.
6 How do you reconcile that with the riparian
7 discussion involving not -- you don't have the
8 right to see across a lot you don't own?
9 MR. TOLCES: The Board is charged with
10 evaluating the application based upon the criteria.
11 And I believe you're referring to paragraph F6 --
12 VICE-CHAIRMAN HONIG: Yes.
13 MR. TOLCES: -- in the code.
14 So you have to look at the facts and evidence
15 presented here today and evaluate it against the
16 provisions in the code.
17 With respect to the issues regarding
18 somebody's right to have a view from their property
19 and their riparian rights, that is a consideration
20 that you can make, but that comes in under --
21 that's Section 6.
22 And, you know, the legal arguments or legal
23 determination about whether or not somebody's
24 riparian rights are being impacted are, I guess,
25 part of that element of your evaluation.

1 So, you know, it's going to be up to the
2 applicant or anybody objecting to it to make those
3 arguments to you. You can evaluate them in
4 conjunction with these criteria.
5 But it's one part of the -- we've got nine or
6 ten -- ten elements that you need to evaluate. And
7 I hope I answered that question.
8 VICE-CHAIRMAN HONIG: You did. I appreciate
9 that. So I guess that's the reason we have these
10 processes, because it's not so perfectly clear.
11 MR. TOLCES: Correct.
12 VICE-CHAIRMAN HONIG: Okay. No, I appreciate
13 that response.
14 So next question for you is that there was a
15 lot of dialogue back and forth about special
16 conditions and what's required for a special
17 condition and exemptions allowed under special
18 conditions and the point I wanted to ask you about
19 was one person made the point that six lot lines
20 instead of four does not create a special
21 condition.
22 Does that even matter or is a special
23 condition an accumulation of things rather than
24 one?
25 MR. TOLCES: You know, a special condition

1 could be one element. It could be a multiple of
2 elements, but I think you need to look at each
3 parcel on their own, where they're situated and,
4 you know, how they -- how they interact or are
5 compatible with the adjacent properties.
6 VICE-CHAIRMAN HONIG: And one more. I
7 appreciate your response.
8 Section 54.100 talks about special
9 consideration, quote, due to severe access and
10 navigational challenges.
11 Again, is that just one of the special
12 considerations or would that be -- is that a
13 requirements?
14 MR. TOLCES: I'm just pulling up that section.
15 VICE-CHAIRMAN HONIG: Okay. Thanks. 54.100.
16 MR. TOLCES: 54.100 comes under the article
17 dealing with boat docking facilities.
18 VICE-CHAIRMAN HONIG: Yes.
19 MR. TOLCES: And that 54.100 regards the
20 intent and purpose of this section.
21 So can you ask your question again? I'm
22 sorry. As I was looking at it --
23 VICE-CHAIRMAN HONIG: Right. It's the wording
24 in there, quote, due to severe access and
25 navigational challenges.

1 This Board has had a few of those, where, you
2 know, the homeowner, typically, the inside lot --
3 MR. TOLCES: Uh-huh.
4 VICE-CHAIRMAN HONIG: -- couldn't get in or
5 out without our making an exception to or a
6 variance.
7 MR. TOLCES: This is referencing boat docking
8 facilities and it's describing what the intent and
9 purpose of this chapter is and saying it's
10 recognized that specific waterway locations could
11 warrant special consideration due to severe access
12 and navigational challenges and community character
13 and esthetic impacts. City Council may authorize
14 the establishment of overlay districts with
15 district-specific dimensional standards and
16 regulations to address boat docking facilities
17 within the overlay areas.
18 So I think that reference in that section is
19 specifically giving City Council the basis and the
20 authority to establish overlay districts if there
21 is a need for that due to specific waterway
22 locations, access issues, navigational challenge.
23 VICE-CHAIRMAN HONIG: So --
24 MR. TOLCES: I don't know if it necessarily
25 applies to this specific application because we're

1 not dealing with a waterway district.
2 VICE-CHAIRMAN HONIG: Got it. So it's not a
3 requirement that it meet this as a special
4 condition?
5 MR. TOLCES: Correct.
6 VICE-CHAIRMAN HONIG: I see. Okay. Thank you
7 for your patience and your responses.
8 MR. TOLCES: You're welcome.
9 CHAIRMAN BAILEY: All right. Why don't we
10 move on and hear from the applicant, if that's
11 okay.
12 MR. LOMBARDO: Good morning. My name is Zach
13 Lombardo. I'm here on behalf of the applicant 986
14 Sundrop, LLC.
15 Preliminarily, I didn't want to interrupt any
16 speakers on the Board, but we are going to preserve
17 an objection to any factual information provided
18 Board members that is not going to be provided by
19 either the applicant or the objectors, and the
20 Planning Board's design is to be an impartial
21 review board of information provided, and so to the
22 extent any of that prejudices the decision, we're
23 just going to preserve the objection, not asking it
24 to be ruled on.
25 Moving on. With me today I have obviously the

1 applicant, who is represented by his authorized
2 agent, Mr. Curtis (phonetic). We have Brian
3 Gilmore of Collier Seawall and Dock who is the dock
4 builder and designer, and then we have Jeff Rogers
5 from Turrell, Hall & Associates, the engineers on
6 the project.
7 What I wanted to emphasize -- there was a lot
8 of information to process on the front end, and so
9 I want to kind of address some of those before
10 diving into my presentation in chief because there
11 was a couple of easy to answer questions there.
12 I think it was answered. It's a 26-foot beam
13 on the boat proposed, but I want to preface that by
14 saying the reason why you were shown a boat at all
15 is because the boat itself is included into the
16 extension analysis, right?
17 So it doesn't have to be that boat.
18 Essentially what you're being asked is can any boat
19 go there up to 40 feet from the shore, 10 feet from
20 where they could go normally.
21 So it doesn't necessarily matter what boat it
22 is. There were pictures shown before and I will
23 just confirm that's not the boat. And so that
24 needs to be kept in mind.
25 There was a height question asked. And I'll

1 defer to disagreement from city staff or city
2 attorney. There's no requirement in the code about
3 boat height, and we know this because the height
4 requirements are for structures. The definitions
5 of structures are permanently constructed and
6 affixed objects.
7 And so there are height requirements
8 applicable to the dock itself. The dock is an
9 accessory structure under your code. The house is
10 a structure under your code. There are height
11 requirements to both. There are no height
12 requirements for the boat.
13 There was a question asked about in -- I'm
14 sorry -- about hurricanes, how do we make sure this
15 boat is not sitting there when a large hurricane
16 comes through.
17 What I will offer and proffer as a suggestion,
18 but we can have testimony from the applicant later,
19 if necessary, the boat is insured. The insurance
20 policy requires that it not be sitting at a
21 non-hurricane rated dock during a hurricane. This
22 is not a hurricane rated dock, but those questions
23 can be asked and confirmed to the dock builder and
24 to the owner, who are both here and sworn in for
25 your consideration.

1 There was a question about, and we're going to
2 get into this in my presentation at some length,
3 and I appreciate your patience because I think it's
4 very important, about reconciling views of the
5 channel and looking over side yards. That, I
6 think, is really going to be the -- what I'll call
7 the theme of my presentation, so let's just --
8 let's start there.
9 I'm going to use the document camera, to
10 whoever is controlling the screen.
11 What I'm going to start with is the concept of
12 riparian rights because what this element is,
13 really -- look at that -- is an element on riparian
14 rights from a view perspective.
15 Your code defines riparian rights, this is the
16 section from your code, and your code, at the end
17 of the day, kicks out to Florida Statute 253.141.
18 It says riparian rights are those that have the
19 meaning in that section. So we can go there.
20 Here are some lists from the statute of what
21 the riparian rights are, but the riparian rights
22 concept is an ancient one from common law. And so
23 even the statute kicks out to common law and says,
24 or those that are defined by law, which I included
25 for you.

1 In this particular analysis, what we are
2 interested in is docking and view. And so the
3 objectors have primarily focused on the view issues
4 and the code primarily focuses on the view issues.
5 So I'm going to address that here so we can answer,
6 sort of in the long way, the question asked by
7 Commissioner Honig.
8 The -- let's see here. This is the definition
9 of what the riparian right of view is. It is a
10 right to an unobstructed view over the water to the
11 channel. I added a little parenthetical there
12 because we're going to get into some more case law
13 to understand what over the water means.
14 But, importantly, it's to the channel. And I
15 want to emphasize that in your code, the element
16 that we are considering for view says view to the
17 channel.
18 And so we have to know and you have to know,
19 before you make your decision today, where's the
20 channel and where does everybody's view go with
21 relation to the channel.
22 And so the first case on this that I wanted to
23 just -- and I've sent this to the attorney and to
24 city staff and so this has been reviewed. I'm not
25 fire bombing you with case law and strange

1 diagrams, but is a -- it's a local case.
2 So if this were to go to a court, it would
3 eventually be reviewed by the Second District Court
4 of Appeal, who decided this case, and so Lee County
5 versus Kiesel is a very important case to
6 understand when something is a problem.
7 So Lee County, in the -- I'm not sure when,
8 but Colonial, if you're familiar with that road,
9 goes across the Caloosahatchee River and lands in
10 Cape Coral. It does not take off straight from the
11 landing part and land straight. It goes off at an
12 angle. And when it goes off at an angle, it clips
13 the area in front of the property owner of Mr. and
14 Mrs. Kiesel.
15 They took this up on appeal and said you need
16 to pay us because you took our view.
17 And so let me just show you, better than the
18 diagram, the picture. This is the lot. And the
19 bridge is eclipsing the edge of their view and so
20 that is considered a real riparian rights
21 objection.
22 Sorry, sir. Yes?
23 MR. VERGO: I don't mean to interrupt.
24 MR. LOMBARDO: Please.
25 MR. VERGO: This is all wonderful and I love

1 lawyers, except for the question is simply should
2 we grant the applicant an additional 10 feet, is
3 there a necessity to grant him an additional 10
4 feet.
5 MR. LOMBARDO: Okay.
6 MR. VERGO: It's for his convenience. So all
7 this is all wonderful.
8 This is a bridge, okay? This is a municipal
9 state thing.
10 MR. LOMBARDO: Sure.
11 MR. VERGO: So they have grant -- land issues
12 and everything else where they can occupy that
13 space.
14 This is asking us, should we grant them an
15 additional 10 feet, is there a necessity for it.
16 So this is all kind of moot --
17 MR. LOMBARDO: Well --
18 MR. VERGO: -- okay? Because when we're
19 granting -- when we're granting them the permission
20 to do an additional 10 feet, we do have to take
21 into consideration infringing on neighboring areas'
22 views and things that you may consider
23 inconsequential.
24 MR. LOMBARDO: I don't, sir --
25 MR. VERGO: Because this is not a necessary, a

1 necessary 10 feet, period.
2 MR. LOMBARDO: Okay. So I disagree. And so
3 what you've identified is one of the elements. One
4 of the elements is that it does need to be
5 necessary. I don't disagree that that's an
6 element. The other element is, does it impact the
7 view to the channel.
8 So I was addressing the view to the channel,
9 but I'm more than happy to switch to the necessary
10 part. This is going to come from my analysis of
11 the water depth at the property line.
12 It was referenced several times by you all
13 that they could just put pilings into the -- across
14 the shore and put a 26-foot boat up against the
15 shoreline, which would be within the 30 feet that
16 they're entitled to. I don't think there's any
17 disagreement that they're entitled to 30 feet.
18 The answer is, however, that would require
19 dredging that is likely not possible. And so we
20 can have either Jeff or Brian, if someone wants to
21 speak, Jeff perhaps, about would it be possible to
22 build -- to put this boat here without having this
23 adjustment here.
24 And then as far as the overall overlay about
25 does this fit in the space, it is critical to keep

in mind, this is not on a canal. This is on the Marco River. It's a 3,000-foot wide body of water. It is not -- it's a large lot, 187 feet of waterfront.

And so it's not the case that we need to be so concerned about getting around the boat because we're not sitting on a 100-foot wide channel. We're sitting on a 3,000-foot body of water.

But your question is, is it necessary (indiscernible) with that element.

So, Jeff, can you speak to that? And let me put up a picture of the drawing or the rendering. Hold on.

CHAIRMAN BAILEY: I'm going to interrupt for a second, if that's okay.

MR. LOMBARDO: Sure.

CHAIRMAN BAILEY: I think it's important that the applicant has an opportunity to make their full presentation, you know, without us interrupting unnecessarily. I think that's important as our role as an impartial Board here.

So I think -- if you got thrown off and want to switch gears, if you want to do that, do that. I think if you want to keep going, keep going.

I under --

1 MR. VERGO: (Indiscernible) on me. I
2 didn't --
3 CHAIRMAN BAILEY: I know. And I understand
4 your point. He called on you and he was trying to
5 be polite and -- but I think if you just want to --
6 MR. LOMBARDO: Well, and (indiscernible) you
7 were shaking your head and I just wanted to make
8 sure -- you disagree with me. So I want to make
9 sure that we're on the same page.
10 CHAIRMAN BAILEY: I think it's important of us
11 to afford you the opportunity to make your full
12 presentation, whatever that may be. So --
13 MR. LOMBARDO: So, okay. Well, then, I'm -- I
14 will come to your factor. It's a factor we have to
15 analyze. I'm going to come there. I'm going to
16 finish this analysis of the side yard issue.
17 So there's a case -- so that's the first case,
18 Lee County versus Kiesel.
19 Second case, and I'll move a little faster
20 because I don't want to bog us in case law if we're
21 not interested in it. The Mickels and Norton, this
22 is in Port Charlotte. There are two property
23 owners. And it's probably more helpful to look at
24 the property owners. We're talking about this lot
25 and this lot. They are on this waterway and this

1 waterway.
2 This property owner here put up a fence along
3 his side yard. This property owner could no longer
4 see Alligator Bay, which is the body of water here.
5 That property owner sued them and said, you've
6 impacted my riparian right of view.
7 The Second District Court of Appeal said two
8 things in its holding. One, you're not on the same
9 body of water and you only have to view the body of
10 water that you are on. And, two, you never have a
11 right to look across somebody else's property at
12 anything. And so they ruled, in fact, for the
13 fence builders here in this case.
14 And what I want to emphasize is that, in our
15 case, for the immediately adjacent lots, that is
16 the situation we are in. They are on the canals.
17 They are not on the Marco River. The canal comes
18 up and goes out to the mouth. Jeff is going to
19 speak to this.
20 Those are the canals that they're on. Those
21 are the navigational channels. And they can see
22 the canal at all times. In fact, we're going to
23 pull the dock back around the corners so that they
24 will not be able to see the dock at all unless what
25 they do is they turn and look across the side yard

1 to the boat.
2 There's no riparian right there, but you don't
3 have to care about the riparian right because your
4 code says view to the channel. What we're asking
5 you to do is apply only the code.
6 So in this scenario, everybody has a right to
7 a view sort of in the direction of their lot lines
8 from their lot and no one -- these two lot owners
9 here don't look to the river. They look out to the
10 mouth of this canal here. This is their body of
11 water. And they have to look this way, the boat is
12 over here, across the side yard to see.
13 The owners on Orange Court and the other
14 finger are interrupted by the channel which is
15 critical. The channel comes up here and connects
16 to the Marco River and it comes up here and
17 connects to the Marco River. And this boat lies
18 fully on the inside of three different channels.
19 And so they are not having any view issues when it
20 comes to that.
21 There was an assertion made many times in
22 several letters that we can't see the bridge.
23 Respectfully, from the Orange Court lot, which is
24 the vacant lot, is 3,000 feet to the bridge. The
25 bridge is actually in -- is an intrusion into the

1 view, of which you only ever have a right to view
2 is the water.
3 And so the bridge itself is not something you
4 have a right to look at. And, in fact, had Marco
5 built the bridge, which the county -- when the
6 county built the bridge, if there was an
7 uninterrupted 3,000-foot view, every end lot unit
8 owner would be able to sue to be paid off for the
9 view damage that the bridge did.
10 And so interestingly now, we're saying we want
11 to view the bridge. But that's never the case
12 because it's always to the channel. At the end of
13 the day, it's a navigation issues which is
14 basically that you either -- they're either looking
15 over the property or they're looking past the
16 channel. In either case, there can be no view
17 issue.
18 That doesn't mean you can't decide against for
19 another reason, which is what we're going to get
20 into, but on the view issue, there's no legal basis
21 in your code, there's no legal basis at common law,
22 there's no legal basis under the Florida state
23 statutes to say that there's a view issue.
24 These are way too small, but you have ten
25 standards that you need to consider. And the first

one is the dimensional requirements. This is the easiest one. I don't think there's any serious questions here.

Your only dimensional standards, other than the 10 feet, is the side yard setbacks. We're at 27 feet and we pulled it back around the corner of the lot. Federal permits are being applied for because, unlike the canals in the City of Marco, the Marco River is owned by the Board of Trustees for the State of Florida, and so we have to get a submerged land lease which means we have to have at least 25 feet setbacks, but we did the additional two to bring it around the corner to further improve view generally, not necessarily view rights.

So this is the current dock. As you see, it comes around the corner and the setbacks are only 15 and 17, respectively.

Zooming out to the new dock, this is the rendering here prepared by Turrell Hall. Water depth is -- a starting point, to the answer of your question which is why can't -- why do you need 10 feet.

The water depth analysis, this was submitted in the packet, is part of the answer. The boat has

a large draw and so it can't sit up against the seawall.

And so that's the -- it's the answer to this and the answer to the question about that, but we have more answers to that.

So what I want to do is start there, that the water depth is sufficient as long as we go this far out into the river.

Subject, property-wise, it's not so much -- this was a question about special conditions. Special conditions is anything that makes the property unlike the majority of the properties on the island.

Marco is unique in that the majority of the properties are waterfront properties, but they are majority waterfront properties on canals and they tend to sit on the edges of the canals and then they sit in the corners of the canals, and a couple of them sit on the end caps, but that alone does not make them unique because a lot of them sit on end caps on interior waterways.

There are very few lots that sit on end caps on a state body of water. This is one of them. So the canals are usually 100 feet. Some of them are more narrow than that.

1 And I would submit -- earlier, it was asked,
2 well, what about the hazards of navigation intent.
3 That does apply, and to the extent that what we're
4 worried about in the canals, what's in the code is
5 we're trying to make sure everyone can get
6 everywhere navigationally.
7 And so when we're sitting on a body of water
8 this large, that concern greatly diminishes. At
9 least that's -- my argument is that it diminishes
10 because the navigation issue falls by the wayside.
11 This is a section from your code, but I don't
12 think we need to go there because I think we're all
13 in agreement on the 30 feet, about what can be
14 there generally. This is the kind of lot this is.
15 It's an end cap lot.
16 This is just a zoom-out so you can see the
17 scope of the river and to get the measurements on
18 the river which is just 2,700 feet across on the
19 river.
20 And the yellow dots are the navigational
21 channel markers for the designated channel, and
22 they are far from this lot here.
23 Here's the question about how far does it go
24 into the waterway. The answer is very small, 1.4
25 percent. It's a larger waterway.

1 And that's -- and, to me, this goes back to
2 the uniqueness. This is the point. This is a huge
3 body of water. This is a huge lot. It's got a lot
4 of waterfront.
5 The minimum size of the docking facility is --
6 so a couple of things go into this. One is, well,
7 would you need the backstop at all. And the answer
8 is yes, to contain the stability of the vessel, but
9 as you know, it doesn't matter if we took that off
10 or not, because the vessel itself is part of the
11 measurement and so I think, at this point, maybe if
12 Jeff or Brian, if you were -- one of you two
13 prefer, talk about the requirements for why we had
14 to put just that 10 feet, basically, off --
15 because, really, the 10 feet is coming off the lot,
16 which is causing the 10 feet to step into the Marco
17 River.
18 MR. GILMORE: Good morning. Hi. Brian
19 Gilmore, Collier Seawall and Dock.
20 Yeah, so the L-shaped configuration at the end
21 of the float, that is there as a way to safely moor
22 the boat so you can cross-tie in the back. So
23 that's part of the design that gives it more
24 stability.
25 And the reason -- the whole reason, really,

1 we're here is to get that extra 10 feet and that's
2 because of the draft of the vessel and also there's
3 a draft for the floating dock as well.
4 And you can't just arbitrarily dredge out in
5 front of the seawall because you're going to
6 undermine the integrity of the seawall.
7 UNIDENTIFIED MALE VOICE: Thank you.
8 MR. LOMBARDO: So to -- did you have a
9 question for him?
10 UNIDENTIFIED MALE VOICE: I'll wait.
11 MR. LOMBARDO: Okay. So it's both the boat
12 and the dock. And so in order to affix it safely
13 to the wall, this is what is necessary for this
14 configuration.
15 Let's see here. This is the first view
16 section, and I just underlined the fact that it's
17 view to the channel. It is not view generally.
18 And so this is why I went through the riparian
19 side to give you the comfort that, in addition to
20 the fact that your code says this, your code is in
21 exact concert with state law on this point.
22 And the channel here -- this is the current
23 Google Map overlay conveniently showing a boat
24 using the channel. The navigational channel on
25 this as is fairly seen here, is up the canal. The

canals are designed for navigation.

So everyone on the canal can go out approximately 25 feet and then that leaves a 50-foot navigational channel in the middle of the canal. It's in the canal to the left by Orange Court and it's in the canal to the right. These channels come out and they connect to the Marco River.

The entire dock, the entire boat, everything that we're asking for permission to do is on the inside of that rectangle and so it's not possible that anyone on Orange Court see this on the way to viewing the channel.

What they could do is they could see to the channel, across the channel and then to my client's property, but that's not the standard that you have here.

And so I don't think that would be an appropriate reason to vote against this particular application. There may be other reasons, and you -- and we can discuss those, but that reason is not something that, in my opinion, meets the muster of the code.

This is the current view from the western lot. This is the current dock, which is viewable from

1 standing here. The proposed dock will actually
2 pull that back so it's not going to be possible to
3 see that when you're standing on that lot looking
4 out.
5 I will note this lot is interesting because it
6 has this gazebo platform. If they go out onto
7 their gazebo platform and turn and look, then, yes,
8 they're going to be able to see this. Similarly,
9 on the current dock configuration, my client can
10 walk out onto this dock and turn and his view of
11 the canal is impeded by this gazebo platform, but
12 we don't consider that to be an issue because it's
13 not because we can see the channel, which is the
14 Marco River.
15 The look from the other lot line, same thing.
16 That's going to be pulled back. It won't be
17 visible at all. So this is what they look at.
18 They're going to look at the water out from that
19 direction.
20 We already talked about the riparian rights
21 issue on 6.
22 Again, on this number 7, it's asking the
23 question about impact of view to the channel. And
24 so -- and the surrounding property owners are on
25 angles on both sides or they're interrupted by a

channel itself. And so, again, on 7, I don't think that there is a legitimate, non-arbitrary objection to this point based on the code as you have written.

Let's see here. And then there's -- this is really a navigational concern. Does this impede the ability to use the boat docks that surround this. And the answer is no, because, again, we're pulling it back.

So everyone -- after this is done, if it's approved, this will not even be in the mouth of the channel at all for the surrounding property. So the surrounding property owners will now have the total mouth to use to get out into the river. And so, if anything, it's actually, even though I'm sure I'm going to get a lot groans, it's an improvement.

9 and 10, as agreed by city staff, are not applicable. This is sea grass beds. There are not sea grass beds within the required district -- distance.

And then 10 is a manatee consideration and it doesn't apply to residential properties. We do have the manatee mortality map anyway in our packet, but there -- it's not something that is at

1 issue here.
2 Comprehensive plan-wise, the -- this was in
3 our -- an additional submission in our packet
4 because the comprehensive plan is always a document
5 that's to be considered.
6 A lot of your comprehensive plan focuses on
7 density. This doesn't change anything about the
8 density. It's still a residential lot.
9 And I want to emphasize something, because I
10 know this is going to be the objection, which is
11 nobody else does this.
12 And the answer to that is that is incorrect.
13 And I would direct you to start at 849 Buttonwood
14 Court, which is close to the bridge. It's one of
15 the first things you see coming in.
16 Here is the lot at the end of 849 Buttonwood
17 Court. This is a double lot. They bought this.
18 They merged it into one lot and they have a 115
19 boat on the right, a 90-foot boat on the left. The
20 dock on the left is about 130 feet, same size that
21 we're looking at. The dock on the right is about
22 100 feet.
23 And then they have an additional dock for a
24 30-foot boat on the same property. So they have
25 three boats.

1 And, actually, depending on what you're
2 looking at, if you're looking at the Google Maps
3 overlay, they actually keep two additional boats
4 off the 30-footer.
5 And so this is a residential lot in the City
6 of Marco Island, and it has a significant amount of
7 boats, it has a significant amount of dock space.
8 And even more amazingly, this is not on a large
9 body of water. You can actually see the edge of
10 the canal from this zoomed-in angle. They are on a
11 canal.
12 And so -- but that's not -- we don't
13 necessarily need to stop there. We can go one
14 finger down. Here's -- here's an aerial overhead,
15 by the way, of it, I think, a couple of weeks ago.
16 So this is the boat here. The other boat seems to
17 be out to sea.
18 And I do want to, for what it's worth, it's
19 not like the boat is going to sit at the dock all
20 the time. It will be out to sea for months at a
21 time and so that's something to consider. And
22 that's why we don't necessarily have the building
23 height regulation, because it's not permanent.
24 But now we're going to go back to this lot
25 back here, which is 855 Fairlawn Court. This has,

again, two boat docks. We've got a 95-foot boat docked here. And so these measurements, by the way, this is -- the property appraiser's tool allows you to measure objects and so this is -- I say approximately, because I can't be 100 percent sure, but it's approximately a 95-foot boat.

There's a little small watercraft in front of it, because that dock is actually 120 feet across. And then there's a slip there for another boat that doesn't seem to be present at the time of this aerial.

And, again, going back to this shot here. That's back here. So they usually have a second boat sitting here, but I couldn't measure that because it wasn't there when the property appraiser took its most recent aerial.

So it's not the case that there are not residential structures in the City of Marco Island that have significantly large boats, and more interesting, on canals where the hazard of navigation actually is, I think, a peak concern.

And so to go back to the special conditions, in my opinion, the existence of the Marco River, when it comes to location, is the special condition, the primary special condition.

1 And so I don't have -- I would like to be able
2 to answer questions and provide my witnesses to
3 answer questions if you have them.
4 MR. VERGO: Could you go back to that one
5 aerial photo that you had, please?
6 MR. LOMBARDO: Yes, sir.
7 MR. VERGO: I believe it was two ago, if I'm
8 not mistaken.
9 MR. LOMBARDO: This one?
10 MR. VERGO: No. One before that.
11 MR. LOMBARDO: This one?
12 MR. VERGO: Yes. Now, the one thing I'd like
13 to point out on that is if you look at that, that
14 vessel is moored up to the seawall, and they didn't
15 ask for an extension. So they're within their 25
16 feet.
17 One of the things that we have to consider, as
18 a Planning Board, is we have no limitation of what
19 vessel you can put behind your house as long as it
20 fits legally behind your house, you know, so the
21 limitations in this case, it's a 30-foot protrusion
22 on that, is one of the things that we can do to
23 limit the size of the vessels to keep it within
24 some sort of reason for the small-town atmosphere
25 of Marco Island.

1 By granting an additional 10 feet, you know,
2 we're allowing this larger beam, which means a
3 longer vessel. All these vessels were
4 significantly lower in length, which allowed a
5 narrower beam.
6 And, you know, if you looked at all those
7 photos, there was no actual dock. They were moored
8 up directly to the seawall because they had -- they
9 had the depth to do it, you know.
10 So I guess my point of all this is I
11 understand they have this beautiful boat, and Lord
12 knows, I wish I could have one, too, okay? But a
13 vessel like this, it is -- it's just not fitting
14 within the confines and they're asking us to extend
15 those confines when, in reality, it really belongs
16 in a marina or a yacht club or something of that
17 nature, where there's adequate facilities in case
18 there's some sort of an emergency.
19 We're talking huge engines, huge diesel
20 engines, you know. I believe they add up to be
21 like 5,200 horsepower, generally, to push a boat of
22 this size, you know, but things of that nature,
23 generators on board, all kinds of other things,
24 you know.
25 So these are all concerns. Are they going to

1 have immediate cleanup capabilities for the
2 catastrophic oil spills or potential diesel spills
3 that could happen on this type of a vessel, you
4 know, surge concerns, all kinds of things that can
5 happen with these larger vessels.
6 And, you know, honestly, I'm probably the
7 first person to fight for property owners as far as
8 what you can do with your property, but sometimes
9 we've just got to put the brakes on and use a
10 little bit of common sense.
11 MR. LOMBARDO: If I could just first -- I want
12 to just point out one thing about this aerial.
13 We do not know what the beam of that boat is.
14 What we know is because they didn't do an extending
15 piece to moor the back, they didn't have to come
16 before you.
17 I highly doubt -- so this property owner does
18 not have 30 feet. They're on a canal and so --
19 MR. VERGO: They have 25 feet.
20 MR. LOMBARDO: They have 25 feet.
21 MR. VERGO: Correct.
22 MR. LOMBARDO: So there's a large possibility
23 the beam of that boat is larger than that, but they
24 didn't come before you because they don't have to
25 because they didn't build something out that far.

1 And so I would suggest that the -- this one
2 and the prior one, we don't know. And, actually,
3 there is a dock structure, and it is out over the
4 water right here. This is a really crappy --
5 MR. VERGO: No pictures to the left.
6 MR. LOMBARDO: No. It's right here. You can
7 see it right here. There's a dock structure.
8 So we don't know how far out they are. And
9 their beam could be longer than that, but they
10 didn't come before you because they didn't build
11 something that went out into the water. We're
12 building something that's going out in the water.
13 We're being honest. We're coming to you and we're
14 saying, here's what it's going to look like. And
15 we've given you renderings of the boat.
16 This was a boat that was built and they pulled
17 a boat up next to it. The same with the other ones
18 on Buttonwood Court. I highly doubt that the boat
19 on the right here has a beam that is less than 25
20 feet. And if it doesn't, then if this is an open
21 code enforcement case -- but, you know, the City is
22 not out there sending people in kayaks measuring
23 boat beams, because you don't require boats to come
24 to you and register, but it would not be hard to
25 check what the beam on that boat was if you had the

1 registration number of the hull.
2 So I don't think you can look at this and say,
3 aha, it's possible they're following the code, I
4 don't think so. I think that this says that maybe
5 they are. Maybe they are.
6 And I'm not saying -- and I think that that is
7 a much better analysis than the view analysis, and
8 I think this is a discussion you have to have and a
9 decision you have to make, but I don't think,
10 looking at this, the conclusion is not, they did
11 it, why can't they pull it up against the shore.
12 We don't know exactly what's going on here.
13 Even here, you can see the dock here. I
14 should have -- I wish -- my finger's right there --
15 MR. VERGO: There's a small dock.
16 MR. LOMBARDO: There's a small dock.
17 MR. VERGO: A small dock.
18 MR. LOMBARDO: Sure. Even if it's a 2-foot
19 dock, if the beam is 24 feet, they're over the
20 edge.
21 MR. VERGO: If it is. I happen to know the
22 vessels --
23 MR. LOMBARDO: You know the vessels?
24 MR. VERGO: -- in the pictures, yes.
25 Firsthand.

1 MR. LOMBARDO: Are they your vessels?
2 MR. VERGO: No, they're not mine.
3 MR. LOMBARDO: Okay.
4 MR. VERGO: But I know the owners.
5 UNIDENTIFIED MALE VOICE: Air-conditioning
6 doesn't pay that good.
7 MR. VERGO: I wish it did.
8 MR. LOMBARDO: So look at the -- there's an
9 objection submitted by Mr. Snyder (phonetic), and I
10 just wanted to address some of these issues here.
11 We talked about the height limit. There is no
12 height limit for boats in the City of Marco Island.
13 He makes an assertion on page 4 that it will
14 take up 90 percent of the waterfront. It's 130
15 feet. It's a 187-foot waterfront. It's 70
16 percent. It's not 90 percent. It's 90 percent of
17 that front piece, but it's not 100 percent of the
18 waterfront.
19 He asserts some sort of right of kayaking in
20 the zone. I don't think that that is something
21 that -- it's not a right special to any of the
22 particular property owners. I mean, anyone in the
23 state waters has a right to kayak in them, but I
24 don't -- but, importantly, what you need to know
25 about that is they've applied to DEP, who is the

1 agent for the Board of Trustees, to determine
2 whether this is an acceptable encroachment into the
3 state waterways. And, in fact, they have to pay a
4 lease payment every month if they build this dock
5 for this right to encroach.
6 And so the kayaking thing is resolved because
7 the state's making that determination. You all
8 don't sit as the Board of Trustees to determine how
9 we're going to use state waters. But you do sit as
10 the managers of your own community. So I will
11 certainly defer to you all on that.
12 And I would like to reserve a brief rebuttal
13 after we hear the applicants (sic), if the Chair
14 will allow that.
15 CHAIRMAN BAILEY: Sure.
16 MR. LOMBARDO: And then I will also point out
17 that any pictures of actual boats submitted to you
18 in objections are not the boat. I don't know where
19 Mr. Snyder found this picture. And I hope this is
20 your boat. If it's not --
21 UNIDENTIFIED MALE VOICE: No, I believe it is
22 Board Member Vergo's boat.
23 MR. LOMBARDO: Okay.
24 MR. VERGO: It's my weekend vessel.
25 MR. LOMBARDO: I knew it. I knew it.

All right. I'll defer to the objectors and bring all of my mess of papers back. Thank you.

CHAIRMAN BAILEY: Ms. Rivera, did you have a question for the applicant?

MS. RIVERA: Yes, I had four quick questions, please.

Number one, can you tell me what the submerged land lease is being applied for? What does it give you?

MR. LOMBARDO: Sure. The -- anytime you build a dock on state lands, which would be the submerged lands, which is the Marco River, over 1,000 square feet, you have to give the Department your plans. You have to meet their setback requirements, which are 25 feet. And you have to agree to pay them -- I don't know if it's monthly or yearly, Jeff?

MR. ROGERS: It's an annual fee that you pay, but they charge you monthly.

MR. LOMBARDO: And it gives you the right to put structures over state submerged lands to the exclusion of the rest of us, who are all residents of the state of Florida.

MS. RIVERA: Got it. So it's almost like renting a slip.

MR. LOMBARDO: Yeah, it's a lease.

1 MS. RIVERA: Yeah. Okay.
2 So number two question is, did this
3 application require that you disclose that it was a
4 130-foot boat that you were going to --
5 MR. LOMBARDO: No.
6 MS. RIVERA: Why did you do that?
7 MR. LOMBARDO: Because we needed to show you
8 the beam because -- we had to disclose the beam
9 because if we -- what we could have done, I guess,
10 is not included -- it could have been more like,
11 although I'm hearing it's not accurate, but I'm
12 going to go ahead and make the implication anyway.
13 We could have just built a little dock and
14 then parked this boat here and we would have never
15 come before you, and then people would have been
16 very mad.
17 MS. RIVERA: I mean, you could have left the
18 boat (indiscernible) beam off and --
19 MR. LOMBARDO: Sure. The answer is because
20 we're reading the code, and this is what the code
21 says we need to do, and we're here asking.
22 MS. RIVERA: Okay. And I kind of suspected
23 that you weren't required, but you did. So now
24 you've made the paper.
25 Okay. Next question is, Buttonwood Court came

1 to mind immediately once I saw what -- that you
2 wanted to moor a 130-foot -- I mean, the house
3 looks like this and the boat is back in there.
4 And do you know what year or -- Mr. Vergo, do
5 you know what year they started bringing one of
6 those big yachts onto Buttonwood Court? Because
7 I've been here a little over 20 years and I --
8 frankly, I don't remember not seeing that boat.
9 MR. VERGO: It's been a while. I don't know
10 exactly when they took control of those properties.
11 I've only came to know them over the last three
12 years or so.
13 MS. RIVERA: Okay.
14 MR. FAHRINGER: If I could.
15 CHAIRMAN BAILEY: Yeah.
16 MR. FAHRINGER: I actually live on the canal,
17 and the 27 years I've been there, there's always
18 been big boats. That's Dr. Miller.
19 MR. VERGO: I didn't want to say any name.
20 MS. RIVERA: Are they -- are they
21 grandfathered prior to our comprehensive plan or --
22 or it's never been questioned on whether they are
23 in keeping with the comprehensive plan or not? Or
24 does the comprehensive plan not --
25 MR. TOLCES: No, it's just permitted -- no,

1 it's permitted.
2 MS. RIVERA: So the comprehensive plan isn't a
3 conflict or an issue?
4 MR. LOMBARDO: Well, if I can interject.
5 MR. TOLCES: Well, for today, it is. You
6 know, you consider elements of the comprehensive
7 plan as part of your discussion, but as far as --
8 it's my understanding, from what I'm hearing today,
9 that it's not necessarily a condition for them to
10 be able to moor their vessel on that property.
11 MS. RIVERA: I'm sorry. Could you repeat that
12 last part?
13 MR. TOLCES: For that property owner to moor
14 that specific vessel on that property, the
15 comprehensive plan, I do not believe, comes into
16 play.
17 MS. RIVERA: Okay. Because, actually, I just
18 learned. I've been seeing that vessel on
19 Buttonwood like forever, and today I came to the
20 realization that there's two of them there. Okay.
21 So then that drives me to my last question.
22 Is the owner a boat rental corporation? I mean,
23 I've seen these boats down in St. Barts over the
24 month of December. They park -- they have dozens
25 of them down there, because they're leased over the

1 Christmas and New Year's holidays. They move them
2 around the world.
3 Is this a business proposition that's moving
4 into that property or is --
5 MR. LOMBARDO: Yeah, and to answer that, no.
6 And the owner is here. This is the owner. And --
7 MS. RIVERA: Oh, so you're the owner, not the
8 manager?
9 MR. LOMBARDO: Technically, because it's a --
10 the property is held in an LLC, but it is not --
11 there's no -- it's not a business.
12 And to be very clear, they would not be able
13 to run a business out of this per your zoning code.
14 It's in a residential zoning district.
15 MS. RIVERA: That's why I'm asking the
16 question.
17 MR. LOMBARDO: Yeah. So it's not possible to
18 do that, and that is not what is intended. This is
19 his personal boat, his asset. He wants to hold it
20 in a company.
21 I will note that Dr. Miller does hold his boat
22 in the Miller Family Companies, LLC. So that's not
23 an unusual approach, but to confirm, this is a
24 residential use that we're asking for.
25 I wanted to go back to your question about

1 what applies. Your boat docking code section was
2 enacted in 2000, at least the current version was
3 primarily enacted in 2000. So I have no idea when
4 the Miller boat showed up or the other boat, but if
5 it was around that time, this would have applied.
6 What I'm suggesting to you is, we don't know
7 if -- what the distance of that dock and what that
8 boat is, and so we don't know if they are within
9 the limits of their riparian zone.
10 MS. RIVERA: I agree with you.
11 MR. LOMBARDO: All right. Any other
12 questions?
13 MS. RIVERA: That's it.
14 CHAIRMAN BAILEY: We have more questions.
15 MR. LOMBARDO: Okay.
16 CHAIRMAN BAILEY: Larry?
17 VICE-CHAIRMAN HONIG: Thanks, Jason, and
18 thanks, Zach.
19 You said something toward the end that I want
20 to -- I'd like to get your reaction to a thought.
21 You made an interesting point.
22 I didn't write down your exact words, but you
23 said something like, approximately, these other
24 boat owners did not have to come in to get a
25 variance like the ones that you were showing on

1 Buttonwood, but I could flip that.
2 This is the setup for the question. I could
3 flip that on you and say, you know, maybe that's a
4 good thing, that maybe that discourages people from
5 having very large vessels on their property because
6 they have to come before this Board and maybe we
7 will be skeptical because of the visual impact on
8 the character of the community.
9 That's the question I'm trying to get out of
10 you.
11 MR. LOMBARDO: Sure.
12 VICE-CHAIRMAN HONIG: And get your reaction.
13 MR. LOMBARDO: My --
14 VICE-CHAIRMAN HONIG: Let me read you -- if I
15 can, let me read you one more thing from the
16 comprehensive plan, because it talks about an
17 objective in the land-use element. And the
18 objective is to protect existing and future
19 residential development from any encroachment uses
20 that are potentially destructive to the character
21 and integrity of the residential environment.
22 And it goes on to say, well, what -- I
23 remember this question was asked by somebody on
24 this Board, what do you mean by that.
25 Compatibility is defined as the characteristics of

1 different uses or activities of design which allow
2 them to be located near or adjacent to each other
3 in harmony. Some elements affecting compatibility
4 include the following: Height, scale, mass, bulk.
5 That is at issue here, I think. I'd love to
6 get your response to that.
7 MR. LOMBARDO: Yeah. As I'm sure you'll not
8 be surprised, my answer to that is no, that's not
9 at issue. And let me explain that. I knew you
10 were -- you were waiting for it, like he's going to
11 say no.
12 The answer is no, because of a -- the word,
13 and the word is uses. So the comprehensive plan is
14 the backbone document of how you principally create
15 the zoning code.
16 And so the zoning code is obsessed with the
17 concern with usage. What that is saying is we do
18 not want industrial uses, for example, to get too
19 close to residential uses. So this is a
20 residential use.
21 And this goes back to the question asked by
22 Ms. Rivera. If this were a boat leasing company or
23 some kind of cruise terminal, that would -- under
24 no circumstances would it meet the muster of that
25 standard. But this is uses, not shapes, I guess.

1 And so then -- but, as you noted, it does say
2 things like height and bulk. That's of the use.
3 And so if this were a marina, if this were a boat
4 storage yard, if this were something that was not a
5 residential house, it would be a massive conflict
6 with that section and, frankly, we wouldn't even
7 get to that section because we'd be out at zoning
8 level. We wouldn't be able to submit the
9 application.
10 But the use here remains, is and remains
11 residential. No matter what -- whether you do or
12 do not allow the boat, it's a residential house.
13 So that's my answer to that question.
14 To your prior question, and I'm trying to
15 recall exactly what the question was. Could you
16 remind me?
17 VICE-CHAIRMAN HONIG: It was all that
18 question. I wanted to get how you reacted to the
19 specific language in the comprehensive plan and I
20 appreciate your reaction.
21 MR. LOMBARDO: And so any other questions?
22 Sorry.
23 CHAIRMAN BAILEY: Geoff?
24 MR. FAHRINGER: Thank you, Jason.
25 As to the (Indiscernible) submerged land

1 lease, what's the process -- what's the status of
2 the application? Have you had any correspondence
3 from the State of Florida yet?
4 MR. LOMBARDO: Mr. Rogers?
5 MR. ROGERS: For the record, Jeff Rogers with
6 Turrell, Hall & Associates.
7 To answer your question, yes. An application
8 has been submitted to the Department and is
9 currently in review. I am waiting on the survey to
10 be completed which outlines the boundary of the
11 lease, which has to encompass the vessel, the dock.
12 Anything over water that the -- is behind this
13 applicant's home will be encompassed in the lease
14 and a per-square foot dollar amount is applied to
15 that lease area and the owner is -- pays that on an
16 annual basis.
17 And it's under review. There's been no
18 reasons that the Department will not issue the
19 permit that has been brought up yet, as long as we
20 comply with the lease requirements.
21 MR. FAHRINGER: Okay. If you just hang on a
22 second. Another question unrelated, but a
23 curiosity question. David had brought it up.
24 When this vessel is at the dock, can you tell
25 me, will there be someone at that residence 24/7,

so to speak, if there's any high-water alarms or anything else goes off and that vessel starts to take on water?

I know a lot of the marinas require a crew or some type of alarm systems. I know it's not related to this. It's just a question I have.

MR. ROGERS: Yeah. So this is a single-family lot. They are not subject to the typical requirements that marinas or multi-family, commercially zoned lots are in regards to marina operation management plan, it's called.

But, yes, from what I understand, what I've been told, this residence -- the house and the vessel, when the vessel is there, there will be somebody in the residence at all times and being there just to watch over the boat.

MR. FAHRINGER: Great.

MR. LOMBARDO: This is that someone. This is the captain, the proposed captain for the boat should the boat be allowed to be there.

If you can just confirm your name.

MR. HOWARD: My name is Doug Howard. I'm the captain of Janus Navem.

MR. FAHRINGER: Are you a Marco Island resident, sir?

1 MR. HOWARD: Oh, yeah.
2 MR. FAHRINGER: Thank you.
3 One last thing for Mr. -- for Turrell & Hall
4 Associates. You have a -- I think it's Exhibit A5,
5 and it shows the depths. I don't know if you can
6 answer this or maybe the gentleman from Collier --
7 but, actually, the captain probably should.
8 What would you assume to be the draft of a
9 vessel this size, normally?
10 MR. HOWARD: 7 feet.
11 MR. FAHRINGER: 7 feet. Okay.
12 So -- all right. I just was looking at -- if
13 you were to put in a smaller dock system, it would
14 be iffy as whether you'd be able to stay under the
15 30 feet, is what I'm looking at here.
16 On this Exhibit A5, it appears that you're
17 hitting 7 feet, but I can't really tell the
18 distance out, but you're probably more than 4 feet
19 off that seawall to reach 7 feet depth?
20 MR. HOWARD: Correct.
21 MR. FAHRINGER: Okay. Thank you.
22 MR. ROGERS: You can take -- when we go to
23 design these kind of docking facilities for
24 individual homeowners, we take into consideration
25 every factor, water depth, speed in particular.

1 Those docks, the dock that is proposed in
2 front of you is a concrete floating dock. It will,
3 on average, draft about 4 to 5 foot of water. So
4 you have to verify what the depths are with a
5 pre-survey, existing condition survey.
6 And what we do with that survey is we get
7 depths reference to mean low water. So the depths
8 on those exhibits are the average low tide depths.
9 Granted January, December, February months, the
10 averages drops a little bit, but that's taken into
11 consideration.
12 So the depths in front of you on that are mean
13 low water. The dock does help to get the vessel
14 into an area of safe mooring on a low tide based on
15 water depths.
16 Dredging is an option here. It always is.
17 However, the state lands plays a major factor into
18 getting that approved as well as what does the
19 dredging do to the structural integrity of the
20 seawall that's already there as well.
21 MR. FAHRINGER: Thank you.
22 CHAIRMAN BAILEY: I have a couple of
23 questions.
24 MR. LOMBARDO: Sure.
25 CHAIRMAN BAILEY: In this report -- I've been

1 to some of the adjacent properties.
2 In your application, it talks about a vinyl
3 seawall, and I might be screwing it up, but it says
4 either to be completed or has been completed.
5 When I was there, it looked like there was a
6 vinyl seawall in place. Can anyone confirm that
7 that's --
8 MR. LOMBARDO: There is a vinyl seawall in
9 place.
10 CHAIRMAN BAILEY: There's not another one
11 going in front of what's there?
12 MR. LOMBARDO: No.
13 CHAIRMAN BAILEY: Okay. Some of the documents
14 you've submitted, I don't know what exhibit it is,
15 I apologize, but you've got an overview of the
16 property where you've got like a red dash line and
17 a blue line. The red dash line -- your eyes have
18 got to be better than mine.
19 The red dash line, is that the property line?
20 MR. LOMBARDO: Yes, sir.
21 CHAIRMAN BAILEY: So a question I would have
22 is, in our code, protrusion is measured from the
23 property line; is that correct? Mr. Tolces, Mary?
24 I thought the protrusion was measured from the
25 property line, not from the face of the seawall.

1 MR. TOLCES: Yes, yes.
2 CHAIRMAN BAILEY: So we've added a seawall in
3 front of the seawall. So this might be nitpicky,
4 but, you know, we're asking for a variance of X
5 feet.
6 Is that variance request actually correct?
7 Because are we asking for a variance from the face
8 of the seawall or are we asking for a variance from
9 the property line?
10 I mean, to me, looking at this, it looks like
11 you might actually need more of a variance than
12 you're requesting.
13 UNIDENTIFIED MALE VOICE: I think it is taken
14 from the seawall, not the property line.
15 MR. LOMBARDO: That is correct. We did not
16 (indiscernible) that. We apologize.
17 CHAIRMAN BAILEY: So you might need an
18 additional 2 or 3 feet beyond what you're asking
19 for?
20 MR. LOMBARDO: That appears to be the case
21 based off the scale.
22 CHAIRMAN BAILEY: Okay. I'm going to ask you
23 a question, but I'm also going to ask Mr. Tolces
24 this question, too. I'd be curious what your
25 responses is.

1 You talk about riparian views and all that.
2 Do riparian views change based on where you are?
3 You mentioned the gazebo on the property next door.
4 I mean, that's an accessory structure by code.
5 Do riparian views, do they change at all? Do
6 you have any more right to views based on where you
7 are on your primary structure, primary property?
8 MR. LOMBARDO: Well, they change as long as
9 you're on your property. The gazebo is not on that
10 person's property.
11 CHAIRMAN BAILEY: But it's an accessory
12 structure.
13 MR. LOMBARDO: It's an accessory structure
14 that the City has allowed them to build in their
15 riparian zone.
16 CHAIRMAN BAILEY: Okay.
17 MR. LOMBARDO: So when they step out onto that
18 gazebo, as you can see, what we just talked about
19 where the property line is, they leave their
20 property line, and they go into the area of
21 riparian use that the City allows them and the
22 State of Florida allows them to have.
23 And from that point, you do not get additional
24 riparian views.
25 CHAIRMAN BAILEY: Okay.

1 MR. LOMBARDO: Your view is from your property
2 line. And all of your rights are from your
3 property line.
4 CHAIRMAN BAILEY: Okay.
5 MR. LOMBARDO: And, obviously, if counsel
6 disagrees with me, I'd be more than happy to
7 discuss.
8 CHAIRMAN BAILEY: Yeah, I'd be interested in
9 hearing what Mr. Tolces' thoughts are, so.
10 MR. TOLCES: I believe that you retain the
11 same riparian view rights on your property,
12 notwithstanding the fact that you may have
13 constructed that accessory structure. That gives
14 you some additional angle. It's still going to
15 remain with what's on your primary property.
16 CHAIRMAN BAILEY: So your riparian rights are
17 not expanded or contracted --
18 MR. TOLCES: Correct.
19 CHAIRMAN BAILEY: -- based on where you are?
20 MR. TOLCES: Correct.
21 CHAIRMAN BAILEY: Okay.
22 MR. TOLCES: And it still doesn't necessarily
23 -- under the law, it still doesn't give you the
24 right to look over onto somebody else's property.
25 CHAIRMAN BAILEY: Okay.

1 MR. VERGO: The only exception to that might
2 be these -- like mine, I'm at the end of a -- I'm
3 at the end of a canal with an L, where my property
4 line actually extends 12 feet into the water. The
5 actual property line, mine actually extends 12 feet
6 into the water.
7 MR. TOLCES: I mean, I'd have to look at it,
8 but each property is different, so.
9 MR. VERGO: Each property is different. So it
10 goes by the property line itself --
11 MR. LOMBARDO: Yes.
12 MR. VERGO: -- is the point.
13 MR. LOMBARDO: You -- if you have a shoulder
14 lot, you could build a dock to the edge of your
15 property line, and then go stand on the end of that
16 dock and you would have additional riparian rights
17 because that's your property line.
18 CHAIRMAN BAILEY: Okay. A couple of other
19 questions that some of your team may or may not
20 have the answer, but you talk about building a
21 concrete floating dock.
22 Is that required for this or is that just the
23 preferred way to do it? Is that what the applicant
24 wants to do?
25 MR. ROGERS: That is the preferred application

here for this type of vessel. When you're mooring -- when you're doing lay-along mooring, like this will be, it floats with the vessel. It's just ease of getting on and off, access, loading things. It's a safety thing as well as maintenance.

You can clean the side of the hull. You can, you know, just -- it provides -- it just makes everything -- it's the idea -- it's the Cadillac of docks, is what we call it. Fixed dock, you're up in the air. Low tide, the vessel will drop. So it's a ladder, you know, it just gets a little bit more complicated.

Here, the water depths allow for a float, concrete floating dock. The vessel ideally would want to be moored up onto a concrete floating dock, which is Marco Island Yacht Club is a perfect example of a typical marina that we design.

You know, it just provides a lot of ease for the owners as well as the crew.

CHAIRMAN BAILEY: Do these come in precast sections?

MR. ROGERS: Yes, sir.

CHAIRMAN BAILEY: Is that why you're asking -- is that why you're proposing to build a 10-foot structure? I mean, is it a 10-foot wide panel that

1 you have to get built or are there 5-foot wide
2 panels you can order? How does that work?
3 MR. ROGERS: They're custom ordered through --
4 I'm assuming this is going to be a Bellingham
5 Marine dock, which is -- they're made in
6 Jacksonville. They are custom floats that are
7 basically 10-foot sections, typically, 10-foot long
8 by either 5-foot wide, 10-foot wide, 8-foot wide,
9 whatever the dock design is.
10 The engineered float, the concrete aspect of
11 the float will only probably be about 8-foot wide,
12 and then they will put wooden whalers on each side
13 of it and through rods that go through it that acts
14 as the guts and holds the whole dock structurally
15 together.
16 So the concrete aspect of it will be about 8
17 to 9-foot wide, and then they will be wooden on the
18 outside of that.
19 CHAIRMAN BAILEY: So would something narrower
20 be an option or is that not an option? Does
21 Bellingham make a 4-foot or a 2-foot or --
22 MR. ROGERS: Good question. Yeah, so the
23 skinnier you go with a larger vessel like this, you
24 don't have a lot of sticks in the ground, like a
25 fixed dock, so to speak, pilings.

1 So, structurally, the dock is going to be held
2 together by probably, in this case, I would assume
3 probably six to eight control piles, and the dock
4 floats up and down on those piles, obviously.
5 But that provides -- the width -- the skinnier
6 you go, the more the dock wants to start twisting
7 on you over time. So a 4-foot dock, we will not
8 really design or engineer for customers unless we
9 absolutely have to because that's all that fits
10 because the dock will start to do this.
11 Being on an open body of water like it is,
12 they will get some fetch from some wind at certain
13 times of the year, as we all know. Larger is
14 better, unfortunately, with those.
15 And stability-wise, as well as to protect the
16 vessel, I think what we did for Marco Island Yacht
17 Club, we went 20-foot wide, and those are
18 breakwater docks that we engineered there, which
19 those probably take up about 10 foot of draft of
20 water. That's -- they're breakwater docks. They
21 are, you know, they are really heavy-duty docks.
22 This case, same idea, a little less, you know,
23 draft, a little less meat goes into these ones, but
24 4 to 5-foot drafts, 10-foot wide is going to
25 provide stability.

The least I would recommend for a dock like this width wide would be 8 foot. 10 foot is ideal and, you know, that's ideally what we want.

However, we could reduce it a little bit, but that's up to the applicant.

CHAIRMAN BAILEY: Okay. Thank you.

I don't think we have anything else for you.

MR. LOMBARDO: Based on your questions, though, I do need to -- we would be willing to do 8 feet, and we'd also -- but we would need to amend our application to go the actual distance, which is going to be the 12 feet additionally into the river.

So I'll make an ore tenus motion to amend. I don't think I -- I did not catch that before. I apologize.

MR. TOLCES: So just -- because we were looking at that issue. So the setback -- the encroachment that you would be looking for would be for 38 as opposed to 40?

MR. LOMBARDO: No. It would be --

CHAIRMAN BAILEY: Plus the distance of the new seawall from the property line.

MR. LOMBARDO: It would be 42, because the seawall sits in the riparian zone in advance of the

1 property line, and so -- and I don't -- do we know
2 the exact distance? I don't think we know the
3 exact distance, and so I'm saying --
4 MR. ROGERS: We can determine it. It's at
5 least 2 feet.
6 MR. LOMBARDO: So I guess what I would be
7 amending it to is as shown, and we would submit and
8 post what the exact number is, but it's as shown,
9 which appears to be, based on the scale, about an
10 additional 2 feet.
11 UNIDENTIFIED FEMALE VOICE: 18 inches,
12 according to the scale.
13 MR. LOMBARDO: 18 inches, according to the
14 scale?
15 UNIDENTIFIED FEMALE VOICE: Yes.
16 (Indiscernible).
17 MR. ROGERS: The drawing -- so can I explain a
18 little bit?
19 When we go to -- well, we're not contractors,
20 but when a contractor replaces a seawall, which, as
21 we know, Marco Island is going through that right
22 now, you put a wall in front of a wall.
23 The State of Florida allows you 18 inches to
24 put a wall in front of a wall.
25 The reason they do that is because they're --

1 technically, there's a home up there. If you go
2 ahead and pull out the existing wall, it's a domino
3 effect. You start losing things; dirt, pools,
4 retaining walls, what have you. So they allow you
5 to put a wall in front of a wall. They give you 18
6 inches to do that.
7 A lot of contractors do the vinyl in front of
8 the concrete, easier to use, less weight for them
9 to pick up, and then you just pour one large cap
10 over both walls entombing the two together.
11 So looking at this, I would say we -- it's
12 going to be probably 2 feet additional, is what we
13 would need. I need to verify that on CAD real
14 quick, and then survey, and get that dimension, but
15 I'm assuming it's going to be approximately 2 feet.
16 MR. LOMBARDO: Thank you.
17 CHAIRMAN BAILEY: Thank you. Mr. Tolces, if I
18 could ask you another question, because it
19 sounds -- this, today, is perhaps a little bit
20 different than other days that we have an attorney
21 that's representing some objectors here. We have
22 phone calls.
23 Do you have a preference on what we do next?
24 MR. TOLCES: Whatever the Board's, you know,
25 preference is. You know, there's no -- there's no

1 requirement who (indiscernible). You may want to
2 let whoever is present speak first, and then go
3 with the folks on the line, but whatever the
4 Board's preference.
5 CHAIRMAN BAILEY: I didn't know if you had
6 anything that was -- you know, whatever.
7 MR. TOLCES: No.
8 CHAIRMAN BAILEY: If it mattered legally that
9 way.
10 MR. TOLCES: No, not necessarily.
11 CHAIRMAN BAILEY: Well, why don't we go ahead
12 and just -- then we'll move to public comment, I
13 guess, because that's going to be all encompassing,
14 and I don't -- I have not received anything that
15 anyone signed up to speak.
16 Did anyone actually sign up to speak?
17 UNIDENTIFIED FEMALE VOICE: No.
18 CHAIRMAN BAILEY: Okay. So we can go to --
19 why don't we do the phone calls first? We've got
20 two phone calls, it looks like. And so our back
21 room staff will help us with that? We've never
22 done this before, so we're going to muddle our way
23 through it. Maybe. Or we'll take an awkward
24 break.
25 MR. BISSELL: (Indiscernible) members of the

1 board.
2 CHAIRMAN BAILEY: Hello. Good morning. Can
3 you hear us?
4 MR. BISSELL: No. There's no -- there's no
5 (indiscernible).
6 CHAIRMAN BAILEY: Hello. I can hear you.
7 MR. BISSELL: I do want to let whoever is
8 present (indiscernible).
9 CHAIRMAN BAILEY: Hold on a second, please, if
10 you can hear us.
11 MR. BISSELL: (Indiscernible).
12 MR. TOLCES: You may have -- you may have
13 somebody else on the line or maybe he's got a
14 speaker that's providing feedback.
15 MR. BISSELL: (Indiscernible).
16 MR. TOLCES: Ask him to mute whatever he's
17 listening to before he speaks.
18 CHAIRMAN BAILEY: If you can mute whatever
19 you're listening to, please.
20 MR. BISSELL: Yes, that's me. I muted it.
21 Can you hear me?
22 CHAIRMAN BAILEY: Perfect. We can hear you
23 now.
24 If you could state your name for the record.
25 You have four minutes, please.

1 MR. BISSELL: My name is Matthew Bissell
2 (phonetic). I live at 1264 Laurel Court.
3 CHAIRMAN BAILEY: Thank you. Please go ahead.
4 MR. BISSELL: Yeah. There's a -- can the
5 Board hear me?
6 CHAIRMAN BAILEY: We can.
7 MR. BISSELL: Okay. Thank you. There's a
8 delay between the telephone and the live video that
9 I am watching.
10 My name is Matthew Bissell. I reside at 1264
11 Laurel Court. I had submitted an e-mail to Mary
12 Holden that did not make it into the Board packet.
13 I'm assuming that the Board members did, indeed,
14 receive that since I have received e-mails from two
15 of the Board members regarding my letter.
16 CHAIRMAN BAILEY: We did receive something,
17 Mr. Bissell.
18 MR. BISSELL: Good. Thank you.
19 I don't need to repeat myself, what I view as
20 an issue with a vessel that size, and the view,
21 that it would do primarily to my home residence. I
22 also own the house next door.
23 Based on the attorneys talking about the
24 riparian rights, if you were to look at the
25 satellite view, my home literally faces up the

diagonal seawall of the canal straight to where the tip of that yacht would be sticking out. So it definitely would reflect on my view without having to look across anybody's other property in order to do so.

While I realize that the primary role of the Planning Committee is to work with what the regulations and the statutes say, yet, I know that there is flexibility, and it was mentioned that, by Larry, that the comprehensive plan speaks to a small-town feel and protecting the feel for the residents of the island.

I'm a large proponent of something like that, where, you know, this would change the character of the island. I have spent plenty of time in Miami and Fort Lauderdale and have seen what the yachts of that size have done to the views from the waterways and also the views from the land.

And this just does not hit me as something that Marco really wants to do. It would change the character dramatically. If this were to happen, I believe it would open up the door for many more of these types of boats or mega yachts to end up in front of properties, significantly changing the character of the island.

1 Dave Vergo commented very well on the size of
2 the yacht and the fact that there would be a crew,
3 likely of six to seven people. When I've been
4 traveling on my boat and you're in a marina that
5 has mega yachts, there's always a crew working and
6 maintaining the boats. That water is not a nice
7 thing on boats. So that definitely would affect
8 the neighborhood, you know, also, I believe.
9 When Turrell did the study and put the
10 drawings together, it does not show where the posts
11 are going to go. I believe he mentioned six to
12 eight. These are very large posts, a floating
13 dock, especially holding a yacht of that size.
14 And I'm just curious how tall those posts are
15 going to be, the six to eight that he mentioned.
16 So regardless of where or when the boat is not at
17 the dock, those would still be very visible from
18 other properties, and especially from my property.
19 I really believe this would dramatically
20 impact the value of my property. When I purchased
21 my home there, approximately 16 years ago, based on
22 insurance requirements, everything else, about 25
23 percent of the purchase price was attributed to the
24 house and 75 percent of the purchase price was
25 attributed to a lot with an unobstructed view of

1 the Marco River, and this will take out my primary
2 view from my interior living space up the Marco
3 River.
4 And I would just like that to be taken into
5 account because I do believe the Planning Board has
6 a larger responsibility than just a black and white
7 of the way that our codes are written and it does
8 sound to me like there might need to be some review
9 of how those codes are written in the future
10 because this is, in my mind, going to be the
11 equivalent of having a multi-unit condominium
12 sitting out in the water at the end of a tip dock,
13 and I do not believe that is the intention that the
14 Planning Board should accept.
15 Thank you for hearing my comments.
16 CHAIRMAN BAILEY: Thank you. It looks like we
17 have another caller on the line here as well.
18 Mitchell.
19 MR. McBRIDE: Hello.
20 CHAIRMAN BAILEY: Hello. Good morning.
21 MR. McBRIDE: Good morning. This is Mitch
22 McBride calling in.
23 First of all, before we do anything, there
24 wasn't adequate notice provided to us. Under
25 Section 54.115(d)(2), there needs to be notice to

1 all property owners within 300 feet of the subject
2 petition, and we have not, to this date, received
3 any notice by first class US mail.
4 And that's very important because there are
5 constitutional due process rights that are
6 implicated by the loss of our view, which is
7 protected by the statutes.
8 So it's important that all of the property
9 owners within 300 feet get the notice, and we
10 currently have not received that notice, and we
11 imagine others haven't as well.
12 We've tried to contact all the neighbors. We
13 learned about it through different ways, through a
14 friend of a friend. We imagine other neighbors
15 that might have loss of use don't even know about
16 this. And we haven't been able to get in contact
17 with everyone.
18 As I said, before we do anything, I'd ask that
19 the Board assure itself that that provision has
20 been met.
21 On August 19, Sherry Kirsch posted a legal
22 notice on a newspaper of general circulation, but
23 that alone is not enough.
24 In addition to that, we have plenty of merits
25 arguments which we raised in our letters to you

1 which rebut everything that was said.
2 There was one new comment about the riparian
3 line. And to the extent that ancient common law
4 did not protect views that look different ways from
5 the property, that's been displaced by the Marco
6 city statute, which specifically says that all
7 views of surrounding property owners of the
8 waterway are protected. So that does not limit
9 itself to the views directly out from the property
10 line.
11 But in the -- I've tried to quickly look up
12 the cases, and the one case, at least, that I've
13 been able to read in the time is not responsive to
14 the question.
15 And so -- and even if we are wrong on that
16 score, as Mr. Bissell said, his view is directly
17 out of his property.
18 So we do think that, under Section
19 54.115(f)(7), you have to consider the impacts on
20 our views by the mega yachts. The vessel, the City
21 staff admits, is well in excess of 50 percent of
22 the length of the water frontage, and that should
23 be a huge consideration. That (f)(7) should weigh
24 very heavily (indiscernible) the view blockage.
25 In addition, in our letters we raised that

1 there's no special justification that has been met
2 in this case. That remains true to this day from
3 everything that I've heard.
4 Section 54.111(a)(1) of the codes provide
5 that, in the city statute, it provides for what
6 should happen on a -- at a property that's at the
7 end of a canal. So the City Council, when they
8 passed the statute in 2000 and amended it in 2003,
9 2009 and 2018 considered lots at the end of a
10 canal, and did not make a special exception for
11 them. They could have, but they did not.
12 In addition, the code provides that the City
13 Council does have the authority to make zones that
14 would exempt properties like this, but they have
15 not done so.
16 And, more generally, it's important to realize
17 that there's no right to an extension past the --
18 what is in the code. The petitioners bear the
19 burden, and that is a significant burden, to prove
20 an exception to the rule should apply in this case.
21 The rule as -- has been set out for almost
22 every other property owner on Marco Island. It's
23 set out in the code. And they're asking for an
24 exemption from that, which would -- to build a mega
25 yacht, which would substantially infringe upon the

1 views of multiple property owners at this point,
2 and we ask the Board to consider that as well.
3 So, in -- all the other arguments that were
4 raised by the petitioner have been rebutted in our
5 letters if you read those thoroughly. So we ask
6 that the Board deny the application.
7 And at least, at this point, we don't believe
8 the Board has the jurisdiction to grant the
9 application because inadequate notice has been
10 provided. Nothing in the record shows that the
11 petitioner sent out first class US mail notices to
12 all property owners within 300 feet.
13 And I'll answer any questions if you guys have
14 them for me later. Thank you.
15 CHAIRMAN BAILEY: Thank you. It looks like we
16 have another call. I'm going to let you respond to
17 that, but I'm going to try to take another caller
18 first.
19 So we have another phone call? I have two
20 names on here, so I'm not sure who to announce.
21 UNIDENTIFIED FEMALE VOICE: (Indiscernible).
22 CHAIRMAN BAILEY: Hi. Good morning. Would
23 you mute whatever you're listening to, please?
24 UNIDENTIFIED FEMALE VOICE: You need to mute
25 -- bear with me one moment. Okay. Can you hear

me?

CHAIRMAN BAILEY: Yes. Good morning. If you can state your name for the record, please. You have four minutes.

UNIDENTIFIED FEMALE VOICE: Hello. Can you hear me?

CHAIRMAN BAILEY: Hello. Good morning. State your name for the record, please. You have four minutes.

DR. THANGAVELU: I am Rajani Thangavelu, Dr. I am the 983 Pembrook Court owner. And the reason I bought the tip lot is for the value. I am the original owner since 1975. I am a taxpaying, abiding citizen. And the view is very important to me.

I'm retired. I am 73. I have a 99-year-old mother, and we both enjoy the view.

And, secondly, it's going to be a lot of noise. Also with the floating dock can go up and down and that also can need lot of repair work down the road, and also it will be noisy.

And then a tip lot is the reason I spend extra money to buy for my personal pleasure and view.

And then Marco Island has preserved the residents' choices, and I've been a very good

1 resident of Marco Island for many, many years.
2 And then even the tree height that was there,
3 my next neighbor was against the code, but I
4 tolerated that. It was a (indiscernible) tree. I
5 didn't ask them to cut it. You have regulations
6 even for the tree heights there, but when they even
7 built the house at a high level, it did block my
8 view, and also my other neighbor, Tom
9 (indiscernible) lived there. He made sure I
10 removed my tree even for blocking his view from his
11 deck.
12 But I hope you will definitely do the right
13 thing. I have great respect, and the dock
14 extension and the floating dock and the height of
15 the yacht all will definitely impact my pleasure,
16 my lifestyle and my retired life.
17 And I also think money alone is not
18 everything. I'm a psychiatrist by profession. And
19 how important emotional well-being is, I want to
20 point that out.
21 I know you have to do on factual basis. I'm
22 not a lawyer. I am not an engineer. But I am a
23 citizen of Marco Island. I pay my taxes and I hope
24 you will do the right choice.
25 And hold on. My daughter wants to add.

1 MS. THANGAVELU: Sure. I just want to
2 mention, I want to welcome the neighbors and let
3 you know --
4 CHAIRMAN BAILEY: You need to state your name
5 for the record, please.
6 MS. THANGAVELU: I'm sorry. Tara (phonetic)
7 Thangavelu.
8 We do want to welcome the neighbors. This
9 isn't the way we want to meet your neighbors. We
10 are happy to have new neighbors.
11 However, we are greatly concerned. My late
12 father, who's passed away, owned the home. As a
13 physician, and I'm a professional musician, we have
14 been impacted by the hurricane. So we're awaiting
15 an elevation and various things.
16 We also are concerned about a dock that -- in
17 the future. We're in the process of dealing with
18 an architect and things like that, how that's going
19 to impact our dock and coming out into the water.
20 Additionally, we definitely think that there
21 would be a sound issue, and that this could be
22 considerably challenging, especially having staff.
23 I mean, typically, residents in the area --
24 typically, residents in the area are obviously
25 impacted by when boats come in and out, but I'm

1 concerned also about the amount of impact on our
2 seawall of such a magnitude vessel, that they may
3 impact our seawall.
4 And also the canal, even though this is an
5 open water, the variance itself is concerning
6 because these are boats that are supposed to be for
7 personal use (indiscernible). I'm not saying it's
8 commercial use, but when you have staff and the
9 required (indiscernible) that a boat of a magnitude
10 or, rather, yacht of this magnitude takes, I've
11 stayed on a lot of yachts, and I'm very familiar
12 with the amount of waves that you get when you're
13 coming in.
14 So that's definitely going to impact several
15 of the properties as well (indiscernible) seawalls
16 for sure. I'm not technically proficient in that
17 area, but that's something I'd request.
18 Also, the fact that we refer to our lot as
19 (indiscernible) lot. We look in three directions
20 as of now from our home. This is infringing on the
21 neighbor's property. We're not looking at their
22 property. We can't even see their property
23 (indiscernible) as now (indiscernible).
24 So we're not even that high, but we look out
25 to the waters in three directions from our home,

1 and so the boat itself would be protruding and that
2 would be a direct infringement on our view. So I
3 just want to state that.
4 And we deeply would appreciate consideration
5 for not granting this variance based on these
6 things because for future (indiscernible) the one,
7 you know, down the road, if we were to ever sell
8 our property, the lot value, as other residents
9 have stated, is impacted significantly. The value
10 is not our home. The value is our lot. It's the
11 water view. Being a tip lot is key. And so this
12 significantly impacts our value.
13 So we would appreciate your consideration.
14 And thank you for your time.
15 CHAIRMAN BAILEY: Thank you. Seeing no more
16 callers, why don't we talk to the people in the
17 audience?
18 Does anybody want to get up -- actually, you
19 know what? I apologize. Do you want to get up and
20 talk about the notice? That was a question that I
21 had for Mary. I think Larry had the same question.
22 MR. LOMBARDO: Sure. And I believe Mary
23 confirmed the notice was proper.
24 I will note, there was a comment in there on
25 one of the comments about I didn't receive notice.

1 First and foremost, if you appear at the hearing,
2 notice issues are waived.
3 And so we -- anyone who is physically here
4 cannot say I did not receive notice, but be that as
5 it may, the notice was sent out per this section.
6 But I do want to note for you in your code,
7 you do not have a unified notice section, which you
8 may want to bring attention to City Council,
9 because you have different -- you have seriatim
10 notice requirements in each type of proceeding.
11 So what is weird is that this notice provision
12 did not require a 10-day lead time, whereas, your
13 variance procedure does. These are similar
14 proceedings.
15 I would imagine what you might want to do is
16 ask the City Council or the city attorney to create
17 a solitary notice provision for all provisions and
18 then have it point to that, because we followed
19 this exactly as required. A newspaper ad was drawn
20 by city staff. I sent out the -- my office sent
21 out the first class certified mail.
22 And I will also note that sometimes your code
23 says return receipt requested. This section did
24 not say that, although, it's my understanding of
25 the USPS, it would have got there faster if it

1 wasn't return receipt requested, so this was that.
2 I will note I received -- and it's in my
3 affidavit, but I sent the notice to the actual
4 address and then the listed address where the tax
5 bills go. I received two return envelopes, which I
6 provided to City Council, where I didn't have --
7 where basically there was no double address, and I
8 got a return mail.
9 I didn't say that clearly. I'm telling from
10 the faces. But I got two returns where they didn't
11 get a letter. One of those returns has just
12 provided you public comment and signed and
13 submitted an objection. So there's clearly no
14 issue there, which means out of the 300-foot
15 radius, and that's determined by the property
16 appraiser, we pay the property appraiser to certify
17 which lots are there, so I don't arbitrarily
18 determine this. One lot got a return, and I can't
19 be sure that they got the notice, but that's why we
20 have the newspaper ad and there's not an actual
21 statement in the code that says, you know, if it
22 comes back, you need to hand-deliver it to them or
23 something along those lines, because otherwise it
24 -- it's not possible because if they don't update
25 their address, what are you supposed to do?

1 That's my statement, but I would really rely
2 back on what your staff advised you, which is that
3 notice was proper.
4 And then I would make a request, as someone
5 who does business on this island, that you guys
6 conform the notice section.
7 CHAIRMAN BAILEY: So you sent things out first
8 class or you sent it out certified?
9 MR. LOMBARDO: I sent it out exactly as
10 required.
11 CHAIRMAN BAILEY: You said both.
12 MR. LOMBARDO: Yeah. So the only way you can
13 send out second class is if you're a newspaper, it
14 turns out, but the -- I sent it out first class,
15 certified, which is what is required in the code.
16 I only received two back that were not able to be
17 delivered and didn't have a second backup address.
18 MR. TOLCES: You just didn't do the return
19 receipt requested?
20 MR. LOMBARDO: I didn't do that because it was
21 not required.
22 MR. TOLCES: It wasn't required, right.
23 MR. LOMBARDO: Thank you.
24 CHAIRMAN BAILEY: Do you know roughly how many
25 people you sent it to?

1 MR. LOMBARDO: I know exactly. Hold on. The
2 requirement is within 300 feet, but hold on.
3 CHAIRMAN BAILEY: And the only reason I'm
4 asking you, I know that Mary said that you had
5 given her an affidavit. I just know that it seemed
6 like several of the people who made objections,
7 that was a common theme, that they just said we
8 received no notice, you know, we left town 10 days
9 ago and still hadn't received notice. So that's
10 the only reason I'm asking you again at the
11 hearing.
12 MR. LOMBARDO: Okay. One moment. I've got it
13 right here.
14 Within 300 feet of this parcel, there are 17
15 additional parcels. So they were sent to 17
16 property owners.
17 CHAIRMAN BAILEY: Thank you.
18 MR. LOMBARDO: Thank you.
19 CHAIRMAN BAILEY: Geoff?
20 MR. FAHRINGER: Thank you, Jason.
21 The question came up about the pilings that
22 the floating dock will be moored to.
23 Can you address what the height of those
24 pilings would be?
25 MR. ROGERS: Bellingham is the dock

1 manufacturer, and they are technically the
2 engineers of record when they manufacture these
3 docks.
4 They take our design or our contractor's
5 design and they -- their engineers dictate the
6 piling count. That's why I was -- I'm unsure
7 exactly how many.
8 I'm giving you my expert opinion that it's
9 going to be probably a good solid six, maybe eight.
10 Just depends on what kind of capacity we want the
11 dock to be able to withstand.
12 If it's a hurricane-rated dock, they're going
13 to require a bunch of pilings. That's not typical
14 for single-family docks.
15 This case, typically, what we like to do is go
16 to FEMA elevation with the dock piles so that no
17 docks are floating off of these control piles and
18 ending up going down the Marco River in a hurricane
19 or a storm surge event.
20 So, typically, they're about 12 foot above the
21 mean high water elevation, which is right around
22 FEMA 11 feet, somewhere around there. It just
23 depends on where you are on the coast.
24 So that's what we try to shoot for.
25 MR. FAHRINGER: Thank you.

1 CHAIRMAN BAILEY: Why don't we continue with
2 public comment? We have additional people in the
3 audience.
4 Anybody else that would like to speak?
5 MR. SNYDER: Good morning. My name is Neil
6 Snyder. I'm an attorney with the law offices of
7 Hodge and Snyder right here on Marco.
8 And I had the privilege of representing Brett
9 Glass and Nicole Glass (phonetic) at 1295 Orange
10 Court, as well as Nicole Stephanie Bowman
11 (phonetic), who is in the audience, and her
12 husband, William Bowman.
13 I can tell you, and I don't know how this
14 comes about, that my clients, similar, did not
15 receive -- oh, and I would ask for -- because I do
16 have two clients affected, if I could have five
17 minutes per client.
18 And I would also ask that -- we've
19 submitted -- unfortunately, because we did not have
20 the notice, we're not able to timely submit
21 materials to the City for the Board's
22 consideration. We would ask that the materials
23 that we did provide be incorporated into the record
24 of this date.
25 CHAIRMAN BAILEY: They are.

1 MR. TOLCES: They've been provided to the
2 Board members and they're included in the file.
3 MR. SNYDER: Thank you very much.
4 The notice is important, and it's not
5 because -- and it's not just, I would say, that
6 we're here, therefore, notice is deemed waived.
7 It's important because we found out about -- I
8 found out about this hearing on Tuesday. We were
9 fortunate enough that one of the agents of the
10 petitioner provided the materials for the hearing
11 to my clients. We found out about it three days
12 ago.
13 So while we are here, certainly, it impairs
14 our ability to prepare for and to have the expert
15 testimony and everything that would give a
16 meaningful presentation to this body. So I am
17 proceeding without waiving the issue of notice.
18 This is an issue that -- and I will -- I am
19 actually not even going to get into how this
20 petition would negatively impact my clients' views,
21 especially the Glasses' who are on a tip lot. It
22 would absolutely obstruct their views. And I can
23 show you pictures at the very end, but that's going
24 to be a brief part of this presentation.
25 If you go back to the mission of the Planning

1 Board, why are we here? We are here to enhance the
2 quality of life for residents and visitors of Marco
3 Island while managing growth and development for
4 the protection of the island's small-town
5 character. That is what the sworn duty of this
6 Board is.
7 If I could also have use of the projector,
8 please.
9 When you -- when you read the comprehensive
10 plans, and not just the proposed one, the one in
11 place, the strategic plans, it all focuses on the
12 same points; the livable, small-town community,
13 small-town charm, community character.
14 Marco Island is a visually attractive
15 small-town community with a strong identical sense
16 of place, goal of maintaining city small-town
17 identity.
18 As I believe that it was Vice-Chair Honig
19 pointed out, that some of the amounts -- some of
20 the elements affecting compatibility include the
21 following: Height, scale, mass and bulk of
22 structures.
23 I don't think that we can look at it in a
24 vacuum and say, well, this may or may not be
25 eligible for consideration. I think that we would

1 look at this as the eligibility in concert with the
2 governing documents of the city, as well as -- and
3 we do believe that there is a safety issue that is
4 proposed.
5 Now, this was brought up by counsel sort of
6 anecdotally, but I think it's a very real concern,
7 because there are paddleboarders and the
8 paddleboarders, as best we could do in the last
9 three days, is to -- relative scale of a vessel.
10 We don't know the actual measurements of this
11 vessel as far as height goes.
12 We're told it's 130 feet. As such, that is
13 what you paddle -- a kayaker, rather, or a
14 paddleboarder, would have. And we would say that,
15 in addition to the view obstructions, that this --
16 that this presents a safety issue for those who are
17 trying to achieve ingress and egress from the
18 canals and around the boat.
19 I see that my time is up, but I would --
20 CHAIRMAN BAILEY: It's not up.
21 MR. SNYDER: Oh, okay.
22 CHAIRMAN BAILEY: That was the first one. You
23 get another one.
24 MR. SNYDER: Oh, thank you. Thank you. Music
25 to an attorney's ears. Thank you.

When you talk about the character, the size, I believe that petitioner's attorney is absolutely correct. There is nothing that governs the height of a vessel. However, that cannot be measured in a vacuum.

It is relevant to say that the building code does not allow a home that is more than three and a half stories, and that this vessel, just for a visual effect, would tower over any of the largest size homes that could be built on Marco Island.

It does not fit in with the small-town charm and character that we all strive to preserve.

The views of the Marco Island -- of the Marco River and all views are important. So is the ability to own a -- and I apologize. I referred, in my writings, to this as a mega yacht. A mega yacht is defined as a vessel that is 200 feet or longer. This is only a super yacht.

I think that the distinction is moot for this presentation, because this super yacht has other areas where it could be moored. Right around -- right around the -- right around the bridge at the Rose Marina, right around the bridge at the Marco Island Yacht Club and Marina, which are commercially zoned for this very purpose.

1 Then, of course, there is facilities in Naples
2 or anywhere else.
3 I heard it mentioned that the boat will not be
4 here for a certain period of time. It will be gone
5 for most of the time.
6 The assumption is that the boat would be here
7 all the time, because that is the reality of what
8 the landowner, property owner would be entitled to,
9 but that doesn't change the scale and character of
10 what it is that we are trying to achieve. We are
11 trying to achieve maintaining this small-town feel,
12 the small-town charm.
13 I did hear and I found it confusing, there was
14 a question -- there was a slide about other
15 properties and other vessels, and at least in my
16 mind, that brought more confusion than clarity
17 because we don't know when those docks were
18 permitted. We don't know whether it was recently
19 or whether it was while the jurisdiction of Marco
20 Island was an unincorporated entity of Collier
21 County.
22 And we do know, though, that none of those
23 vessels approach the super yacht length of this
24 one.
25 The City -- the Planning Board is here to go

1 on a case-by-case basis to evaluate how the request
2 and the petition would affect the small-town
3 community and the small-town charm. And I would
4 ask, most respectfully, that this Board follow its
5 mission and deny the petition of the applicant.
6 Thank you.
7 CHAIRMAN BAILEY: Thank you. Anyone else?
8 MS. BOWMAN: Do I have the right to speak a
9 minute if he has spoken and --
10 MR. SNYDER: Oh, I didn't actually use all my
11 time.
12 CHAIRMAN BAILEY: That would be up to
13 Mr. Tolces, because your letter indicates that
14 you're representing them, and we're supposed to
15 communicate through you, so let the attorneys
16 figure it out.
17 MR. TOLCES: All right. You know, with all
18 deference, Mr. Chair, it's up to the Board, you
19 know --
20 CHAIRMAN BAILEY: I have no problem with it as
21 long as it doesn't pose any legal issues.
22 MR. TOLCES: No.
23 MS. BOWMAN: It's more of a personal --
24 CHAIRMAN BAILEY: Well, you just need to get
25 up to the podium. State your name and address for

1 the record.
2 MS. BOWMAN: My name is Stephanie Bowman. I
3 live at 1289 Orange Court.
4 I purchased that home in June of this year.
5 We closed June 28. Upon purchasing that home, I
6 asked a lot of questions about things that made me
7 feel comfortable in protecting my view, because I
8 did pay a premium price because of the view.
9 Yes, I can look out of my lanai and look
10 straight down and see a canal. That's true.
11 However, the back portion of my home, where my
12 living areas look out across the water are at an
13 angle, and I do look out immediately over the
14 McBrides' dock, the gazebo-shaped dock and the
15 corner of the petitioner's dock.
16 When the petitioner's boat is there, what I
17 will see is the rear end of the boat, and that will
18 be about all I see except for my little bitty
19 canal. When my neighbors, who are going to move
20 there, the Glasses, put a dock in, their dock will
21 be supposedly to statute, and that's going to take
22 some of my view.
23 And I realized that. And I'm fine with it
24 because that's what Planning Boards do, is they
25 regulate things in a way that I know what to

1 expect. Fine.
2 I go up on my balcony. I look out across at
3 the bridge. I had my daughter with me to show her
4 the bridge, and her comment was, wow, that's really
5 sad. Probably in five years you won't be able to
6 see that either.
7 And I thought, well, I haven't really
8 considered that, but she's telling the truth
9 because that's the home that a previous caller
10 called in about that had retired there whose mother
11 lived with her.
12 And when that family is gone and they decide
13 to sell that house, it will certainly be pushed
14 over. There will certainly be a big house there,
15 and I'll lose that view.
16 And, you know, I hate that, but that's fine,
17 too, because it's going to be done within the
18 regulations.
19 What's not fine is for me to ask all these
20 questions to give me a good feeling for me to spend
21 all of the money that we have saved our entire life
22 for retirement, to retire somewhere where we felt
23 the personal property was respected, to have to
24 look at the back end of somebody's boat.
25 And that's all I have to say. Thank you.

1 CHAIRMAN BAILEY: Thank you. Anyone else for
2 public comment?
3 MR. AYUDO: Good morning. My name is William
4 Ayudo (phonetic). And I don't think enough has
5 been said about the safety of kayakers, for one,
6 because I've spent a lot of time at 1289 Orange
7 Court, and the amount of kayak traffic that comes
8 through there, and now it will be pushed out
9 further into the river around this boat, where
10 people -- it's not a no-wake zone there, and people
11 are going pretty much full throttle over there. So
12 I think that poses a problem.
13 But also I think that, you know, it's been
14 mentioned here today that views aren't protected,
15 but the City Council has already set a precedence
16 for that by banning boathouses. So, you know, I
17 think there's something to be said for that.
18 Thanks.
19 CHAIRMAN BAILEY: Thank you. Anyone else?
20 All right. Moving on. Dave?
21 MR. VERGO: One of the things I'd like to just
22 reiterate is the compatibility issue. I know -- or
23 I think Larry hit on it earlier. The attorney here
24 just hit on it.
25 But, you know, it says, in policy 221,

1 compatibility is defined as the characteristics of
2 different land uses or activities or design which
3 allow them to be located near or adjacent to each
4 other in harmony. In harmony. Some elements
5 affecting compatibility include the following:
6 Height, scale, mass and bulk of structures,
7 pedestrian or vehicular traffic, circulation,
8 access to parking impacts, landscaping, the
9 lighting, noise and architecture.
10 Compatibility does not mean the same as in
11 terms of density/intensity, architecture/building.
12 Rather, it refers to the sensitivity of development
13 proposals in maintaining the character of existing
14 development. That's pretty, pretty clear and --
15 you know, as far as that goes, of existing
16 development, maintaining the character of existing
17 development.
18 So those are some things we should really kind
19 of consider as well.
20 CHAIRMAN BAILEY: Thank you. Anyone else on
21 the Board?
22 I have one more question, if it's okay. And
23 this might be for -- I apologize. Jeff.
24 One or two people have talked about dredging.
25 MR. ROGERS: Uh-huh.

1 CHAIRMAN BAILEY: And do you have the ability
2 to talk about what that process looks like, what
3 the process would look like time-wise, cost-wise,
4 whether or not dredging would get this boat to the
5 point where -- or yacht, whatever it's called --
6 MR. ROGERS: Dredging, like I said before,
7 dredging is usually always an option. In this
8 case, it's not an aquatic preserve. You're
9 adjacent to the aquatic preserve, being Isles of
10 Capri, basically, and Rookery Bay area.
11 Dredging is an option here. However, you
12 know, it is state lands, which complicates the
13 permitting process with that, but there is a
14 process in place with the state to go through that.
15 You do have to pay an additional fee to the state
16 because you are technically removing state, public
17 lands, so they charge you per cubic yard, however
18 many cubic yards you take out. It's a small fee.
19 It's -- I think it's $2.25 per cubic yard, is what
20 they charge you.
21 But the permitting process would probably take
22 -- for dredging like this, I would estimate six,
23 eight months additional, on top of the submerged
24 land lease. I believe I've quoted it to them as
25 well about six months to get it fully processed

1 through Tallahassee as well.
2 This -- the one thing we haven't looked at
3 from an engineering perspective is the existing
4 seawall. We are not the engineers of record of
5 that wall, so we would need to look into how long
6 those panels are. It is a deeper water body than a
7 typical canal here.
8 So the panels need to be about 40 percent of
9 penetration below the substrate to prevent kickout.
10 So if they're, let's just say 15-foot long panels
11 and we dredge it down to 12 feet or 10 feet, we're
12 getting to that breaking point. So we'd have to
13 look into that.
14 So, yes, the answer in short, yes, dredging is
15 always an option. However, in this case, the water
16 depths were sufficient with putting a dock in along
17 the seawall. Whether it be fixed or floating would
18 push the vessel out to the area where we felt
19 dredging was not necessary.
20 We always try to protect the environment and
21 try to go the path of least resistance with
22 permitting and the most cost effective way for the
23 applicant. And, in this case, putting in a dock
24 and pushing the vessel out slightly and coming in
25 front of you guys today for a boat dock extension

1 request was the easier route to go.
2 CHAIRMAN BAILEY: And one more question, if I
3 may.
4 MR. ROGERS: Uh-huh.
5 CHAIRMAN BAILEY: So the submerged lands
6 lease, is that required regardless of what type of
7 dock goes in there?
8 MR. ROGERS: Yes, sir.
9 CHAIRMAN BAILEY: So even if they put a 4-foot
10 dock in there and a 15-foot Boston Whaler, they
11 need to get a submerged land lease?
12 MR. ROGERS: No. It's based on square
13 footage, as mentioned before. So the state will
14 allow you to go up to 1,000 square feet for a
15 typical single-family dock.
16 For a general permit or an exemption of a
17 permit, if you meet the certain criteria for those
18 two, the permitting line -- it's streamlined. If
19 you go outside of that box and go for an individual
20 permit and/or submerged land lease, the state has
21 different thresholds of permits.
22 So this case, it's an individual permit,
23 including the submerged land lease. There's extra
24 hoops you have to go through, further review with
25 Tallahassee. It actually goes up to Tallahassee

1 and they review it, and the Bureau of State Lands,
2 and, basically, give you a permit or not.
3 CHAIRMAN BAILEY: Thank you. And I apologize.
4 One more question.
5 MR. ROGERS: Uh-huh.
6 CHAIRMAN BAILEY: What can I say? I'll shut
7 up after this. I promise.
8 MR. ROGERS: You're fine. You're fine.
9 CHAIRMAN BAILEY: From a safety standpoint, as
10 far as having this vessel on that property --
11 MR. ROGERS: Uh-huh.
12 CHAIRMAN BAILEY: -- some of the people on the
13 Board have talked about how some of the other boats
14 in other waterways perhaps have moored right up to
15 the seawall.
16 Is -- are there safety issues in doing that as
17 far as the crew's concerned, getting on and off the
18 boat if -- let's say the owner of this boat
19 decides, you know what? We're not going to do a
20 dock. We're going to put it right up against the
21 seawall and dredging is a possibility.
22 MR. ROGERS: Uh-huh.
23 CHAIRMAN BAILEY: Does that present safety
24 issues or would you still need some sort of
25 structure to get over the water, onto the vessel,

1 depending on the time of day and the tide and -- I
2 mean --
3 MR. ROGERS: Yes, sir. We would take safety
4 into consideration here and build some sort of
5 fixed platform, let's call it, that would go in
6 between or go over top of the seawall cap and
7 reaches out over -- cantilevers out over the water
8 to be even with the dock pilings or the pilings
9 along the seawall so that they could use that as a
10 loading platform so that you're not trying to jump
11 from the seawall cap to the vessel, because the
12 pilings that we would call out would be at least
13 12-inch thick in between waterward of the face of
14 the cap.
15 So there would be probably a good 15 to 16
16 inches of water in between the end of the seawall
17 cap and the actual vessel. So we would want to gap
18 that step with some sort of platform to reduce any
19 safety issues, but it's not an ideal situation for
20 a vessel -- for any vessel size loading and
21 unloading.
22 Yeah, and also, you know, where this is
23 located, being on the river, there is -- it's a --
24 I've mentioned before the fetch. Those canals, the
25 vessels that they showed before, those vessels were

on a protected waterway. So the way -- you're not going to get waves generated from boats going through the ICW or through the Marco River, nor are you going to get the fetch from wind.

So those vessels aren't going to -- there's no banging up against the -- you're going to end up using concrete piles, too. So you're going to have to have some type of bumper system as well to keep the vessel off of the pilings.

So, actually, that's another gap. So we're talking about maybe 24 inches from the edge of the -- the end of the seawall to where the actual vessel is going to be from the shoreline, keeping it inside of our request today, yes. However, it's not the ideal safety, you know, situation.

CHAIRMAN BAILEY: Thank you. Geoff?

MR. FAHRINGER: Actually, I have a question for the city attorney.

We're here for a request for a dock extension, but we've spent the preponderance of our time talking about a boat, which I found to be educational. I'm not complaining.

A month or two ago, we did a vote on a garage down on Barfield to put in an RV-type garage, but the discussion of what type of RV, the size of the

1 RV, et cetera, never came into play.
2 On this boat thing, I guess my question to you
3 is an opinion. How much weight should we put into
4 this vote in regards to some boat that may show up
5 at this dock someday versus the extension itself?
6 I seem to keep getting wrapped around the boat
7 issue, not the extension issue.
8 MR. TOLCES: Thank you, Commissioner.
9 The -- the criteria that you have before you
10 today that are contained within the City's code
11 include a provision that references the vessel.
12 So whatever testimony evidence you're hearing
13 today is -- or should be considered in light of
14 that provision.
15 I'm not certain, with respect to the RV
16 garage, that there is a consideration given for the
17 size of the RV in relation to the garage door or
18 the structure or the setbacks or anything like
19 that.
20 So to the extent that you're considering the
21 discussions related to the vessel here today,
22 you're going to weigh that evidence and testimony
23 in relation to the criteria which is contained in
24 Section (f) -- where is it -- (f)(7), which talks
25 about the length of the -- yeah, the water frontage

in relationship to the vessel.

MR. FAHRINGER: Thank you.

CHAIRMAN BAILEY: Dave?

MR. VERGO: In relation to the RV garage, just to clarify, it was on the height of the garage door. There is no -- everything with that structure met current building code except for Marco Island statute of the garage door height.

So a variance was granted just for the garage door height. That's it.

If you want to put it in perspective with that RV, because of how they look and because of the impact on the community, we're not allowed to have RVs in our yard, okay. You can't have your boat on a trailer in your yard because of what it does to the character of Marco Island.

So they have to be fully enhoused in a garage or hidden from view.

What the applicant is doing is asking for a extension of the boat dock because that allows him to facilitate this vessel. And because of the size of this vessel, it's actually a portion of the protrusion itself.

So the regulations state that that vessel is actually considered part of the protrusion. So

1 that's a little bit of the difference there.
2 UNIDENTIFIED MALE VOICE: (Indiscernible).
3 MR. LOMBARDO: Could I add one piece to that?
4 CHAIRMAN BAILEY: You may.
5 MR. LOMBARDO: Very briefly. The beam is a
6 portion of it. And so the -- again, there's no
7 provision anywhere in your code about height of
8 anything when it comes to boats or RVs. There's
9 garage door heights, which would limit how big your
10 garage could be.
11 Similarly here, there's a protrusion limit, so
12 the beam matters, the length matters because of the
13 side yard setbacks and all we're asking about is
14 the beam.
15 CHAIRMAN BAILEY: Anything else from the
16 Board?
17 Anyone want to make a motion? No one wants to
18 make a motion?
19 Ms. Rivera?
20 MS. RIVERA: I make a motion that we move
21 forward to approve the 10-foot variance to the dock
22 or the adjusted --
23 CHAIRMAN BAILEY: 12 feet, thank you.
24 MS. RIVERA: -- 12-foot variance to the dock.
25 CHAIRMAN BAILEY: Do I have a second?

1 MR. TOLCES: I guess the -- the application is
2 to allow for -- it's a 42-foot protrusion from the
3 property line.
4 MR. LOMBARDO: Yes, sir.
5 MR. TOLCES: Okay. So that's -- and just for
6 the record, you're not increasing the extent of the
7 protrusion. We're just clarifying the fact that
8 it's 42 feet from the property line.
9 CHAIRMAN BAILEY: Thank you.
10 MR. TOLCES: So that's -- Ms. Rivera, I didn't
11 mean to interrupt you. That's your motion.
12 MS. RIVERA: Yes. You worded it more
13 elegantly than I did, so thank you.
14 CHAIRMAN BAILEY: Do I have a second?
15 MR. FAHRINGER: I'll second the motion.
16 CHAIRMAN BAILEY: Okay. Do we have any
17 further discussion from the Board? Any further --
18 Ms. Rivera?
19 MS. RIVERA: Yes. I would like to make a
20 brief comment on this, and that is that I see this
21 as an issue of permitting a dock extension, not a
22 variance for a 130-foot yacht, which today could be
23 130 foot, tomorrow can be a 30-footer. It really
24 -- it's irrelevant.
25 I will not agree to penalize a landowner who

has been fully transparent with the City and the Planning Board on what he intends to put there when he was not required to have disclosed that it was a 130-foot yacht that he was putting down.

I do not want to encourage bringing large vessels into Marco under incremental or false pretenses. I think it is better that we operate under full transparency and full support for the growth of this island in a managed way.

Thank you, Mr. Chairman.

CHAIRMAN BAILEY: Thank you. Any other questions or discussions from the Board? Any other public comment?

Would you call the roll, Daisy, please?

DAISY: Member Rivera?

MS. RIVERA: I support the variance.

MR. TOLCES: Speak into the mike so we can hear you.

MS. RIVERA: Sorry. I support the variance.

DAISY: Member Fahringer?

MR. FAHRINGER: Yes.

DAISY: Member Hogan?

MR. HOGAN: Yes.

DAISY: Member Finkle?

MS. FINKLE: No.

1 DAISY: Member Vergo?
2 MR. VERGO: No.
3 DAISY: Vice-Chair Honig?
4 VICE-CHAIRMAN HONIG: No.
5 DAISY: Chair Bailey?
6 CHAIRMAN BAILEY: No.
7 MR. TOLCES: Motion fails 4 to 3. So the
8 request is denied.
9 CHAIRMAN BAILEY: All right. So moving on.
10 Thank you, everyone.
11 (End of excerpt.)
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STATE OF FLORIDA

COUNTY OF COLLIER

I, Joyce B. Howell, do hereby certify that:

1. The foregoing pages numbered 1 through 121 contain a full, true and correct transcript of the excerpt proceedings in the above-entitled matter, transcribed by me to the best of my knowledge and ability from the digital video recording.

2. I am not counsel for, related to, or employed by any of the parties in the above-entitled cause.

3. I am not financially or otherwise interested in the outcome of this case.

SIGNED AND CERTIFIED:

Joyce B Howell

Date: September 18, 2021