



THE LAW OFFICES OF HODGE AND SNYDER

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November 19, 2021

VIA EMAIL ONLY: mmcness@cityofmarcoisland.com

Mr. Michael McNees

City Manager, City of Marco Island

50 Bald Eagle Drive

Marco Island, FL 34145

RE: Notice of Affected Persons Pursuant to Section 3(c)(4) of the City of Marco Quasi-Judicial Proceedings re: Notice of Appeal of the Planning Board's denial of Boat Dock Extension Petition for 986 Sundrop Ct., Marco Island, Florida, 34145, Folio No. 56942480004- Reference No. BD 000177

Dear Mr. McNees:

This office has the privilege of representing neighbors Brett and Nicole Glass ("the Glasses") as well as William "Skip" and Stephanie Bowman ("the Bowmans"). Our representation is regarding the Boat Dock Extension Petition for 986 Sundrop Ct., Marco Island, FL 34145, Folio No. 56942480004-Reference No. BD 000177 ("Petition") and the appeal by the Petitioner of the City of Marco Island's Planning Board's decision to deny the petition ("Appeal"). Accordingly, please direct all future communications to this office.

In accordance with Section 3 (c)(4)(i) and (iv) City of Marco Quasi-Judicial Proceedings the following are "affected persons" who are against the Petition and the Appeal of the Petition by the owners of 986 Sundrop Ct., Marco Island, FL 34145 ("Sundrop Property"):

Brett and Nicole Glass

Address: 1295 Orange Court, Marco Island, FL 34145

Phone Number: (913) 302-4500

William "Skip" and Stephanie Bowman

Address: 1289 Orange Court, Marco Island, FL 34145

Phone Number: (256) 452-4185

In accordance with Section 3(c)(4) (ii) City of Marco Quasi-Judicial Proceedings, in addition to their own testimony, neither Mr. and Mrs. Glass nor Mr. and Mrs. Bowman anticipate calling other witnesses in the above referenced matter.

In accordance with Section 3(c)(4)(v) City of Marco Quasi-Judicial Proceedings, as the owners of 1295 Orange Court, Marco Island, FL 34145, Mr. and Mrs. Glass are "affected persons." As the owners of 1289 Orange Court, Marco Island, FL 34145, Mr. and Mrs. Bowman are likewise "affected persons."

In accordance with Section 3(c)(4)(iii) City of Marco Quasi-Judicial Proceedings, we intend to present, reference and use the following documents, correspondence, memorandum and/or other evidence:

- Exhibit 1. September 2, 2021 Correspondence from the Law Offices of Hodge and Snyder on behalf of the Glasses and the Bowmans objecting to the Boat Dock Extension Petition for 986 Sundrop Ct., Marco Island, Florida, 34145, Folio No. 56942480004- Reference No. BD 000177
- Exhibit 2. August 31, 2021 Reply to Staff's Recommendations regarding the Boat Dock Extension Petition for 986 Sundrop Ct., Marco Island, Florida, 34145, Folio No. 56942480004- Reference No. BD 000177 sent by Gary and Lorraine McBride property owners of 980 Sundrop Court also "affected persons"
- Exhibit 3. September 29, 2021, Opposition to Appeal submitted to the Marco Island City Council by Mitchell McBride on behalf of the McBrides
- Exhibit 4. November 19, 2021, Memorandum in Opposition to the Appeal submitted on behalf of the Glasses and the Bowmans
- Exhibit 5. Statement of Brett and Nicole Glass
- Exhibit 6. Statement of William and Stephanie Bowman

Very truly yours,


Neil E. Snyder

NES/jp

Enclosures

cc: Clients

Alan L. Gabriel, Esq. <agabriel@wsh-law.com>

Laura Litzan <llitzan@cityofmarcoisland.com>

Mary Holden <mholden@cityofmarcoisland.com>

Daniel Smith <dsmith@cityofmarcoisland.com>

**CITY OF MARCO ISLAND
CITY COUNCIL**

**MEMORANDUM IN OPPOSITION TO BOAT DOCK EXTENSION PETITION FOR
986 SUNDROP CT., MARCO ISLAND, FLORIDA, 34145, Reference No: BD-21-000177**

Brett and Nicole Glass, owners of 1295 Orange Court, Marco Island, Florida (“the Glasses”) and William and Stephanie Bowman, owners of 1289 Orange Court, Marco Island, Florida, (“the Bowmans”), by and through undersigned counsel, request that the members of the Marco Island Florida City Council (“Council”) uphold the decision of the Marco Island Planning Board (“Planning Board”) denying the Boat Dock Extension Petition for 986 Sundrop Ct., Marco Island, Florida, 34145 (“Property”), Reference No: BD-21-000177 filed by the owners of 986 Sundrop Ct., Marco Island, Florida (“Petitioner”). Both the Glasses and Bowmans are affected persons by virtue of their respective ownership of properties within 300 feet of the Property.¹

Objection to Timeliness of Petitioner’s Filing of Notice of Appeal to City Council

As a preliminary matter, we do not believe the petitioner’s appeal was timely filed with the City. As stated in the email exchange below and attached hereto, it is our position that the 14 day period for the appellant to file their appeal started on September started and ended on September 17, 2021. A copy of the email thread with copies to Ms. Holden, Mr. Smith, Ms. Litzen, Mr. McNees and Mr. Tolces is attached hereto as Exhibit A.

“Good afternoon Ms. Holden and thank you for your response. I cannot agree with the City’s conclusion regarding the timeliness of the appeal as the definition of the term Rendition below makes it clear that the final order was effective on September 3, 2021 and became the record of the Planning Board on that date. As such, the date for appeal started September 3, 2021.

Rendition means the issuance of a written order, including approval, approval

¹ Although counsel for the Petitioner testified before the Planning Board that he mailed notices to all property owners within 300 feet of the Property, neither the Glasses nor the Bowmans received notice of the Planning Board hearing regarding the Petition.

with conditions, or denial of a determination by the city council, planning board, director, or other administrative official, effective upon **the date of signing by the authorized city official of such order or final letter of determination and its filing in the records of the city council or planning board**, or said director or other administrative official.”

The determination of the planning board denying the Boat Dock Extension application was effective on September 3, 2021, upon its signing and immediate adoption by the Planning Board of the City of Marco Island. As such, the 14 day period to appeal ended on September 17, 2021 making Petitioner’s filing untimely by six days. A copy of the Planning Board’s denial of said application is attached as Exhibit 6 to appellant’s Notice of Appeal and is attached hereto as Exhibit B.

Memorandum in Opposition to Appeal of Denial of Boat Dock Extension Petition

As it relates to the merits of the Glasses’ and the Bowmans’ objections, they agree with and incorporate by reference, the factual allegations, legal analysis and conclusions set forth in the “Opposition to Appeal” submitted by Gary and Lorraine McBride on September 29, 2021 to the Council (“McBride Opposition Brief”). It is not our intent to restate the well reasoned arguments set forth in the McBride Opposition Brief. To that end, the Glasses and Bowmans submit the following, in addition to the McBride Opposition Brief, to support their request to uphold the decision of the Planning Board.

A. The Petitioner did not demonstrate that there was a special condition relative to his property that justified granting him an exemption.

The issue before the Council is whether the Petitioner met its burden of proof as required by § 54-115 (b) (1). Pursuant to § 54-115 (b) (1) the Petitioner must demonstrate a special condition relative to 986 Sundrop Ct., Marco Island, Florida (“Property”). The special condition must be one that justifies the Council granting the Petitioner an exemption to the standard

ordinances regulating boat docking facilities in the zoning classification for the Property. The Planning Board found the Petitioner did not meet its burden of proof and we agree.

Per the Petitioner's response to Question 3 in its Petition for an exemption to the standard ordinances regulating boat docking facilities, the special condition relevant to the Property is "its location on the Marco River and not on a canal." The Petitioner's argument before the Planning Board also confirms its response to Question 3:

Mr. Lombardo: "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."

Exhibit 7 of the Appeal of the Petitioner, page 47 lines 23-25.²

City of Marco Island Ordinance § 54-115 (b) (1) requires that the Petitioner demonstrate a condition and/or justification that is peculiar to the Property that is not applicable to other properties in its zoning classification that warrant an exemption.

As part of its petition for an exemption, the Petitioner submitted a plan to demonstrate that the Property was able to support the proposed extended boat dock. In addition, at the Planning Board hearing, the Petitioner provided testimony from its dock builder and designer, Brian Gilmore and its project engineer Jeff Rogers, that the Property could support the proposed extended dock. However, most importantly, neither Mr. Gilmore nor Mr. Rogers presented any testimony or evidence that there were unique conditions applicable to the Property that

²It is important to note there is an existing functioning boat dock at the Property with the standard dimensions set forth in City of Marco Island Ordinance § 54-111. This fact alone is evidence that the Property does not have any unique conditions that differentiate it from other similarly situated properties in its zoning classification rendering a boat dock meeting the standard dimensions unusable.

differentiated it from other similarly situated properties in its zoning classification that justified granting a deviation from the standard dimensions. Essentially, the sum of their collective testimony was that the Petitioner wanted a larger boat dock and the Property could accomodate the proposed extended boat dock.

Mr Gilmore: “And the reason—the whole reason, really we’re here is to get that extra 10 feet and that’s because of the draft of the vessel and also there’s a draft for the floating dock as well.”

Exhibit 7 of the Appeal of the Petitioner, page 40, line 25; page 41 lines 1-3.

In other words, the justification of the petition for a deviation from the standard boat dock dimension is not being driven by any unique conditions of the Property itself, but solely to accommodate Petitioner’s 130 foot super yacht. A desire for a larger boat dock to accommodate a new super yacht is not the standard for a variance.

Clearly, Petitioner failed to meet its burden as it failed to present any evidence that the Property has any unique conditions that differentiate it from other similarly situated properties in its zoning classification. It is important to note that § 54-115 (b) (1) applies to the attributes of the subject property itself. If the subject property, as in this case, does not have any unique obstacles rendering the standard dimensions applicable to its zoning classification for a boat dock unsuitable, then the petition for a deviation from the standard boat dock dimensions should be denied. If the homeowner of the Property desires to construct a new boat dock, it must meet the applicable standards set forth in § 54-111 just as any other owner of property in its zoning classification.

B. The Decision of the Planning Board was Based on Factors and Criteria Set Forth in the Marco Island Ordinances.

In its Appeal, the Petitioner argues that the Planning Board considered evidence and factors outside of the criteria set forth in § 54-115. Petitioner argues that the Planning Board improperly considered: 1) the height of the super yacht, 2) City of Marco Island Strategic Plan, 3) the potential damage from a super yacht from a hurricane, and 4) testimony from the surrounding affected property owners which the Petitioner deemed to be “not competent evidence”.

Although there isn't an ordinance which specifically restricts the height of a vessel moored at a residential property, § 50-100 and § 54-115 (f) (7) and (8) enabled the Planning Board to factor into their decision the effect the estimated 50 ft. height of the super yacht would have on the use and views of the surrounding property owners that they currently enjoy. There were discussions and the Petitioner did not dispute that the super yacht in question is 130 feet long and over 50 feet in height above the waterline.

The proposed extension of 12 feet into the Marco River is a very significant request given the natural navigation at low tide would require boats to travel close to this docking location in order to avoid the low tide sandbar. This should be taken into account in addition to the overall width of the waterway.

In addition, while there was attention given to the width of the super yacht and how far out the dock will extend into the Marco River, there was little attention given to the length of the vessel and the length of the waterfront the dock will require in excess of the ordinance.

While the ordinance provides for a dock no more than 50% of the length of the water frontage, the proposed dock extension of the Sundrop Property will be well over the ordinance at

approximately 70% of the length of the waterfront. This is no minor consideration. There was testimony by several surrounding property owners, including the Bowmans, that given the anticipated height, width and length of the super yacht, their view would be adversely affected and their property values diminished. There was also testimony that as a result, the proposed boat dock and mooring vessel would adversely impact the community character and aesthetic impact of the community.

As it relates to reference to the proposed City of Marco Island Strategic Plan (“Strategic Plan”), there is no evidence submitted by the Petitioner that the Planning Board based its decision to deny its Petition on. In any event, even if the Planning Board did consider the part of the Strategic Plan that was referenced by Vice Chairman Honig in making its decision, the Petitioner was not prejudiced because nothing referenced from the Strategic Plan by Vice Chairman Honig contradicts any of the goals, objectives and policies set forth in the 2009 Marco Island Comprehensive Plan.

Proposed City of Marco Island Strategic Plan

“The first page, Marco Island’s vision. Marco Island is a great residential community with small-town charm.” Exhibit 7 of the Appeal of the Petitioner, page 13, lines 15-17.

“[S]mall-town charm is characterized by Marco Island’s convenient coastal living, a balanced mix of land uses. The City will manage growth to enhance the community both fiscally and physically and protect property values.” Exhibit 7 of the Appeal of the Petitioner, page 13, lines 22-25; page 14, line 1.

“And, finally, protect existing and future residential development from any encroachment of uses that are potentially destructive to the character and integrity of the residential environment.” Exhibit 7 of the Appeal of the Petitioner page 14, lines 12-16.

City of Marco Island 2009 Comprehensive Plan

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.

Next, the Petitioner argues in its Appeal that any consideration of the potential damage that could be caused by the extended boat dock or his super yacht was improper during a hurricane was improper because none of the factors in § 54-115 require that the applicant submit a hurricane plan. However, the Planning Board was correct to review any potential issues related to hurricanes pursuant to the City of Marco Island 2009 Comprehensive Plan. Therefore, the Petitioner's argument is without merit.

In its Appeal, Petitioner argues that it presented the only "competent evidence or testimony" at the hearing before the Planning Board. We disagree. Following is a list of testimony and evidence that was submitted to the Planning Board on behalf of the objecting surrounding property owners, including the Glasses and the Bowmans:

1. July 25, 2021 Written Letter of Objection by McBride
2. August 20, Written Letter of Objection by Rajani Thangavelu property owner of 983 Sundrop Court, Marco Island
3. August 25, 2021 Addendum to the Written Letter of Objection by McBride
4. August 27, 2021 Written Letter of Objection by Matthew and Vicki Bissell property owners of 1264 and 1260 Laurel Court, Marco Island
5. September 2, 2021 Written Letter of Objection by the Law Offices of Hodge and Snyder on behalf of the Glasses and the Bowmans
6. September 3, 2021 testimony from surrounding property owners Matthew Bissell, Rajani Thangavelu, Stephenie Bowman and Mitchell McBride

Further, several of the Planning Board members conducted a site visit and/or were familiar with the Property location. As members of the public, as well as affected property owners, the Planning Board properly considered their evidence and testimony in rendering its decision.

C. Conclusion

The Petitioner did not Demonstrate that there was a Special Condition Relative to his Property that Justified Granting Him an Exemption.

There are no special conditions that justifies the Council granting the Petitioner an exemption to the standard ordinances regulating boat docking facilities in the zoning classification for the Property. Therefore, the Petitioner failed to meet its burden of proof and its Petition was properly denied by the Planning Board.

The Decision of the Planning Board was Based on Factors and Criteria Set Forth in the Marco Island Ordinances.

In addition, all of the evidence and testimony considered by the Planning Board was proper pursuant to § 50-100 and § 54-115 and the City of Marco Island 2009 Comprehensive Plan.

The Glasses and the Bowmans respectfully request that the Council deny the Petition and Petitioner's Appeal and affirm and adopt the resolution as approved by the Planning Board.

Respectfully submitted by:

By: /s/ Neil E. Snyder
Neil E. Snyder
Florida Bar No.: 0691003
Law Offices of Hodge and Snyder
651 South Collier Blvd., Suite 2H
Marco Island, Florida 34145
(239) 430-0001 telephone
(239) 430-0002 facsimile
Attorneys for Brett Glass, et ux.
and William Bowman, et ux.

EXHIBIT A

Jaclyn Payne

From: Neil Snyder
Sent: Friday, September 24, 2021 02:32 PM
To: 'Mary Holden'; Daniel Smith
Cc: HS-Filings; Laura Litzan; Mike McNees; David N. Tolces
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

Good afternoon Ms. Holden and thank you for your response. I cannot agree with the City's conclusion regarding the timeliness of the appeal as the definition of the term *Rendition* below makes it clear that the final order was effective on September 3, 2021 and became a the record of the Planning Board on that date. As such, the date for appeal started September 3, 2021.

Rendition means the issuance of a written order, including approval, approval with conditions, or denial of a determination by the city council, planning board, director, or other administrative official, effective upon **the date of signing by the authorized city official of such order or final letter of determination and its filing in the records of the** city council or **planning board**, or said director or other administrative official.

I say this as I anticipate this will be an appellate issue moving forward.

Thank you.

Neil E. Snyder

Neil E. Snyder, Esquire
Law Offices of Hodge and Snyder
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CONFIDENTIALITY NOTE: This e-mail has been sent from a law firm. It may contain privileged and confidential information intended for the use of the person(s) named above. If you are not an intended recipient, you are hereby notified that any dissemination or duplication of the e-mail is prohibited and that there shall be no waiver of any privilege or confidence by your receipt of this transmission. If you have received this e-mail in error, please notify us by collect telephone call and immediately delete this e-mail. Thank you.

From: Mary Holden <mholden@cityofmarcoisland.com>
Sent: Friday, September 24, 2021 2:07 PM
To: Neil Snyder <nsnyder@hodgeandsnyder.com>; Daniel Smith <dsmith@cityofmarcoisland.com>
Cc: HS-Filings <Service@hodgeandsnyder.com>; Laura Litzan <llitzan@cityofmarcoisland.com>; Mike McNees <MMcNees@cityofmarcoisland.com>; David N. Tolces <DTolces@wsh-law.com>
Subject: RE: 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

Good afternoon Mr. Snyder,

Thank you for your inquiry. Action took place on the 3rd of September 2021, and the signed resolution was filed with the City Clerk on the 10th of September 2021. Therefore, the deadline to file the appeal of the denial of the boat dock extension application BD-21-000177 is the 24th of September 2021.

Respectfully,

Mary P. Holden

Mary P. Holden, Senior Planner
City of Marco Island
50 Bald Eagle Dr.
Marco Island, FL 34145
239-389-3975

Comprehensive Plan Update Information: <https://www.cityofmarcoisland.com/growth-management/page/comprehensive-plan-update>



From: Neil Snyder <nsnyder@hodgeandsnyder.com>

Sent: Friday, September 24, 2021 10:25 AM

To: Mary Holden <mholden@cityofmarcoisland.com>; Daniel Smith <dsmith@cityofmarcoisland.com>

Cc: HS-Filings <Service@hodgeandsnyder.com>; Laura Litzan <llitzan@cityofmarcoisland.com>; Mike McNees <MMcNees@cityofmarcoisland.com>

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

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Good morning Ms. Holden. As you are aware, this office represents and appeared on behalf of two homeowners at the September 3, 2021 Planning Board meeting. I would appreciate your advising how the rendition date was calculated relating to the attached appeal.

Thank you.

Neil E. Snyder

Neil E. Snyder, Esquire
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EXHIBIT B

**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.

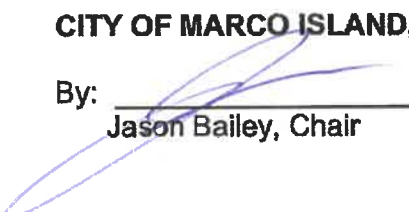
ADOPTED BY THE PLANNING BOARD OF THE CITY OF MARCO ISLAND, this 3rd day of September 2021.

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 1



THE LAW OFFICES OF HODGE AND SNYDER

Rebecca M. Hodge Snyder, Esquire

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† Also admitted in District of Columbia

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September 2, 2021

VIA EMAIL ONLY: (planningboard@cityofmarcoisland.com)

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

RE: ***Objection to Boat Dock Extension Petition for 986 Sundrop Ct., Marco Island, Florida, 34145, Folio No. 56942480004- Reference No. BD 000177***

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

This office has the privilege of representing neighbors Brett and Nicole Glass (“the Glasses”) as well as William “Skip” and Stephanie Bowman (“the Bowmans”). Our representation is regarding the Boat Dock Extension Petition for 986 Sundrop Ct., Marco Island, FL 34145, Folio No. 56942480004-Reference No. BD 000177 (“Petition”). Accordingly, please direct all future communications to this office. Our clients’ position on this issue must be read in conjunction the historical goals to, **“maintain Marco Island as a visually attractive, small town community with a strong sense of place.”** Please see portions of comprehensive and strategic plans attached hereto as Exhibit A. It bears mentioning that neither the Glasses nor the Bowmans received notice of the hearing despite being adversely impacted.

The Glasses are the owners of 1295 Orange Court, Marco Island, FL 34145 (“Glass Property”). As background, the Glasses purchased their Property and paid a significant premium for their wide water view as a tip lot as well as the unobstructed view of the Marco River and the S.S. Jolly Bridge.

The Bowmans are the owners of 1289 Orange Court, Marco Island, FL 34145. The Bowmans purchased their property (“the Bowman Property”) and like the Glasses, the Bowmans have an eastern facing view of the Marco River as well as a partial view down river of the Marco River toward the S.S. Jolly Bridge. The Bowmans similarly paid a significant premium for their views of the Marco River.

The owners of 986 Sundrop Ct., Marco Island, FL 34145 (“Sundrop Property”) filed the Petition seeking an exemption of the dimensional standards for a boat dock as set forth in Section 54-111. The total water frontage for the Sundrop property is 193 feet subjecting it to the dimension requirements set forth in Section 54-111 (a) (1): Protrusion limitations for boat docking facilities on lots on a waterway which is 100 feet or greater in width the combination of a boat docking facility and moored vessel shall not protrude more than 20 feet into the waterway. The Sundrop Property owners propose to construct a boat dock with a 40 foot protrusion.

The purpose of the proposed boat dock extension is so the Sundrop Property owners can dock their mega yacht, which is 130 feet long and over 50 feet in height¹, in a convenient place so the captain can look after it while in port. The Glasses and the Bowmans object to the granting of the Petition for the reasons discussed below.

The Sundrop Property Waterway Location Does Not Warrant Special Consideration pursuant to City of Marco Island Ordinance Section 54-100.

Section 54-100 provides in part:

“It is recognized that specific waterway locations warrant special consideration **due to severe access and navigational challenges**, and community character and aesthetic impacts.” (emphasis added)

Per the Sundrop Property owners’ response to Question 3 of the Petition, the “special conditions” they are citing to warrant special consideration for an exemption is the property in question is not located on a canal but on the Marco River. What the property owners ignore is that the mega yacht will cause navigability challenges and safety concerns to recreational uses of the waterways adjacent to the 986 Sundrop Court property.

By way of example, kayaking is a popular local recreational activity that has an average kayak of 10' and a user with vision line of approximately 2' above the water. With a vessel that is 130 feet long and over 50 feet high, residents enjoying activities such as kayaking, paddle boarding, jet skiing, operation of much smaller boats, even swimmers, will have obstructed views in and around the mega yacht. It would be the equivalent of vehicles accessing roadways at stop signs with overgrown bushes or shrubs blocking the view of traffic in the roadway. As such, from a safety and public policy standpoint, the application for the BDE should be denied. See attached hereto as Exhibit B, a fairly well scaled comparison of boats and activities around the mega yacht.

Further the specific waterway location of the Sundrop Property does not warrant special consideration for an exemption to the dimension requirements due to “community character and aesthetics impact”. If anything, the proposed boat dock severely damages the character and aesthetics of the community in that the proposed mooring vessel is a mega yacht that will encumber the view of the Marco River and the S.S. Jolly Bridge.

Also from a public policy standpoint and contrary to maintaining the “community character and aesthetics impact” concern, the mega yacht at issue will be over 50 feet in height above the waterline. To put it in perspective, no home on Marco Island can be constructed more than 35 feet (3 ½ stories) from the base flood elevation

¹As we do not have a picture of the proposed vessel nor its exact length and height measurements, we can only take the average height of a 130' vessel.

to the mean roof line.² That is to say, at over five stories, the mega yacht would tower over the tallest permissible single family home on Marco Island. See the City of Marco Island Maximum Height as contained in the Single Family Zoning Regulations attached hereto as Exhibit C.

In addition to the towering height and approximate length of 1/3 of a football field, the proposed dock extension has a negative impact on the “community character and aesthetics impact” as it has a negative impact on the views the Marco River of the land owners on the lots on and adjacent to 986 Sundrop Court. The Please see attached hereto as Exhibit D which contains the Glasses objections to the BDE and accompanying photographs as well as Exhibit E which contains the Bowmans objections to the BDE and within their objections, their views of that will be obstructed by the mega yacht.

For the reasons stated above, we disagree with the analysis of the staff of the planning board in recommending the approval of the Petition. Provision 3 of the staff analysis on page 4 finds that the “special condition” justifying the proposed exemption from the standard dimension requirements for a boat dock was simply the location of the Sundrop Property on the Marco River. There was no finding or discussion or any evidence related to navigability and safety, nor the public policy behind the safe use and navigation of our waterways.

There are navigational challenges, as well as the impact on the community character and aesthetic view. This is contrary to his stated charge of “reviewing the request against the City’s codes and Comprehensive Plan.” Moreover, Section 54-115 (b) (1) places the burden on the Sundrop Property owners to demonstrate the waterway location of the Sundrop Property warrants special consideration and provide justification for that special consideration. As such, the Sundrop Property owners have failed to meet their burden of proof and their Petition should be denied.

The Dimensions of the Proposed Boat Dock Violates the Intent and Purpose of Section 54-100.

Per Section 50-100 of the Marco Island Code, “it is the intent and purpose of this Ordinance to provide for the adequate securing of moored vessels and to provide safe access by users for routine maintenance and use **while minimizing the impact** on the navigability of the waterway, native marine habitat, manatees, and **the use and view of the waterway by surrounding property owners.**” In addition, the proposed dimensions of the boat dock are in excess of 50% of the length of the water frontage of the Sundrop Property and will clearly adversely impact the views of the surrounding property owners.

²And still exceeding the additional height allowance from the mean roof height and the ridge.

In the Petition before the Board, the Sundrop Property owners state in response to question 6, that the proposed dock “will improve the current view for the surrounding properties.” Further, in response to question 7, the Sundrop Property owners admit that “proposed moored vessel will be greater than 50% of the length of the waterfront, but will not increase the impact or negatively impact the view of the waterway by the surrounding property owners.” While it is true that the proposed moored vessel will be greater than 50% of the length of the waterfront, it omits the truth that it will be 90% of the length of the waterfront.

As previously stated, the Sundrop Property owners intend on mooring a 130 foot long, 50 foot high mega yacht. There is no question that this vessel will negatively impact the use and enjoyment of the current view of our clients and the adjoining property owners in contradiction of the intent and purpose of the ordinance governing boat dock dimension requirements.

We disagree with the staff comments on page 3 of his analysis that refuses to take into account the effect the proposed vessel to be moored at the proposed expended boat dock will have on the adjoining property owners’ views. Provision 8 of his analysis specifically includes “the proposed location and design of the boat docking facility and moored vessel in combination such that it may infringe upon the use of the neighboring properties.” In addition, Section 54-101 codifies the importance of the “use and view of the waterway by the surrounding property owners.”

The Proposed Boat Dock Will Diminish Mr. Glass’ Property Value.

As stated previously, Mr. Glass paid a significant premium for the water view on the tip as well as the unobstructed view of the Marco Island Bridge. Should the Sundrop Property Owners’ Petition be granted, his property would no longer have the unobstructed water views that he currently enjoys and his property value will be diminished as a result.

The Scale of the Proposed Mooring Vessel Will Not Relate to the Surrounding Structures.

The mega yacht is not only 130 feet long but it also 50 feet high. The current maximum height for a single family home in Marco Island is 35 feet high. The mega yacht will be 15 feet higher than the surrounding single family homes. In addition, to encumbering the view, the scale relationship of the mega yacht will not relate to the surrounding structures.

Finally, the owners of 986 Sundrop Court have mooring alternatives to this BDE. There are mooring spaces for a vessel of this size that are only moments away. These include the Marina at the Marco Island Yacht Club as well as Rose Marina. There are similarly ample alternatives in near-by Naples.

Conclusion

In conclusion, my clients respectfully request the Board deny the Petition. The Sundrop Property owners failed to meet their burden pursuant to Section 54-115 (b) (1) to demonstrate the waterway location of the Sundrop Property warrants special consideration and provide justification for that special consideration. The waterway location of the Sundrop Property on the Marco River is not subject to any severe access and/or navigational challenges. Therefore, any proposed boat docks should be subject to the dimension requirements set forth in Section 54-111 (a) (1).

Further, the proposed dimensions of the boat dock contradict the intent and purpose of Section 50-100 of the Marco Island Code, by adversely impacting the use and view of the waterway by my clients and other surrounding property owners. In addition, the proposed dimensions of the boat dock are not only in excess of 50% of the length of the water frontage of the Sundrop Property at 90%, it will clearly adversely impact the views and property value of the surrounding property owners. The proposed boat dock and mooring vessel would adversely impact the community character and aesthetic impact of the community.

Very truly yours,



Neil E. Snyder

Enclosures

cc: Clients

Mary Holden: mholden@cityofmarcoisland.com

Daniel Smith: dsmith@cityofmarcoisland.com

David Tolces, Esq.: dtolces@wsh-law.com

EXHIBIT A

City of Marco Island Comprehensive Plan Amendment Expedited State Review Process
as submitted to the State of Florida on July 26, 2021

I. Future Land Use Element

Goal 1 Livable Small Town Community

Protect and Enhance the City of Marco Island as a highly livable community with an excellent quality of life, which encompasses its tropical beaches, resorts and recreational amenities, abundant natural resources and sensitive coastal environments, and **small town charm**

Goal 2 Community Character

Maintain Marco Island as **a visually attractive, small town community with a strong identifiable sense of place.**

Objective 2.1

The City will implement Land Development Code regulations that specify enhanced landscaping, signage and architectural standards consistent with **the goal of maintaining the City's small town coastal identity.**

Policy 2.2.1

Compatibility is defined as the characteristics of different land uses or activities or design which allow them to be located near or adjacent to each other in harmony. **Some elements affecting compatibility include the following: height, scale, mass and bulk of structures, pedestrian or vehicular traffic, circulation, access and parking impacts, landscaping, lighting, noise, odor and architecture. Compatibility does not mean "the same as" in terms of density/intensity, architecture/building form or use. Rather, it refers to the sensitivity of development proposals in maintaining the character of existing development.**

Goal 3

Control Growth and Development/Redevelopment

OBJECTIVES

1. Protect the Island “small-town” character
2. Have successful local businesses
3. Protect the Island from overdevelopment
4. Have well-designed, well-maintained roads, sidewalks, and trails
5. Develop and update the Comprehensive Plan, Land Development Code, and infrastructure master plans

MEANS TO RESIDENTS

1. Opportunities to live in a beautiful community
2. Protection of property values
3. Predictable and managed growth
4. Reduce traffic congestion, improve internal mobility on the Island
5. Have viable, usable mobility alternatives beyond the automobile

Marco Island Vision 2034

MARCO ISLAND VISION 2034

MARCO ISLAND 2034
is a GREAT RESIDENTIAL COMMUNITY ⁽¹⁾
with
SMALL TOWN CHARM! ⁽²⁾

MARCO ISLAND 2034
is distinguished by our BEAUTY, ⁽³⁾ our
WORLD-CLASS BEACH and NATURAL ENVIRONMENT ⁽⁴⁾
and our
WATERWAYS. ⁽⁵⁾

In 2034, our residents enjoy our
CONVENIENT COASTAL LIVING ⁽⁶⁾
and take
PRIDE IN OUR MARCO ISLAND COMMUNITY. ⁽⁷⁾

I. FUTURE LAND USE ELEMENT

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.

Objective 1.1:

New, revised, or redeveloped uses of land shall be consistent with the designations shown on the Future Land Use Map (FLUM) presented in Exhibit 2.1. The Future Land Use Map and companion Future Land Use designations are hereby adopted as amended (2008) and shall be binding on all development orders approved by the City of Marco Island. The Future Land Use Map is a visual representation of land use designations that are planned to reasonably occur within the prescribed short and long range planning periods, between 2008 and 2013, and between 2013 and 2018, respectively.

Policy 1.1.1:

The Marco Island Future Land Use Map (FLUM) incorporates the following Land Use designations, residential densities, and density incentive programs as allocated on Table 2.1.

Measurement: Incorporation of the above enumerated land use designations and densities on the adopted Future Land Use Map (FLUM).

Policy 1.1.2:

The maximum intensity of allowable commercial development in any land use category shall be governed by height limitations, setbacks, parking standards, and other bulk regulations. The intensity of commercial projects, as well as the range of permitted uses, increases with the underlying zoning classification from C-1 (lightest) to C-5 (heaviest). Current maximum zoning heights range from thirty-five (35) feet to seventy-five (75) feet* depending on the zoning district. [*See Policy 1.1.2.4].

Measurement: Issuance of development orders for new projects consistent with the densities prescribed on the Future Land Use Map.

Policy 1.1.2.1:

In recognition of the potential for new hotel, motel and/or timeshare development in commercial land use districts, a hotel density allocation of twenty-six (26) units per acre shall be incorporated into the total residential density of Future Land Use policy 1.1.1 and assigned as follows:

Village Commercial - Five (5) acres @ 26 units/acre = 130 potential future hotel/motel/timeshare units;

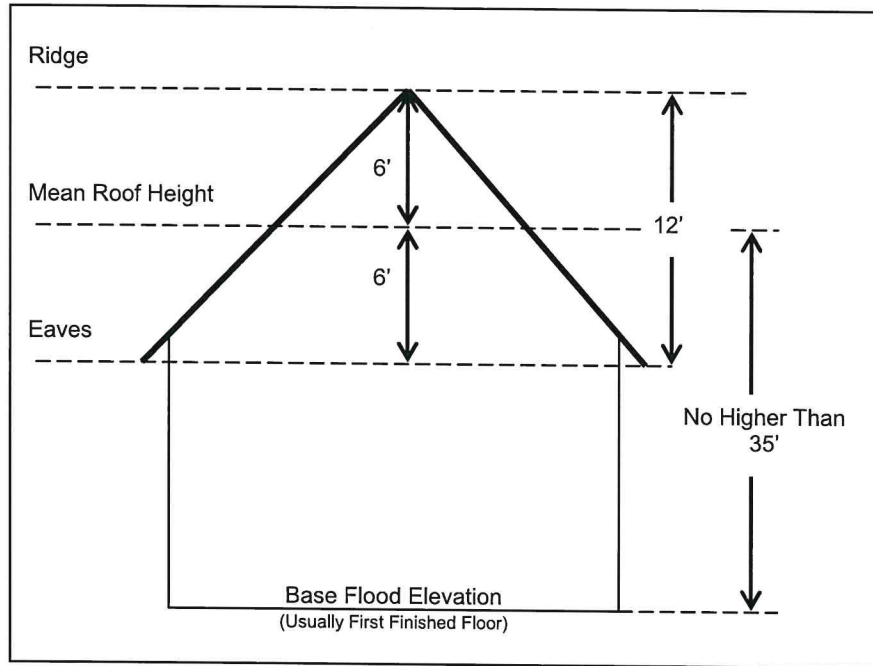
EXHIBIT B



EXHIBIT C

Maximum height:

- *Principal structures:* 35 feet as measured from required base flood elevation to the mean height level between eaves and ridge of a gable, hip or gambrel roof. See diagram below.



- *Accessory structures:* 20 feet as measured from existing ground elevation on average of the subject parcel except for attached screen enclosures which may equal the maximum height permitted for the principal structure.
- *Exceptions to Maximum Height:* The height limitations do not apply to spires, belfries, cupolas, flagpoles, antennas, communications towers, water tanks, fire towers when operated by a branch of government, ventilators, chimneys, feed storage structures, silos, windmills, airport control towers, or other appurtenances usually required to be placed above the roof level. Human occupancy, even casual use, is prohibited except for routine maintenance.

EXHIBIT D

The Glass' Objections

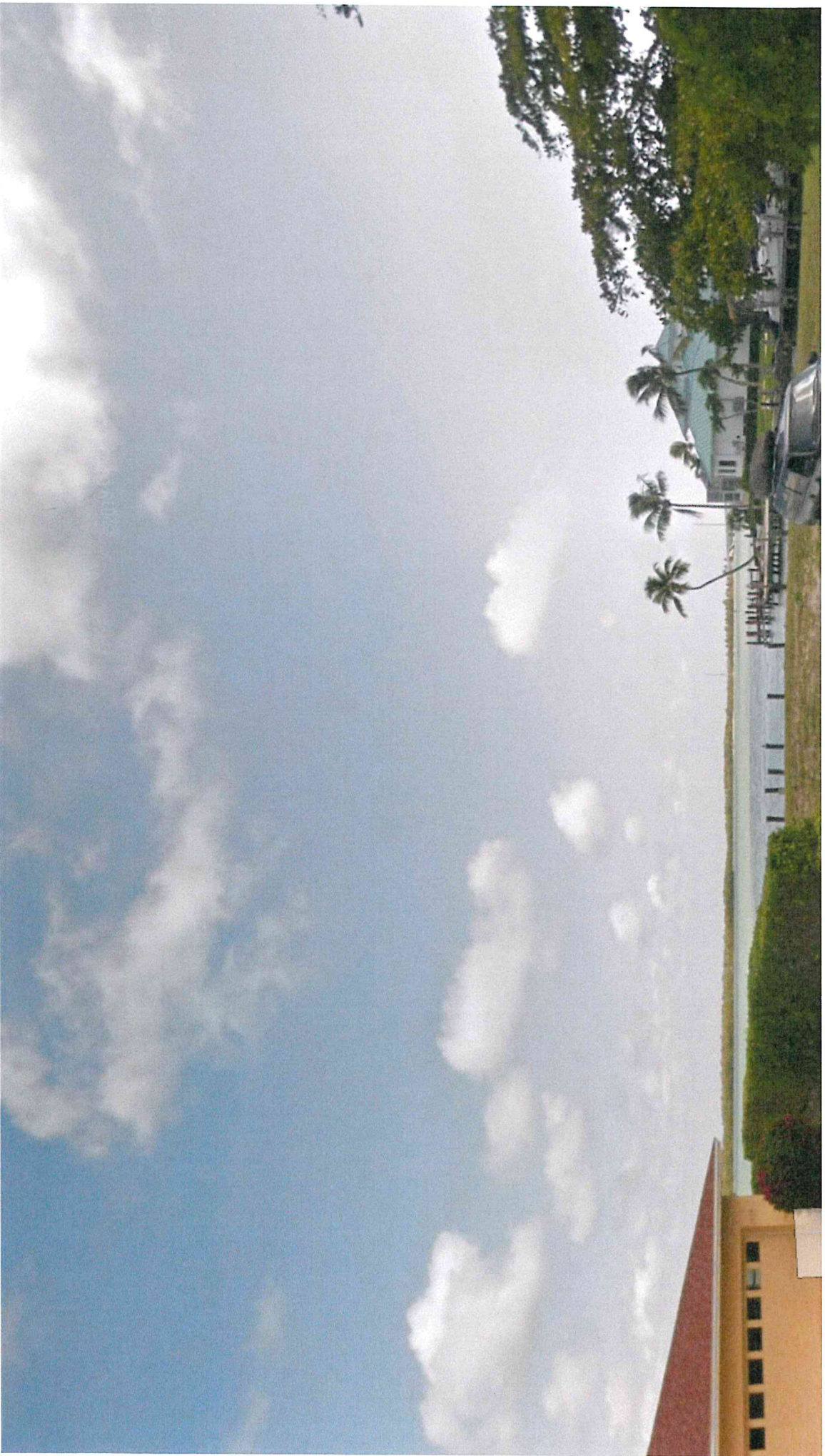
Please also note I previously sent you documents from Collier that show the proposed yacht and its proximity to the view from my kitchen, dining room. The dock, if approved, would obstruct my view of the bridge and restrict the view from my kitchen and dining room by approximately 1/3rd and the view from our outdoor area by approx. 20%. I have been advised by both my builder and my real estate agent that it likely would negatively impact the value of my home, which is at a premium price because of the water view on the tip lot as well as the unobstructed view of the bridge, as it exists currently.

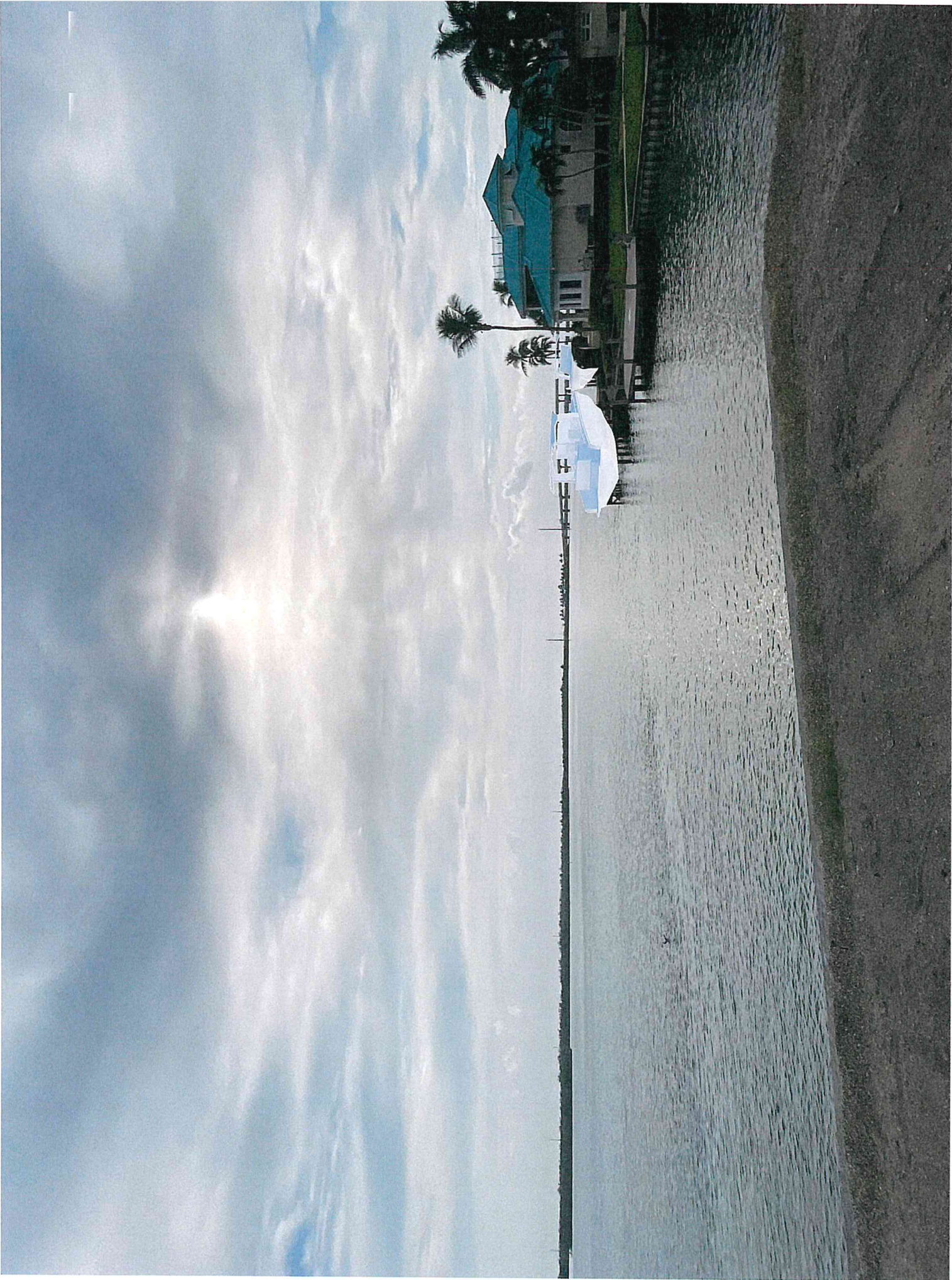
Marco has both a marina as well as a Yacht Club expansion that could have been used to park this boat without affecting residential properties, their homeowners and the values of their homes.

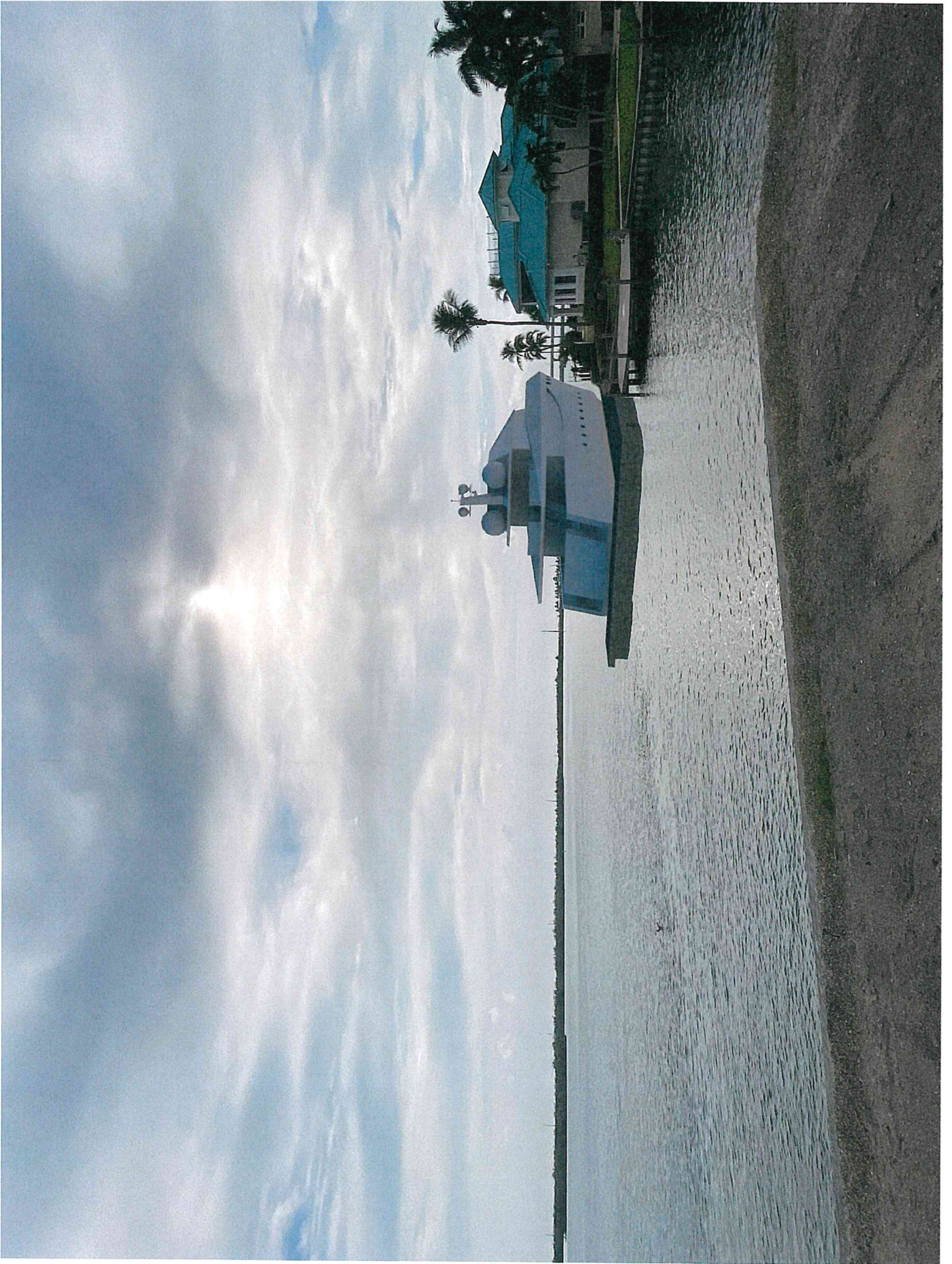
I believe these renderings minimize the impact on view from 1295 Orange Court. I believe the ship will be taller and wider than the renderings, and because the dock will be a floating dock, it will rise up further during high tide. Note the 2nd and 3rd rendering show a large percentage of the Marco Bridge view obstructed, a key reason our lot was priced at \$2M for less than 1/3 of an acre.

I also believe the precedent will be large to the island and not in accordance with intent for homeowners to have guidelines that keep from turning tip lots into Marina's for the large Yacht owners. As Brian states in his correspondence, this is a \$20M boat... pretty easy to buy a home and use it to store a boat, which is fine if it meets the local regulations but not good for blanket granting of exceptions that establish precedent, in my opinion. Please see additional correspondence copied immediately below:













GLASS - 1295 ORANGE CT. - MARCO IS

SCALE: 1"=30'	APPROVED BY:	DRAWN BY: KD
		REV:
DATE: 07/15/2021		
COLLIER SEAWALL & DOCK, LLC		
PROPOSED DESIGN		DRAWING NUMBER:

Collier
SEAWALL
& DOCK
LLC

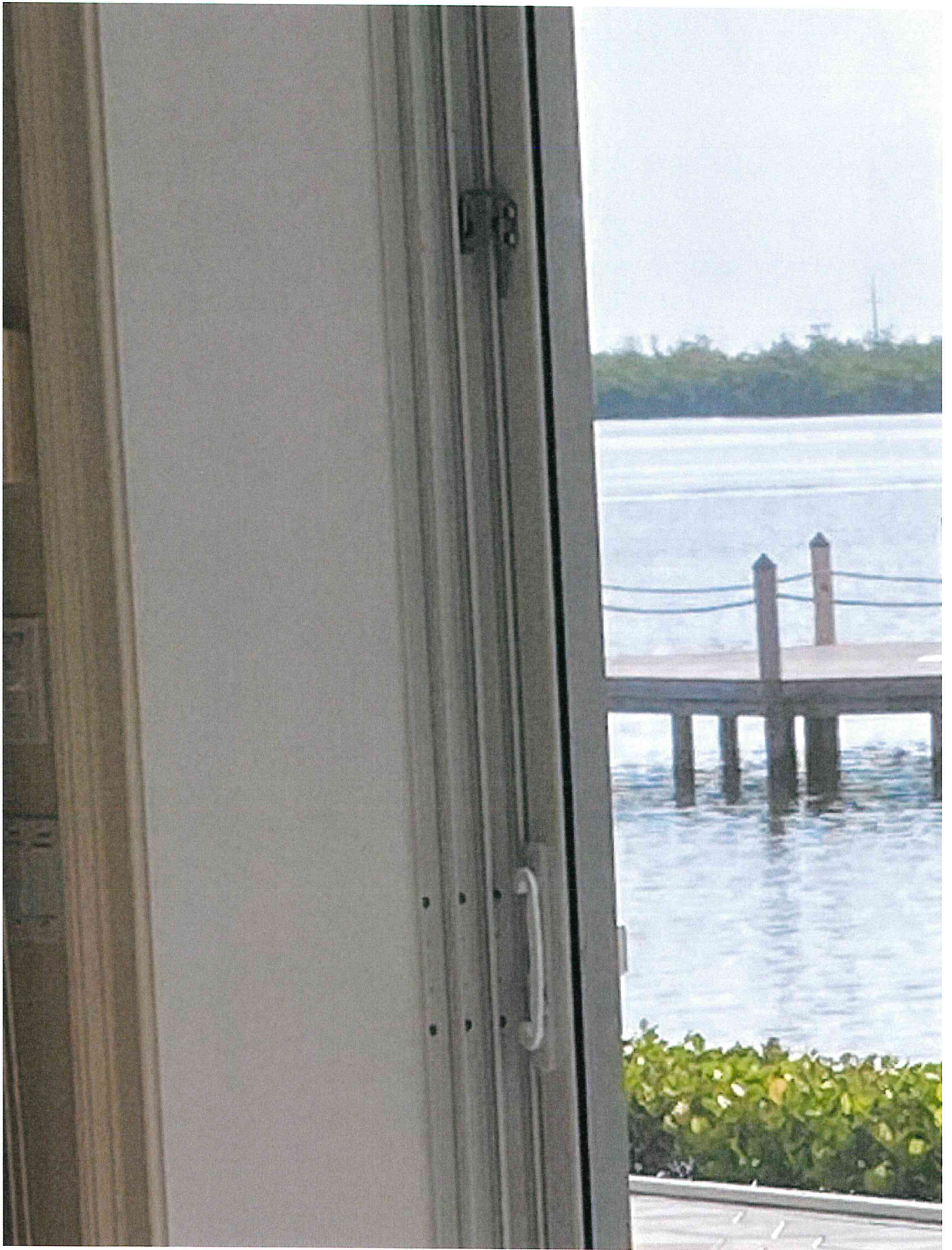
SHEET NO.
EX 1

EXHIBIT E

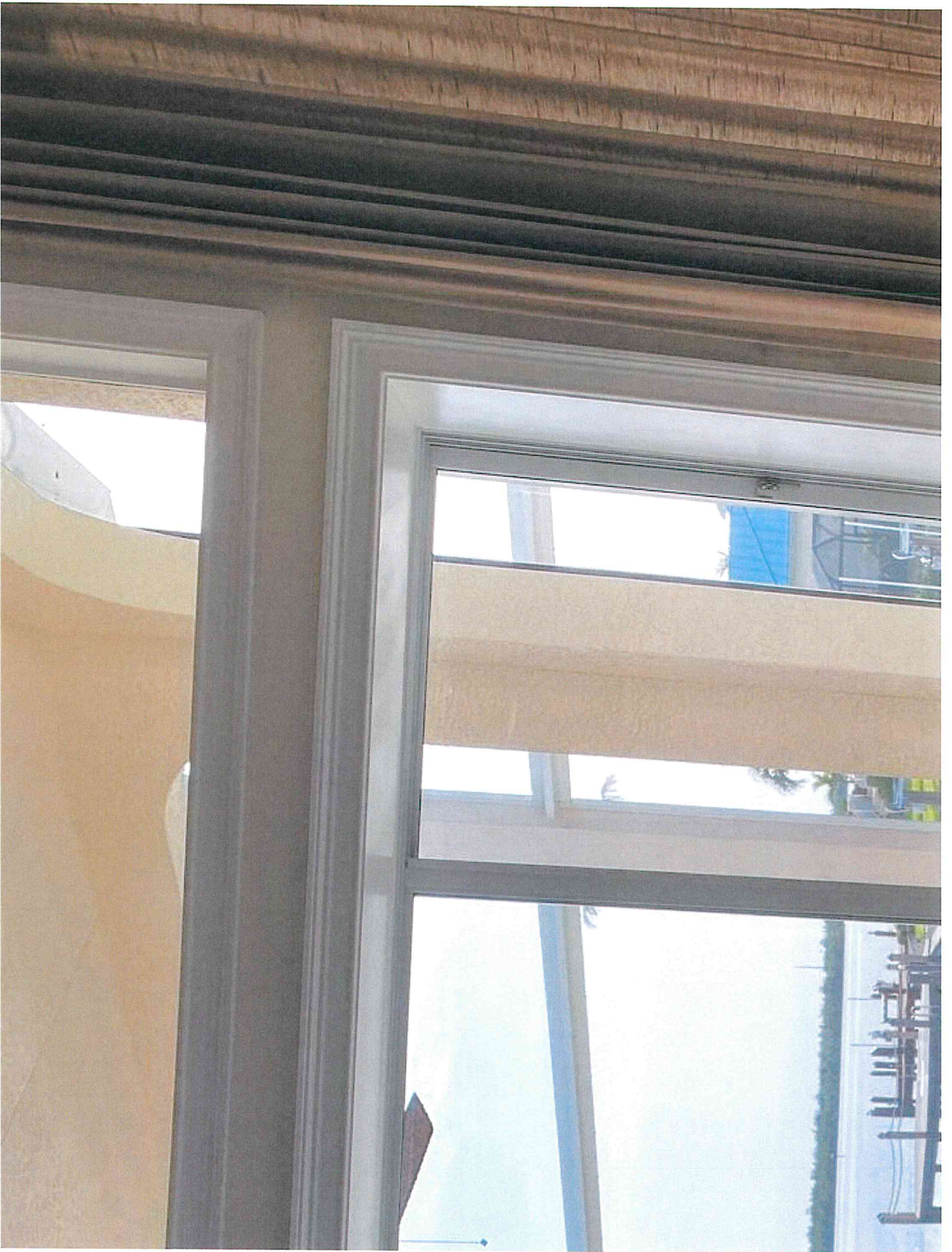
The Bowmans' Objections

First, we object because our decision to purchase our property was based to some degree upon the rules and regulations in place to protect our property value. We asked many questions to be sure that our view would be protected from building projects that are scheduled near us. Just disregarding those regulations not only fails to protect my property value and views, it also compromised the ability of realtors to provide sound interpretations of the rules and regulations to their clients.

Our main objection is that the oversize yacht and dock will substantially block our view of the Marco River. Pictures are attached.







Further to all of the issues that have been highlighted, the actual Boat Docking Facility Extension Petition filed by the owner's legal representation clearly states that the property is a single family dwelling. However, we have heard that the yacht owner's crew will be living in the residence which would be in violation of the definition of a single family dwelling.

In addition to our objections that were detailed yesterday, we have one additional objection to the boat dock extension for 986 Sundrop Court. Although the planning committee thinks that it is acceptable for my views to be obstructed, the actual result could be much worse.

As you know a house is being built at the end of Orange Court by Brett and Nicole Glass. Mr. and Mr. Glass will build a home and dock there, and this will take some of our current view. We are fine with this and are excited to have them as neighbors. We realized this was going to happen as we purchased this home. They are building within the limits of the statutes of the island, unless they too petition for exceptions based upon the precedent that could be potentially set upon approval of boat dock extension for 986 Sundrop Court. The view below off of the end of my balcony is where Glass' dock will be built, as planned.



Yesterday, I went to the upstairs bedroom balcony to show my daughter the bridge connecting Marco Island to the Naples Bridge. Upon standing there a few seconds, her reaction was "That's sad. It won't be too many years until you won't be able to see that either."

I had not considered this possibility, but she is absolutely correct. My view of the bridge is above a smaller, older home that will most certainly be pushed over and replaced with a larger home sometime in the future. And that is fine, because the people who do that will (hopefully) abide by the statutes provided by the island.

Below is my current view of the bridge which will eventually be blocked by a bigger home within the statutes.



We are rule abiding, peaceful people. We have no difficulty accepting change within the ground rules that have been set forth. However, it is unconscionable that a planning committee can make assumptions about the effect of the approval of the request without considering long term effects to the property holders of the island, and I feel pretty confident that no one came and stood on my lanai to actually consider the degree that they are impeding the views.



This is my view from my upstairs balcony currently.

As you can tell, the combination of legitimate change in addition to the proposed mega yacht and expansive dock takes the vast majority of the view. As stated earlier we understand and accept change within the statutes of the island.

The point is that there is room for legitimate growth as the statutes are written. When excessive exceptions are granted, the whole master plan is thrown out the window. Again, we respectfully ask that this exception not be granted.

EXHIBIT 2

REPLY TO STAFF'S RECOMMENDATION

Gary and Lorraine McBride
Property Owners of:
980 Sundrop Court

VIA ELECTRONIC MAIL

August 31, 2021

Marco Island Planning Board
50 Bald Eagle Dr.
Marco Island, FL 34223

**Re: Reply to Staff's Recommendation regarding Boat Dock Extension
Application for 986 Sundrop Ct., Marco Island, FL, 34145, Folio No. 56942480004 –
Reference No. BD-21-000177**

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

We humbly apologize but we are unable to physically be present at the September 3, 2021 meeting of the Planning Board. We were informed by Ms. Mary Holden that we were unable to participate electronically in the meeting, so we are relying on your review of our written objections.

First, the Planning Board cannot currently grant the application as § 54-115(b)(2) has not yet been satisfied. § 54-115(b)(2) requires that “notice of public hearing(s) shall be provided to all property owners within 300 feet of the subject petition.” To date, we have received no “first class U.S. mail” with any such notice, even though our property is within 300 feet of the petitioner’s property. *Id.* We imagine this goes for other property owners as well. Indeed, none of the currently three active objecting property owners has heard about this meeting through the mandated statutory notice. While Ms. Sherry Kirsch (a Planner in the city staff) posted a legal notice of the meeting in the Naples Daily News on August 19, 2021, that alone is insufficient under the statute. The relevant code section expressly provides that it is the petitioner who “shall be responsible for, and bear such costs for” public notices which includes *both* “newspaper advertisements in a newspaper of general circulation” *and* “mailing by first class U.S. mail of public notices to all property owners within 300 feet.” *Id.* As none has appeared in the record, we question whether the city staff received “proof of advertising and mailing” from the petitioner before placing the “subject boat dock extension” on the Planning Board’s agenda. *Id.* Thus, before the Board does anything, it must ensure that the appropriate notices were posted and sent *by the petitioner* within a reasonable time to all property owners within 300 feet. It would be an abuse of discretion or otherwise inconsistent with the jurisdictional prerequisites to consider this proposal without first finding good proof that this notice provision has been satisfied. Without first satisfying this notice provision, there are also constitutional due process concerns.

Second, the city staff has misinterpreted the general requirements for obtaining a boat dock extension under the relevant statute. Ms. Holden asserts that § 54-115(b)(1) is demonstrated through meeting the factors in § 54-115(b)(7) but has not shown any support for that assertion. § 54-115(b)(1) clearly puts the burden on the petitioner to demonstrate

justification for the proposal, not on us to demonstrate lack of justification for the proposal. That code section indicates that this type of petition is not granted by right. This type of application is the exception to the rule, not the rule. The rule is in § 54-111, which describes the “dimensional standards” for all boat docks. This exception was designed as a failsafe by the City Council in the event that the Council did not foresee certain “special” circumstances of particular lots. *See* § 54-115(b)(1). Special justification under § 54-115(b)(1) must be exhibited before proceeding further to the review of additional factors in § 54-115(f). The proper analysis, in line with the text and structure of the statute, reveals the significant burden that must be met to obtain a boat dock extension under the statute.

Third, the city staff has erred in claiming that there are special conditions related to the subject property which justify the application. The city staff cite two factors which they claim are “special” conditions. They first say that the lot contains six lot lines rather than four. However, this fact in itself does not explain why this is special to justify an extension that exceeds the standard limits in § 54-111. The fact that there are six lot lines rather than four may be a distinction, but it is a distinction without a difference. The fact that this is a peninsular lot with six lines may justify building a dock with a differently shaped dock, but it does not justify an extension outward by 10 feet, which has no real bearing to the lot lines, and this extension request for a dock to shelter a mega-yacht would have been made regardless of the lot lines. *See* § 54-115(f)(3) (mandating, not just consideration of special conditions, but consideration of special conditions “*which justify* the proposed dimensions and location of the proposed boat docking facility”). The second reason given by the city staff is that the lot is at the end of canal. This reason was already rebutted in our Addendum to our letter of objection and we need not belabor the point. We note that the staff has stated any reason why our interpretation is incorrect.

Fourth, the city staff improperly weigh the factors, and the decision is statutory left to the Planning Board. The city staff fault us for complaining about the mega-yacht, rather than solely the boat dock extension. They might have a good point if the statute did not expressly provide for this type of scenario and heed the legitimate concern of neighbors that an abnormally large vessel would obstruct views. § 54-115(f)(7) provides that the Planning Board must consider if “the proposed vessel(s) are 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.” Both petitioner and the city staff admit that this is the case. The city staff says the proposed dock and vessel will be: “well in excess of 50% of water frontage.” Amazingly, the city staff discount this fact and say that we will “maintain views of the Marco River,” even though they admit that we will lose some views (which they further discount as being only important to us).¹ The city staff cite no provision of the statute why their opinion should weigh heavier than ours as the property owners. Moreover, the statute does not mandate that we should have a total view loss before our rights are respected. All property views matter and all diminished views affect property values, and so, yes, the “certain views important to the neighbors” *do* matter. *See* § 54-100 (“It is the intent and purpose

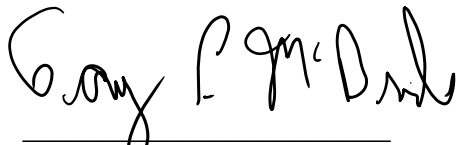
¹ While not stated in the city staff’s report, the petitioner asserts that because the proposed dock would not wrap around the corner, our view would be “completely unobstructed.” Petitioner Application Attachment 1 at 4. This misses the point that we are not complaining about the proximity of the dock to our property line, we are legitimately asserting that our *views* of a significant portion of the Marco River will be adversely affected.

of this article to provide for...the use and view of the waterway by surrounding property owners.”).

Fifth, other than the points related to the view, the city staff fail to respond or address any of the multiple reasons we raise why the application should not be granted. In addition to noting an inconsistency with the Comprehensive Plan, we noted an inconsistency with Chapter 30 of the Land Development Code, if the Planning Board grants the application. Approval of the application will not just affect the surrounding property owners and the character of the island, it stands to reduce property values across the island. Preservation of views are only protected by statutes such as the one at issue here and approval of this application would signal that other similar applications would be given the green light. Thus, the preservation of views would be put at risk and that instability itself could cause a reduction of property values. *See* Addendum to Letter of Objection (citing sources that explain that risks that views are unprotected, in itself, decreases property values and approval here would be creating a new risk). The Planning Board should consider the potential effect that granting this application would have on the city’s property values, as property views are exceptionally important in lot values. *See* § 30-2 (explaining that the purpose of the land development code is to “respect [the] rights of private property owners”).

Even though the city staff erred in multiple regards, we entrust the Board will reach the right decision.

Sincerely,



Gary McBride



Lorraine McBride

EXHIBIT 3

**CITY OF MARCO ISLAND, FLORIDA
CITY COUNCIL**

In re: 986 Sundrop LLC
Boat Dock Extension
Application

Reference No. BD-21-000177

OPPOSITION TO APPEAL

Unsatisfied with the impartial and informed decision of the Marco Island Planning Board (“Board”) on an issue where the Board has expertise and experience, 986 Sundrop, LLC (“Petitioner”) now appeals, seeking full reversal of the decision below. The appeal lacks merit.

Gary and Lorraine McBride (“the McBrides”), property owners of 980 Sundrop Court, Marco Island, FL 34145, ask the City Council (“Council”) to uphold the decision of the Board.

I. BACKGROUND

On July 14, 2021, Petitioner submitted an application seeking an exemption from the standard dimensional requirements regulating boat docking facilities in order to build a dock forty-two (42) feet from the property line that would shelter a 130-foot long, 26-foot wide superyacht¹ at 986 Sundrop Court, Marco Island, FL. Petitioner just recently purchased the subject property from John and Karen Packer.

On July 25, the McBrides, unable to physically attend the Board’s quasi-judicial hearing on the application, submitted a written Letter of Objection and, on August 25, an Addendum with exhibits. On August 20, Rajani Thangavelu (the property owner of 983 Sundrop Court, Marco

¹ Superyachts are typically 78 feet and above. *See* Yacht Sizes, Types, Styles & Categories, *Van Isle Marina*, <https://vanislemarina.com/when-is-a-boat-a-yacht/>.

Island, FL 34145) filed a Letter of Objection. On August 27, Matthew and Vicki Bissell (property owners of 1264 and 1260 Laurel Court, Marco Island, FL 34145) filed an objection. On September 2, through an attorney, William and Stephanie Bowman (property owners of 1289 Orange Court, Marco Island, FL 34145) and Brett and Nicole Glass (property owners of 1295 Orange Court, Marco Island, FL 34145) filed an objection. All of the neighbors who filed objections (collectively, the “surrounding property owners”) take exception at least in part because of the loss to their views facing the proposed waterway location of the proposed dock and superyacht and the effect granting this application would have on Marco Island’s small-town character. No resident of Marco Island other than Petitioner or his agents has voiced support for the application.

On August 24, before hearing all the various perspectives from surrounding property owners, the City Staff issued their recommendation to approve the application.

On September 3, the Board convened to consider the application in a quasi-judicial hearing. The Board heard from the City Staff, the Petitioner, and testimony from surrounding property owners Matthew Bissell (via telephone), Rajani Thangavelu (via telephone), and Stephanie Bowman. After a two-hour meeting, and ensuring each interested party had the full opportunity to express his or her statements and opinions, the Board voted to deny the application. The Board agreed with the arguments of the surrounding property owners while applying the relevant framework and law. The Board found that the i) Petitioner did not carry his burden to demonstrate an exemption from the standard rule, ii) that the views of surrounding property owners would be adversely affected with the proposal, and iii) that the proposal did not meet the objective as contained in the City’s Comprehensive Plan to promote development that is

consistent with the City's small town character. *See* Petitioner Ex. 6 (Planning Board Resolution 21-46, Section 1).

On September 23, Petitioner filed a notice of appeal and appeal with the city manager, seeking reversal by the Council.

II. RELEVANT LAW

Chapter 54 of the Marco Island Code of Ordinances regulates boat docking facilities on Marco Island ("the Code"). § 54-111 only permits boat docking facilities when the facilities comply with the standard dimensional criteria set forth in the statute. If a property owner seeks a boat dock extension, protrusion, or encroachment, he is not entitled to it unless he demonstrates special justification for such a request to the Planning Board. § 54-115(b)(1) demands the petitioner "demonstrate justification for extension, protrusion or encroachment into the riparian setback requested and/or special conditions relative to the subject property." § 54-100 informs the type of "special conditions" that may merit further inquiry: "It is recognized that specific waterway locations warrant special consideration due to severe access and navigational challenges, and community character and aesthetic impacts." In short, the exemption from the standard requirements in § 54-111 was meant as a failsafe in the event a particular lot had particularly severe access or navigational challenges that would merit an exemption from the general rule.

Even if special justification is presented, the Code provides that access issues or navigational challenges alone are not enough. The Planning Board is then to consider ten distinct factors in whether it should grant an application. Multiple factors relate to preservation of the view of the waterway enjoyed by surrounding property owners, making it expressly clear that views of affected neighbors is an interest the statute was designed to protect. *See* § 54-100.

The ten § 54-115(f) factors are as follows:

- (1) Whether or not the proposed boat docking facility meets the other standards 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, protrusion, or encroachment requested.
- (3) 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.
- (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. This requirement shall only be applicable for extension or protrusion requests.
- (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.
- (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.
- (7) Whether or not the proposed vessel(s) are 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. In the case of multifamily developments and public marinas, the 50 percent provision may be exceeded. This requirement shall only be applicable for extension or protrusion requests.
- (8) Whether or not the proposed location and design of the boat docking facility and moored vessel(s) in combination is such that it may infringe upon the use of neighboring properties, including any existing boat docking facilities.
- (9) Whether or not the seagrasses are located within 200 feet of the proposed boat docking facility.
- (10) Whether or not the proposed dock is subject to the manatee protection requirements set forth in section 54-117.

Petitioner bears the burden of demonstrating special justification and bears the burden of proving that this application satisfies the § 54-115(f) statutory factors. *See Irvine v. Duval Planning Com'n*, 495 So.2d 167 (Fla. 1986) (Petitioner has the “initial burden of showing that his application [meets] the statutory criteria for granting such exception[.]”). If Petitioner so

carries this burden, those opposed would then have the burden to prove the statutory standards were not met. *See id.*

In addition to satisfying the aforementioned standards, the application must be consistent with the objectives and policies of Marco Island's current Comprehensive Plan. *See* 163.3194(3), Florida Statutes; *U.S. Sugar Corp. v. 1000 Friends of Fla.*, 134 So.3d 1052 (Fla. 4th DCA 2013) ("The burden is on the applicant to show that the development order conforms strictly to the comprehensive plan."). A goal of Marco Island's current Comprehensive Plan is "to enhance Marco Island's quality of life, environmental quality, and tropical *small town* and resort character..." 2009 Comprehensive Plan, Section I – Future Land Use Element (emphasis added).

III. STATUTORILY-BASED OBJECTIONS

The surrounding property owners principally object because: (1) petitioner has not carried his burden demonstrating a special justification for a boat dock extension, (2) the proposed boat docking facility and superyacht that it would host would adversely affect the views to the waterway of surrounding property owners, (3) permitting a superyacht in a residential area of Marco Island would be inconsistent with the Comprehensive Plan's goal of preservation of Marco Island's small-town character and other goals.²

A. Lack of special justification

§ 54-115(b)(1) requires the petitioner "demonstrate justification for extension, protrusion or encroachment into the riparian setback requested and/or special conditions relative to the subject property" for the Board to then proceed to the second step of the inquiry – whether it should

² There are other safety and environmental concerns the McBrides share, but as those are not directly contemplated by the governing law, they will not be given emphasis here.

grant an exemption upon weighing 10 separate factors. *See* § 54-115(f). The Code was designed so almost all requests proceeded under the standard dimensional requirements of § 54-111. The standard provisions of the Code contemplate various different situations, including whether the dock would be located at the end of canal on a body of water larger than 100 feet. *See* § 54-111(a)(1) (not providing a general exemption for boat docking facilities on ends of canals on large bodies of water). The City Council amended the 2000 code in 2003, 2009, and 2018 and, in so doing, contemplated many different scenarios and, in the event it failed to contemplate a scenario, § 54-100 states that “it is recognized that specific waterway locations warrant special consideration due to severe access and navigational challenges, and community character and aesthetic impacts.” § 54-115 was designed as a failsafe in the event that there may be specific lots with severe challenges that would warrant special conditions relative to those lots. For lots such as end lots on larger bodies of water, the Board considered those and did not provide a general exemption for those types of lots, even though it could have. The City Council could have established an overlay zone for end lots on larger bodies of water if it wanted to let those property owners build docks any size they want. *See* § 54-100 (“City council may authorize the establishment of overlay districts, with district specific dimensional standards and regulations, to address boat docking facilities within the overlay area(s)”). The City Council currently has not decided to provided an exemption for end lots on larger bodies of water.

Here, petitioner has not carried his burden to demonstrate his lot is in any way unique to qualify for an exemption. A desire to have a dock to facilitate a superyacht 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 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.” Petitioner has not identified any special condition of his property requiring such a dock that exceeds the standard riparian limit all property owners face.

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 build a dock for a superyacht. 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 Code was adopted, the canals and general topographical character of Marco Island existed, yet the City Council 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. That petitioner has a property at the end of a canal is not the type of special condition relative to the subject property contemplated by the Code that can carry Petitioner’s burden. If Petitioner thinks property owners at the end of canals on larger waterways should be allowed to build the docks of their choosing, Petitioner should suggest a legislative amendment to the Boat Docking Facilities Code.

In Petitioner’s application, it was also claimed that the lot was special because it contained six lot lines rather than four.³ However, this fact in itself does not explain why this is special to justify an extension that exceeds the standard limits in § 54-111. The fact that there are six lot lines rather than four may be a distinction, but it is a distinction without a difference. The fact that this is a peninsular lot with six lines may justify building a dock with a differently shaped

³ Petitioner abandoned this argument before the Planning Board.

dock, but it does not justify an extension outward by 10 feet, which has no real bearing to the lot lines, and this extension request for a dock to shelter a superyacht would have been made regardless of the lot lines. *See* § 54-115(f)(3) (mandating, not just consideration of special conditions, but consideration of special conditions “which justify the proposed dimensions and location of the proposed boat docking facility”).

B. Harm to view interests

The City Council enacted the Code in 2000 and amended it three times since, always making sure that, as factors to consider in whether to grant an exemption, the Board *must* consider the effect on the views of surrounding property owners due to a proposed dock and abnormally large vessel. *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”); § 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); *see also* § 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.”).

Here, due to the abnormally large vessel that is in excess of 50-percent of the length of the water frontage at the subject property, the surrounding property owners testified before the Board that their views would be adversely affected.⁴ *See* McBride Letter of Objection (discussing the substantial rightward loss of view of the waterway from both their house and dock and

⁴ Waterway views would also be diminished because of the large 12-foot high pilings that would be used for the concrete floating dock to hold a superyacht. *See* Petitioner Ex. 7 at 98:9-21 (Mr. Rogers for Petitioner explaining that between six to eight pilings would be used that are typically 12 feet above the mean high water line).

discussing their reliance interests: “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.*”) (emphasis added)⁵; Thangavelu Letter of Objection (discussing how a dock with an associated superyacht would “significantly trample [her] view, especially the leftward view from [her] property, which looks out to the Marco River.”); Bissell Objection (raising concerns that both of his properties at “1260 and 1264 Laurel Ct would have the views significantly impacted by this,” that it would block most of the view of the Marco River from 1260 Laurel Court and the majority of the view up the Marco River at 1264 Laurel Court both from inside his home and from his outdoor living spaces); *Id.* (observing that permitting a superyacht would be the “literal equivalent of a floating 2 story condominium being added to the end of Sundrop Ct.”); Petitioner Ex. 7 at 107:19-24 (Stephanie Bowman: “What’s not fine is for me...to spend all of the money that we have saved our entire life for retirement, to retire somewhere where we felt the personal property was respected, [and] to have to look at the back end of somebody’s boat”).

In the context of these concerns, the City Staff and one dissenting Board member faulted the surrounding property owners for complaining about the superyacht, rather than solely the boat dock extension. They might have a point if the statute did not expressly provide for this type of scenario and heed the legitimate concern of surrounding property owners that an abnormally large vessel would obstruct their views, which should be protected. § 54-115(f)(7) provides that the Planning Board must consider if “the proposed vessel(s) are in excess of 50 percent of the length of the water frontage on the subject property such that the extension of the boat docking

⁵ Emphasis is added because the petitioner has repeatedly made the red-herring argument that the McBrides and others claim only an interest to a view of the Bridge. The waterways under the Bridge, with all the associated maritime activity, are part of the channel, and important views objectively and subjectively.

facility may adversely impact the view to the channel by surrounding property owners.” It goes undisputed that this is the case. The City Staff explain that the proposed dock and vessel will be: “well in excess of 50% of water frontage.” Petitioner Ex. 3 (Staff Analysis). The City Staff admit that the surrounding property owners will lose some views but they seem to think those views are important only to those owners. This perspective fails to recognize the number of surrounding property owners objecting to view loss, the extent and character of view loss, and that views important to the property owners are significant. The statute does not mandate a total view loss before rights are respected. As diminished views affect property values, all property views matter. *See* McBride Addendum to Letter of Objection at 2 (citing studies that any view loss causes or has the potential to cause a reduction of property values); *see also* § 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).

Rather than substantially dispute the diminishment of views of surrounding property owners, Petitioner asserts that the surrounding property owners have no rights to views except those extending directly outward from their property lines and neither the dock nor the superyacht would interfere with the view rights to the channel of any surrounding property owners.

Petitioner is mistaken for at least three reasons.

First, the common law right of views for waterfront landowners is not artificially capped at the direction of their property lines extended out into the water. Petitioner cites to *Lee County v. Kiesel*, 705 So.2d 1013 (Fla. 2d DCA 1998), which upheld a circuit court inverse condemnation judgment because Lee County built a bridge that substantially and materially interfered with the Kiesel’s riparian right of view “across the waters” of the Calooshatchee River. In fact, quoting

the Florida Supreme Court, *Kiesel* states quite the opposite from Petitioner's desired reading. *See*, 705 So.2d at 1015 (quoting *Hayes v. Bowman*, 91 So.2d 795, 801 (Fla. 1957)) (explaining "that the common law riparian rights to an unobstructed view and access to the Channel over the foreshore across the waters toward the Channel must be recognized over an area as near 'as practicable' in the direction of the Channel so as to distribute equitably the submerged lands between the upland and the Channel. This rule means that each case necessarily must turn on the factual circumstances there presented and no geometric theorem can be formulated to govern all cases.").

Petitioner also cites to *Mickel v. Norton*, 69 So.3d 1081 (Fla. 2d DCA 2011), which held (1) that because the Nortons' property neither adjoined nor faced Alligator Bay, they did not have an appurtenant right of view to that body of water and (2) assuming there is a right of view across the property of another, there was no nuisance when the Mickels installed a fence where it served a useful purpose of privacy and keeping trespassers from entering their property. Like *Kiesel*, this case also does not hold that the right to an unobstructed water view extends only directly out from one's property lines.

The Florida Supreme Court rejected Petitioner's argument in *Hayes* because "seldom, if ever, is the thread of a channel exactly or even approximately parallel to the shoreline of the mainland." 91 So.2d at 801-802 (deciding not to limit view rights of affected property owners only to those views "at right angles with the shore line."); *see also Thiesen v. Gulf, F. & A. Ry. Co.*, 78 So. 491 (Fla. 1917) (noting generally that at common law a riparian proprietor enjoys an unobstructed view over the waters). Applying the applicable and correct law, it is clear that the McBrides', Thangavelus', Bissells', and Glasses' appurtenant right to an unobstructed view of the Marco River from their respective properties, in the direction of the Marco River, extends to

the areas where the proposed dock and superyacht would be placed. *See* § 54-101 (“No boat docking facility shall be constructed so as to encroach upon the riparian rights of other property owners.”).

Second, the Code does not contemplate Petitioner’s proposed limited interpretation of “view to the channel.” Appurtenant rights to a water view extend to the bodies of water that a lot faces. *See Hayes*, 91 So.2d at 801 (a property owners’ riparian right of an “unobstructed view [extends]...across the waters *toward* the Channel”) (emphasis added); *Mickel*, 69 So.3d at 1082 (Because “[t]he north side of the Nortons’ lot faces the Sunrise Waterway,” not Alligator Bay, their special riparian right to an unobstructed view only extended to Sunrise Waterway). Case law establishes that view rights to a body of water exist as long as the lot borders or faces the body of water. The McBrides, Thangavelus, Bissells, and Glasses all have tip lots which border and partly face the Marco River. Therefore, they have an appurtenant right to an unobstructed view of the Marco River. Without any support, Petitioner claims no property owner has a view right to the zone directly in front of Petitioner’s lot because each of the surrounding property owners partly border a canal. However, just because the McBrides, Thangavelus, Bissells, and Glasses may have a view right to a canal on which their property sits, that does not limit their view right to the Marco River which they also border and face due to their tip lots.

Third, Petitioner is mistaken that there must be a common law riparian right to a view before the Board could statutorily consider whether surrounding property owners have interests to views of the Marco River. The Code, in § 54-115(f)(6) and (f)(7), mandates the Board consider all the adverse effects the proposed dock and abnormally large vessel have on the view of the channel for surrounding property owners. That consideration does not reference another portion of the

City Code related to riparian lines⁶ or rights. It mandates the Board consider view loss of the channel from the properties⁷ of surrounding property owners. When considering all views of the channel, in this case the Marco River, it is not statutorily required or necessary for each surrounding property owner to also have a riparian right before the Board can properly consider the effect of the proposal on their view loss to the channel. That some surrounding property owners may have a greater interest and would have a greater portion of their view to the Marco River blocked is a matter of weight for the Board to consider. *See, e.g.*, Petitioner Ex. 7: 81:24-25 & 82:1-5 (Matthew Bissell testifying that the proposed dock and superyacht would be directly outwards from his property: “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.”).

C. Inconsistency with Comprehensive Plan

The Board correctly recognized that, while managing growth, it was their very goal to ensure the small-town feel of Marco Island. The Council, in both the 2009 Comprehensive Plan (and proposed 2021 Comprehensive Plan)⁸, has stated that it desires to maintain Marco Island’s small-

⁶ Riparian lines are mentioned in § 54-101 “to provide a point of reference from which to measure setbacks for docking facilities.”

⁷ Petitioner claims that the McBrides have no right to a view from their gazebo dock. Petitioner is incorrect. The Code grants, as a right, a boat dock when complying with the standard dimensional requirements. Docks are accessory structures, constituting property from which there is a view interest. Regardless, the McBrides have view loss due to the proposed dock and superyacht from what they hope to assume is their undisputed property (the McBrides’ house and surrounding lawn areas).

⁸ The McBrides agree with Petitioner that only the current 2009 Comprehensive Plan can be considered until the 2021 Comprehensive Plan is formally adopted. It is not evident that the Planning Board rested its decision on the 2021 Comprehensive Plan. *See* Petitioner Ex. 6 (Planning Board Resolution 21-46, Section I). That one member made a cursory remark

town character. These words should not merely be adjectives in a dormant document, but should be brought into reality, here and now. Allowing a superyacht 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 it should not so become. *See* Bissell Objection (noting Marco Island’s waterways are not designed for such a vessel, much less it’s lot layouts and home locations. You only have to visit Fort Lauderdale or Miami to see what Mega Yachts like this have done to the waterways and the views from land or from the water.”). Petitioner does not attempt to argue that permitting a superyacht is consistent with Marco Island’s vision of a small-town feel and the City Council should not create a precedent that departs from that goal.

Additionally, there is also an inconsistency with Section V (Conservation & Coastal Management Element), Goal 3, of the 2009 Comprehensive Plan. This section of the Comprehensive Plan protects against the risk of property loss from hurricanes. However, a large non-hurricane rated dock with sizeable pilings poses a risk to the property of the surrounding property owners because the pilings could become detached and strike another’s property. Moreover, the superyacht itself poses a risk as Petitioner is not legally obliged to move the superyacht during a hurricane. *See* Petitioner Ex. 7 at 11:1-4 (Mary Holden replying to Member Fahringer that she “can’t argue that” if a hurricane came through, “a boat of that size, tied to that dock, could become an issue as far as a destructive force.”).

Petitioner has not shown “strict[]” compliance with the Comprehensive Plan. *See U.S. Sugar Corp.*, 134 So.3d at 1052.

regarding the proposed 2021 Comprehensive Plan is not evidence that the Board, let alone this member, rested his decision on the 2021 Comprehensive Plan.

IV. THE PLANNING BOARD DID NOT ERR

A. The Board's decision

Petitioner asserts in his appeal that all the criteria and factors for granting the requested boat dock extension were satisfied, but the Planning Board, the entity statutorily-authorized to rule on the matter, came to the opposite conclusion after its own review. Appeal at 5. The Planning Board found there were “no special conditions related to the subject property or adjacent waterway that justify the proposed docking facility.” Petitioner Ex. 6 (Planning Board Resolution 21-46, Section I). As a practical matter, the Board noted that the request would be convenient for the Petitioner, but was hardly necessary, especially as “other options [may be] available to adequately secure the vessel that may not require such an extension request.” *Id.* As the Board acknowledged, there was no special condition *of the subject property* justifying an extension and there is no right to have a superyacht at one’s residential property. *See* Petitioner Ex. 7 at 49:12-17 (Member Vergo: “a vessel like this, it is – it’s just not fitting within the confines and they’re asking us to extend those confines when, in reality, it really belongs in a marina or a yacht club or something of that nature”).

Moreover, the Planning Board also found that waterway view interests of the surrounding property owners were implicated and the proposal would infringe and obstruct on the waterway views of surrounding property owners. *Id.*; Petitioner Ex. 7 at 30:20-23 (Member Vergo responding to Petitioner: “we do have to take into consideration infringing on neighboring areas’ views and things you may consider inconsequential”). The Board also noted that the dock and superyacht at issue were inconsistent with the small-town charm designed to be protected by the current 2009 Comprehensive Plan. Petitioner Ex. 6 (Planning Board Resolution 21-46, Section I); Petitioner Ex. 7 at 48:17-25 (Member Vergo: “we have no limitation of what vessel you can

put behind your house as long as it fits legally behind your house... so the limitations...is one of the things that we can do to limit the size of the vessels to keep it within some sort of reason for the small-town atmosphere of Marco Island”).

The stated reasons of various Board Members⁹ and the Board’s written reasons for denying the application indicate that no improper factors were considered in the Board’s decision. All of the reasons were statutorily-based on the relevant code provision or the current Comprehensive Plan.

The Council reviews the decision of the Board *de novo*, but in this review, it should accord weight to the Board’s accurate reasoning and should not reverse the Board absent Petitioner demonstrating error. *C.f. Applegate v. Barnett Bank of Tallahassee*, 377 So.2d 1150, 1152 (Fla. 1979) (“In appellate proceedings the decision of a trial court has the presumption of correctness and the burden is on the appellant to demonstrate error.”); *Morris v. State*, 958 So.2d 598, 599 (Fla. 4th DCA 2007) (noting that even in *de novo* review in a criminal matter, a trial court’s decision arrives with a presumption of correctness).

B. The Board utilized its expertise in reaching its decision

In reaching its decision, the Board utilized its expertise as the municipal planning commission. It considered the request as compared to other superyachts on the island, almost all

⁹ Of the Board members in dissent, only one explained her rationale. Member Rivera explained that she would not punish Petitioner when Petitioner had been transparent with the city and she further said that the complaint about the superyacht, rather than the dock itself, was irrelevant. Respectfully, Member Rivera erred in her analysis. The Board is statutorily mandated to consider the proposed vessel that would be sheltered by the dock because the proposed vessel would be abnormally large. *See* § 54-115(f)(7). Moreover, while it is commendable that Petitioner was transparent with the city, it had a duty to be transparent because it was submitting an application that required an exemption from the city. Also, whether transparent or not, the dissenting member erred in considering transparency as that was not a factor for consideration in § 54-115(f) or the Comprehensive Plan.

of which are housed at a marina. *See* Petitioner Ex. 7 at 45-61 (discussing larger vessels at 849 Buttonwood Court and 855 Fairlawn Court); *id.* at 60:23-25 & 61:1 (Vice Chairman Honig: “these other boat owners did not have to come in to get a variance like the ones that you were showing on Buttonwood...maybe that discourages people from having very large vessels on their property because they have to come before this Board and maybe we will be skeptical because of the visual impact on the character of the community”). It also considered how this request varied from a previous request for extending a garage door height to house a motor home. *See* Petitioner Ex. 7 at 115-118 (Member Fahringer questioning City Attorney Tolces on a previous garage door height variance, with Attorney Tolces explaining that there was no consideration given for the size of the RV there whereas here, under the Code, there is consideration for the size of the proposed vessel). Additionally, during the Board’s detailed review Chairman Bailey caught a technical error that both the City Staff and Petitioner had missed. *See* Petitioner Ex. 7 at 68-69 (Chairman Bailey explaining that under the Code, protrusions are measured from the property line, not the face of the seawall). In sum, the Board utilized its expertise and experience in the field of planning and zoning, and, for that reason, the Council should accord its judgment considerable persuasive force. *C.f. State ex rel. Szabo Food Services, Inc. of North Carolina v. Dickinson*, 286 So.2d 529, 531 (Fla. 1973) (administrative judgments, where based on expertise, “should be accorded considerable persuasive force”).

V. THE APPEAL LACKS MERIT

A. Impartiality

Petitioner impugns the impartiality of the Board because Vice Chairman Larry Honig presented his initial thoughts at the beginning of the quasi-judicial hearing that he was curious how the proposal could be consistent with the small-town charm of Marco Island (in addition to

asking the City Attorney legal questions). To the extent that there was prejudice (which there was not), it was cured as Petitioner was given a reasonable opportunity to refute the points raised by Vice Chairman Honig, Petitioner indeed attempted to refute the points, and Vice Chairman Honig presented his initial thoughts *in order to be* most fair to the Petitioner. Petitioner Ex. 7 at 13:1-4 (Vice Chairman Honig: “out of respect for the applicant and those who want to speak, I would like to get some points on the table for possible rebuttal by various parties”); *id.* at 17:15-25 (Vice Chairman Honig: “I have an open mind. I want to give the applicant a chance to react to it...I’m actually being more fair to the applicant in this regard”). If quasi-judicial bodies were not allowed to conduct hearings in this rebuttal-type manner because it violated due process rights, courts across the state have been engaging in due process violations for decades when they conduct status or evidentiary hearings in slightly non-traditional ways. In sum, the decision-making process of the Board was not tainted by the actions of Vice Chairman Honig (an honorable former city councilor) to render the Board’s decision partial.

Petitioner preserved an objection to facts introduced by Board Members but did not object to the admission of any facts, and Petitioner cannot now object. *See Elwell v. State*, 954 So.2d 104, 106 (Fla. 2d DCA 2007) (Canady, J.) (explaining that preservation requires an objection be “*timely raised before, and ruled on by, the trial court*” so the trial court is able to correct any errors itself) (emphasis in original); *LeRetilley v. Harris*, 354 So.2d 1213, 1214 (Fla. 4th DCA 1978) (“[F]ailure to secure a ruling on an objection waives it, unless the court deliberately and patently refuses to so rule.”). Here, Petitioner neither made an objection nor ensured it was ruled on by the Planning Board. Petitioner Ex. 7 at 24: 15-24 (Mr. Lombardo for Petitioner: “we are going to preserve an objection to any factual information provided [by] Board members that is not going to be provided by either the applicant or the objectors...we’re just going to preserve

the objection, not asking it to be ruled on”). Therefore, with no objection raised or ruled on, Petitioner cannot now contest that the Board considered improper materials or otherwise behaved improperly.

Furthermore, Petitioner cites only one case for his alleged constitutional due process violation. While selectively quoting from *Cherry Communication, Inc. v. Deason*, 652 So.2d 803 (Fla. 1995), Petitioner misses the point of that decision. *Cherry Communications, Inc.* held that the prosecutor in an action could not also provide impartial advice to the quasi-judicial body because “the decisionmaker must not allow one side in the dispute to have a special advantage in influencing the decision.” *Id.* at 805. Here, the surrounding property owners were neither given special advantage nor had “special access to the deliberations” because of Vice Chairman Honig’s somewhat early discussion of his thoughts. *Id.* All deliberations took place in public at the hearing with adequate opportunities for responses. Due process is only violated where fundamental principles of fairness and impartiality are violated and none were violated in the quasi-judicial hearing here. *See also Hadley v. Department of Admin.*, 411 So.2d 184, 187 (Fla. 1982) (“[T]he formalities requisite in judicial proceedings are not necessary in order to meet due process requirements in the administrative process.”)

B. Competence to testify of surrounding property owners

Amazingly, Petitioner claims that surrounding property owners are incompetent to testify on the loss of views that would befall their own property due to the proposed dock and superyacht.¹⁰ In the State of Florida, as lay evidence is admissible in judicial proceedings, in the

¹⁰ The McBrides note that Petitioner took a different position before the Planning Board. *See* Petitioner Ex. 7 at 24:18-19 (Mr. Lombardo for Petitioner: acknowledging that the Board can properly consider factual information “provided by either the applicant or the objectors”). Moreover, if the surrounding property owners are incompetent to testify on the loss of their own

context of this quasi-judicial proceeding on the subject related to their property view loss, the surrounding property owners lay testimony is surely competent and proper. *See* § 90.701, Florida Statutes; *Woodham v. Williams*, 207 So.2d 320, 323 (Fla. 1st DCA 1968) (“It is the settled law of this state that administrative hearings before state agencies are relatively informal in character and not controlled by strict or technical rules of evidence and procedure.”). Binding case law establishes that the surrounding property owners are very much competent to testify in opposition to a boat dock extension on matters that do not require technical expertise. *See Board of County Com'rs of Pinellas County v. City of Clearwater*, 440 So.2d 497, 499 (Fla. 2d DCA 1983) (“The local, lay individuals with first-hand knowledge of the vicinity who were heard in opposition at the two public hearings were as qualified as ‘expert witnesses’ to offer views on the ethereal, factual matter of whether the City's proposed dock would materially impair the natural beauty and recreational advantages of the area.”). Rather than the lay opinions of surrounding property owners being inadmissible, binding case law holds that the Board and Council are entitled to accord “great weight” to the cumulative objections of the surrounding property owners. *See id.* No special expertise is required to convey that a homeowner’s view will be obstructed in these circumstances. This is not a case where it is unclear whether a shadow will be cast or particular design makes it unclear whether a view will be obstructed. The surrounding property owners were competent (and perhaps there is no better suited party) to submit factual evidence and informed opinion¹¹ regarding both the loss of their water views by the proposal and the inconsistency with the small-town character aspect of the Comprehensive Plan.

property views, it is not clear what technical view expertise the City Staff or Petitioner has in order to carry its initial burden to show no view impairment under § 54-115(f).

¹¹ The Planning Board could also consider the pictures submitted as exhibits by the surrounding property owners as competent substantial evidence. That there would be a loss of

C. Considerations that affected the Board's decision

Petitioner takes issue that discussions occurred regarding the height of the superyacht. Appeal at 8. Despite the fact that Petitioner caused this discussion by failing to submit the height of the vessel in his application, the Board could consider height of the vessel to the extent that the height further diminished the views of surrounding property owners. In any event, the Board investigated whether there were limitations on heights of temporary structures. There is no evidence that this was a consideration relied upon in its decision. Further, Petitioner itself does not claim height was relied upon in the decision of this application. *See* Appeal at 8 (only asserting that “any use or application or consideration of building heights to the boat or vessel that would use the boat dock was improper and prejudicial,” not that there actually *was* use of building heights). Merely inquiring whether the Board should consider the height of the vessel is distinct from considering that as part of its decision.¹² *See* Petitioner Ex. 7 at 10:1-4 (Member Fahringer asking the city staff: “Is there anything that—regarding height requirements on temporary structures on the beach or, in this case, this boat, in our ordinances?”).

VI. CONCLUSION

The Board faithfully and impartially applied the facts to the applicable standards and, after thoroughly considering the matter, found Petitioner did not carry his burden for an exemption from the standard rule regulating boat docking facilities. In so doing, the Board committed no procedural or substantive error. The Council should not reverse the decision below. The

waterway view from a massive superyacht, to be frank, is obvious and the Board could also take judicial notice of that fact.

¹² The same analysis applies to the “Strategic Plan” document that was merely mentioned quickly by a Planning Board member. There is no evidence the Board rested its conclusions on this document.

Council should heed the wise words of Member Vergo: “honestly, I’m probably the first person to fight for property owners as far as what you can do with your property, but sometimes we’ve just got to put the brakes on and use a little bit of common sense.” Petitioner Ex. 7 at 50:6-10.

Date: September 29, 2021

Respectfully submitted,

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EXHIBIT 4

**CITY OF MARCO ISLAND
CITY COUNCIL**

**MEMORANDUM IN OPPOSITION TO BOAT DOCK EXTENSION PETITION FOR
986 SUNDROP CT., MARCO ISLAND, FLORIDA, 34145, Reference No: BD-21-000177**

Brett and Nicole Glass, owners of 1295 Orange Court, Marco Island, Florida (“the Glasses”) and William and Stephanie Bowman, owners of 1289 Orange Court, Marco Island, Florida, (“the Bowmans”), by and through undersigned counsel, request that the members of the Marco Island Florida City Council (“Council”) uphold the decision of the Marco Island Planning Board (“Planning Board”) denying the Boat Dock Extension Petition for 986 Sundrop Ct., Marco Island, Florida, 34145 (“Property”), Reference No: BD-21-000177 filed by the owners of 986 Sundrop Ct., Marco Island, Florida (“Petitioner”). Both the Glasses and Bowmans are affected persons by virtue of their respective ownership of properties within 300 feet of the Property.¹

Objection to Timeliness of Petitioner’s Filing of Notice of Appeal to City Council

As a preliminary matter, we do not believe the petitioner’s appeal was timely filed with the City. As stated in the email exchange below and attached hereto, it is our position that the 14 day period for the appellant to file their appeal started on September started and ended on September 17, 2021. A copy of the email thread with copies to Ms. Holden, Mr. Smith, Ms. Litzen, Mr. McNees and Mr. Tolces is attached hereto as Exhibit A.

“Good afternoon Ms. Holden and thank you for your response. I cannot agree with the City’s conclusion regarding the timeliness of the appeal as the definition of the term Rendition below makes it clear that the final order was effective on September 3, 2021 and became the record of the Planning Board on that date. As such, the date for appeal started September 3, 2021.

Rendition means the issuance of a written order, including approval, approval

¹ Although counsel for the Petitioner testified before the Planning Board that he mailed notices to all property owners within 300 feet of the Property, neither the Glasses nor the Bowmans received notice of the Planning Board hearing regarding the Petition.

with conditions, or denial of a determination by the city council, planning board, director, or other administrative official, effective upon **the date of signing by the authorized city official of such order or final letter of determination and its filing in the records of the city council or planning board**, or said director or other administrative official.”

The determination of the planning board denying the Boat Dock Extension application was effective on September 3, 2021, upon its signing and immediate adoption by the Planning Board of the City of Marco Island. As such, the 14 day period to appeal ended on September 17, 2021 making Petitioner’s filing untimely by six days. A copy of the Planning Board’s denial of said application is attached as Exhibit 6 to appellant’s Notice of Appeal and is attached hereto as Exhibit B.

Memorandum in Opposition to Appeal of Denial of Boat Dock Extension Petition

As it relates to the merits of the Glasses’ and the Bowmans’ objections, they agree with and incorporate by reference, the factual allegations, legal analysis and conclusions set forth in the “Opposition to Appeal” submitted by Gary and Lorraine McBride on September 29, 2021 to the Council (“McBride Opposition Brief”). It is not our intent to restate the well reasoned arguments set forth in the McBride Opposition Brief. To that end, the Glasses and Bowmans submit the following, in addition to the McBride Opposition Brief, to support their request to uphold the decision of the Planning Board.

A. The Petitioner did not demonstrate that there was a special condition relative to his property that justified granting him an exemption.

The issue before the Council is whether the Petitioner met its burden of proof as required by § 54-115 (b) (1). Pursuant to § 54-115 (b) (1) the Petitioner must demonstrate a special condition relative to 986 Sundrop Ct., Marco Island, Florida (“Property”). The special condition must be one that justifies the Council granting the Petitioner an exemption to the standard

ordinances regulating boat docking facilities in the zoning classification for the Property. The Planning Board found the Petitioner did not meet its burden of proof and we agree.

Per the Petitioner's response to Question 3 in its Petition for an exemption to the standard ordinances regulating boat docking facilities, the special condition relevant to the Property is "its location on the Marco River and not on a canal." The Petitioner's argument before the Planning Board also confirms its response to Question 3:

Mr. Lombardo: "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."

Exhibit 7 of the Appeal of the Petitioner, page 47 lines 23-25.²

City of Marco Island Ordinance § 54-115 (b) (1) requires that the Petitioner demonstrate a condition and/or justification that is peculiar to the Property that is not applicable to other properties in its zoning classification that warrant an exemption.

As part of its petition for an exemption, the Petitioner submitted a plan to demonstrate that the Property was able to support the proposed extended boat dock. In addition, at the Planning Board hearing, the Petitioner provided testimony from its dock builder and designer, Brian Gilmore and its project engineer Jeff Rogers, that the Property could support the proposed extended dock. However, most importantly, neither Mr. Gilmore nor Mr. Rogers presented any testimony or evidence that there were unique conditions applicable to the Property that

²It is important to note there is an existing functioning boat dock at the Property with the standard dimensions set forth in City of Marco Island Ordinance § 54-111. This fact alone is evidence that the Property does not have any unique conditions that differentiate it from other similarly situated properties in its zoning classification rendering a boat dock meeting the standard dimensions unusable.

differentiated it from other similarly situated properties in its zoning classification that justified granting a deviation from the standard dimensions. Essentially, the sum of their collective testimony was that the Petitioner wanted a larger boat dock and the Property could accomodate the proposed extended boat dock.

Mr Gilmore: “And the reason—the whole reason, really we’re here is to get that extra 10 feet and that’s because of the draft of the vessel and also there’s a draft for the floating dock as well.”

Exhibit 7 of the Appeal of the Petitioner, page 40, line 25; page 41 lines 1-3.

In other words, the justification of the petition for a deviation from the standard boat dock dimension is not being driven by any unique conditions of the Property itself, but solely to accommodate Petitioner’s 130 foot super yacht. A desire for a larger boat dock to accommodate a new super yacht is not the standard for a variance.

Clearly, Petitioner failed to meet its burden as it failed to present any evidence that the Property has any unique conditions that differentiate it from other similarly situated properties in its zoning classification. It is important to note that § 54-115 (b) (1) applies to the attributes of the subject property itself. If the subject property, as in this case, does not have any unique obstacles rendering the standard dimensions applicable to its zoning classification for a boat dock unsuitable, then the petition for a deviation from the standard boat dock dimensions should be denied. If the homeowner of the Property desires to construct a new boat dock, it must meet the applicable standards set forth in § 54-111 just as any other owner of property in its zoning classification.

B. The Decision of the Planning Board was Based on Factors and Criteria Set Forth in the Marco Island Ordinances.

In its Appeal, the Petitioner argues that the Planning Board considered evidence and factors outside of the criteria set forth in § 54-115. Petitioner argues that the Planning Board improperly considered: 1) the height of the super yacht, 2) City of Marco Island Strategic Plan, 3) the potential damage from a super yacht from a hurricane, and 4) testimony from the surrounding affected property owners which the Petitioner deemed to be “not competent evidence”.

Although there isn't an ordinance which specifically restricts the height of a vessel moored at a residential property, § 50-100 and § 54-115 (f) (7) and (8) enabled the Planning Board to factor into their decision the effect the estimated 50 ft. height of the super yacht would have on the use and views of the surrounding property owners that they currently enjoy. There were discussions and the Petitioner did not dispute that the super yacht in question is 130 feet long and over 50 feet in height above the waterline.

The proposed extension of 12 feet into the Marco River is a very significant request given the natural navigation at low tide would require boats to travel close to this docking location in order to avoid the low tide sandbar. This should be taken into account in addition to the overall width of the waterway.

In addition, while there was attention given to the width of the super yacht and how far out the dock will extend into the Marco River, there was little attention given to the length of the vessel and the length of the waterfront the dock will require in excess of the ordinance.

While the ordinance provides for a dock no more than 50% of the length of the water frontage, the proposed dock extension of the Sundrop Property will be well over the ordinance at

approximately 70% of the length of the waterfront. This is no minor consideration. There was testimony by several surrounding property owners, including the Bowmans, that given the anticipated height, width and length of the super yacht, their view would be adversely affected and their property values diminished. There was also testimony that as a result, the proposed boat dock and mooring vessel would adversely impact the community character and aesthetic impact of the community.

As it relates to reference to the proposed City of Marco Island Strategic Plan (“Strategic Plan”), there is no evidence submitted by the Petitioner that the Planning Board based its decision to deny its Petition on. In any event, even if the Planning Board did consider the part of the Strategic Plan that was referenced by Vice Chairman Honig in making its decision, the Petitioner was not prejudiced because nothing referenced from the Strategic Plan by Vice Chairman Honig contradicts any of the goals, objectives and policies set forth in the 2009 Marco Island Comprehensive Plan.

Proposed City of Marco Island Strategic Plan

“The first page, Marco Island’s vision. Marco Island is a great residential community with small-town charm.” Exhibit 7 of the Appeal of the Petitioner, page 13, lines 15-17.

“[S]mall-town charm is characterized by Marco Island’s convenient coastal living, a balanced mix of land uses. The City will manage growth to enhance the community both fiscally and physically and protect property values.” Exhibit 7 of the Appeal of the Petitioner, page 13, lines 22-25; page 14, line 1.

“And, finally, protect existing and future residential development from any encroachment of uses that are potentially destructive to the character and integrity of the residential environment.” Exhibit 7 of the Appeal of the Petitioner page 14, lines 12-16.

City of Marco Island 2009 Comprehensive Plan

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.

Next, the Petitioner argues in its Appeal that any consideration of the potential damage that could be caused by the extended boat dock or his super yacht was improper during a hurricane was improper because none of the factors in § 54-115 require that the applicant submit a hurricane plan. However, the Planning Board was correct to review any potential issues related to hurricanes pursuant to the City of Marco Island 2009 Comprehensive Plan. Therefore, the Petitioner's argument is without merit.

In its Appeal, Petitioner argues that it presented the only "competent evidence or testimony" at the hearing before the Planning Board. We disagree. Following is a list of testimony and evidence that was submitted to the Planning Board on behalf of the objecting surrounding property owners, including the Glasses and the Bowmans:

1. July 25, 2021 Written Letter of Objection by McBride
2. August 20, Written Letter of Objection by Rajani Thangavelu property owner of 983 Sundrop Court, Marco Island
3. August 25, 2021 Addendum to the Written Letter of Objection by McBride
4. August 27, 2021 Written Letter of Objection by Matthew and Vicki Bissell property owners of 1264 and 1260 Laurel Court, Marco Island
5. September 2, 2021 Written Letter of Objection by the Law Offices of Hodge and Snyder on behalf of the Glasses and the Bowmans
6. September 3, 2021 testimony from surrounding property owners Matthew Bissell, Rajani Thangavelu, Stephenie Bowman and Mitchell McBride

Further, several of the Planning Board members conducted a site visit and/or were familiar with the Property location. As members of the public, as well as affected property owners, the Planning Board properly considered their evidence and testimony in rendering its decision.

C. Conclusion

The Petitioner did not Demonstrate that there was a Special Condition Relative to his Property that Justified Granting Him an Exemption.

There are no special conditions that justifies the Council granting the Petitioner an exemption to the standard ordinances regulating boat docking facilities in the zoning classification for the Property. Therefore, the Petitioner failed to meet its burden of proof and its Petition was properly denied by the Planning Board.

The Decision of the Planning Board was Based on Factors and Criteria Set Forth in the Marco Island Ordinances.

In addition, all of the evidence and testimony considered by the Planning Board was proper pursuant to § 50-100 and § 54-115 and the City of Marco Island 2009 Comprehensive Plan.

The Glasses and the Bowmans respectfully request that the Council deny the Petition and Petitioner's Appeal and affirm and adopt the resolution as approved by the Planning Board.

Respectfully submitted by:

By: /s/ Neil E. Snyder
Neil E. Snyder
Florida Bar No.: 0691003
Law Offices of Hodge and Snyder
651 South Collier Blvd., Suite 2H
Marco Island, Florida 34145
(239) 430-0001 telephone
(239) 430-0002 facsimile
Attorneys for Brett Glass, et ux.
and William Bowman, et ux.

EXHIBIT A

Jaclyn Payne

From: Neil Snyder
Sent: Friday, September 24, 2021 02:32 PM
To: 'Mary Holden'; Daniel Smith
Cc: HS-Filings; Laura Litzan; Mike McNees; David N. Tolces
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

Good afternoon Ms. Holden and thank you for your response. I cannot agree with the City's conclusion regarding the timeliness of the appeal as the definition of the term *Rendition* below makes it clear that the final order was effective on September 3, 2021 and became a the record of the Planning Board on that date. As such, the date for appeal started September 3, 2021.

Rendition means the issuance of a written order, including approval, approval with conditions, or denial of a determination by the city council, planning board, director, or other administrative official, effective upon **the date of signing by the authorized city official of such order or final letter of determination and its filing in the records of the** city council or **planning board**, or said director or other administrative official.

I say this as I anticipate this will be an appellate issue moving forward.

Thank you.

Neil E. Snyder

Neil E. Snyder, Esquire
Law Offices of Hodge and Snyder
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CONFIDENTIALITY NOTE: This e-mail has been sent from a law firm. It may contain privileged and confidential information intended for the use of the person(s) named above. If you are not an intended recipient, you are hereby notified that any dissemination or duplication of the e-mail is prohibited and that there shall be no waiver of any privilege or confidence by your receipt of this transmission. If you have received this e-mail in error, please notify us by collect telephone call and immediately delete this e-mail. Thank you.

From: Mary Holden <mholden@cityofmarcoisland.com>
Sent: Friday, September 24, 2021 2:07 PM
To: Neil Snyder <nsnyder@hodgeandsnyder.com>; Daniel Smith <dsmith@cityofmarcoisland.com>
Cc: HS-Filings <Service@hodgeandsnyder.com>; Laura Litzan <llitzan@cityofmarcoisland.com>; Mike McNees <MMcNees@cityofmarcoisland.com>; David N. Tolces <DTolces@wsh-law.com>
Subject: RE: 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

Good afternoon Mr. Snyder,

Thank you for your inquiry. Action took place on the 3rd of September 2021, and the signed resolution was filed with the City Clerk on the 10th of September 2021. Therefore, the deadline to file the appeal of the denial of the boat dock extension application BD-21-000177 is the 24th of September 2021.

Respectfully,

Mary P. Holden

Mary P. Holden, Senior Planner
City of Marco Island
50 Bald Eagle Dr.
Marco Island, FL 34145
239-389-3975

Comprehensive Plan Update Information: <https://www.cityofmarcoisland.com/growth-management/page/comprehensive-plan-update>



From: Neil Snyder <nsnyder@hodgeandsnyder.com>

Sent: Friday, September 24, 2021 10:25 AM

To: Mary Holden <mholden@cityofmarcoisland.com>; Daniel Smith <dsmith@cityofmarcoisland.com>

Cc: HS-Filings <Service@hodgeandsnyder.com>; Laura Litzan <llitzan@cityofmarcoisland.com>; Mike McNees <MMcNees@cityofmarcoisland.com>

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

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Good morning Ms. Holden. As you are aware, this office represents and appeared on behalf of two homeowners at the September 3, 2021 Planning Board meeting. I would appreciate your advising how the rendition date was calculated relating to the attached appeal.

Thank you.

Neil E. Snyder

Neil E. Snyder, Esquire
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Fax: (239) 430-0002

Email: nsnyder@hodgeandsnyder.com

EXHIBIT B

**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.

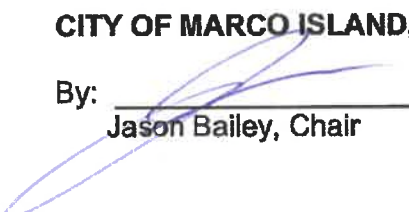
ADOPTED BY THE PLANNING BOARD OF THE CITY OF MARCO ISLAND, this 3rd day of September 2021.

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 5

Statement of Brett and Nicole Glass

My name is Brett Glass. My wife Nicole and I are the owners of 1295 Orange Court. Thank you for the opportunity to provide comments on the petition by the owner of 986 Sundrop Court to the Marco Island City Council. This is our first time to be involved with a city council and we are hopeful that our comments will be heard in the sincere manner intended.

In regards to the Petition by the owner of 986 Sundrop Court for a variance from the standard ordinances governing the dimensions of a boat dock, Nicole and I would like to comment on the areas of safety and community.

1. First we would like to discuss the safety of the waterway traffic on the Marco River.

Marco Island has appropriate regulations in place to make sure residents and visitors can enjoy the island safely. For example, speed limits are reduced in high traffic areas, pedestrians are provided mechanisms to cross busy roads by the hotels, intersections are kept safe by ordinances that restrict signs and landscaping that would block views so that those approaching an intersection can easily see what dangers may exist as they approach the intersection.

The Marco River is like a busy pedestrian intersection in that it is a very busy major waterway for boats and water sport enthusiasts. Accessing the Marco River, in the area between the S.S. Jolley Bridge and the no wake zone just south of Orange Court, is equivalent to a high traffic area pedestrian intersection. Numerous small boats, kayaks and paddle boarders, like Nicole and myself, rely on a clear view in order to avoid danger from the boats traveling at fast speeds and their large wakes.

Given the enormous width, depth and estimated 50' height of a super yacht, its location at the end of Sun Drop Court would significantly obstruct the view for all parties trying to navigate on the Marco River and the canals adjacent to Sun Drop Court and Orange Court.

We believe this would be very dangerous and likely require some form of changed navigation requirements to include extending the no wake zone on the river and requiring those in the canal to take a much wider route to access the Marco River in order to see and safely navigate around the super yacht.

We feel strongly that the reduced view caused by the super yacht combined with the high speeds permitted on the Marco River will dramatically increase the risk of serious injury or death. We respectfully request that the City Council take into consideration these increased risks in making their decision.

2. Second, we would like to comment on the small town community and quality of life that everyone currently enjoys on Marco Island.

Nicole and I looked all over Southwest Florida to find our dream place to live. We looked at many great places with spectacular views such as Naples, Sarasota and St. Pete but in Marco, we felt the community has a small town charm with a more laid back, island type feel. Here, we could go to a nice restaurant in shorts without feeling like we are forced into a comparison based on diamonds or Rolex. We don't mind visiting these other great cities for the great views and people watching, but it isn't where we wanted to live.

We estimate that our amazing view of the S.S. Jolley Bridge will be completely eliminated and our 180 degree view will be reduced by at least 25%. When we performed our diligence on the property, we reviewed all of the disclosures and made life-changing financial decisions assuming we would have these gorgeous views and the views of the bridge at night, all lit up were a major part of our purchase decision.

Nicole and I are mindful that there is no ordinance precluding the reality that will occur if the decision of the Planning Board is overturned. No matter how nice the property owner may be, an extremely wealthy and successful business person buying a house he won't live in and is for the primary purpose of docking a super yacht and housing a full crew as our neighbors is akin to a television reality show. This feels more like an episode of the TV show "Below Deck." But unlike the TV show, we as neighbors do not live next to a commercial marina where super yacht maintenance and activity would be expected.

Because the primary use of the property has, for all intents and purposes, the commercial application of maintaining the vessel when not in use, it is not a situation we would have ever expected to encounter in Marco Island from everything we have ever researched about Marco Island. Super Yachts are loud! The daily maintenance will include the noise of buffing and sanding, not normally heard on a daily basis, from one location, in a residential neighborhood. Imagine relaxing in your dream home, enjoying the peaceful views to be startled by the sound of the giant horns as super yacht prepares to depart. Imagine if every vessel on Marco Island sounded an air horn as they departed their docks. Now imagine Marco Island being shaken by the equivalent of a train locomotive's horn as it departs the dock at 986 Sundrop Court.

We certainly would understand if a boat in compliance with existing ordinances was placed on a tip lot at Sun Drop Court. However, the petition for a variance from these existing ordinances to build a dock for the purpose of mooring a super yacht does not promote the small town charm of Marco Island that attracted us to this community in the first place. A super yacht is longer than 50% of waterfront and in this case would extend up to 70% of the existing seawall. It also extends deeper into the Marco River and at an estimated 50' in height, is taller than any other home or structure around, except for the bridge itself. The sheer size of a super yacht does not fit with the harmony of the small town charm that exists in our neighborhood and in Marco Island today.

We could never have reasonably anticipated in our diligence before investing in our property that the owners of 986 Sundrop Court would apply for and potentially be granted a variance from the existing ordinances. Is it fair for one property owner to cause so many other property owners to lose value in their retirement properties and to lose significant portions of their amazing views so that the one property owner can indulge in their super yacht lifestyle in the middle of a peaceful, residential neighborhood? Shouldn't the impact on many, outweigh the impact on one who is asking for a significant exception?

Thank you again for taking the time to consider our feedback and we pray that you will make the decision that is best for the residents of Marco Island and continue to preserve the small town charm of Marco Island. Finally, we would like to thank each of you for your service to the community.

Thank you,
Brett and Nicole Glass

For reference, photographs of 1295 Orange Court:



EXHIBIT 6

Dear Marco Island City Council Members,

Thank you for taking the time to review our request for denial of the appeal for the boat dock extension located at 986 Sundrop Court.

We purchased our home at 1289 Orange Court at the end of June, 2021. My husband is retiring in approximately 16 months, after working for the same company since 1983. While we have been blessed, he has worked very hard, and our family has made a lot of sacrifices to accommodate his job. After considering a few places to buy our retirement home, we settled on Marco Island. We loved the small town vibe, and there seemed to be an atmosphere of respect towards each other. We picked Marco because it is comfortable, friendly and peaceful. Marco is the American Dream for people like us, people who put their head down, work hard, and earn their own success. We purchased our home after asking a lot of questions regarding the “rules” protecting views and property values. We paid a premium for our beautiful view, feeling sure that the statutes in place would protect our investment.

The LLC which currently owns 986 Sundrop feels that their desires usurp the rights of the nearby residences affected by the requested variance. I appeal to you to protect the rights of the majority of your constituency in this matter and deny the appeal.

A house will eventually be built at the end of Orange Court. That house will have a dock and will block a portion of our current view. We realized this was going to happen as we purchased this home. We are fine with this, as we anticipate that the dock will be built within the statutes provided by Marco Island. The view below off of the end of my balcony is where a future dock will be built in time.



Recently I went to the upstairs bedroom balcony to show my daughter the bridge connecting Marco Island to the Naples Bridge. Upon standing there a few seconds, her reaction was "That's sad. It won't be too many years until you won't be able to see that either."

I had not considered this possibility, but she is absolutely correct. My view of the bridge is above a smaller, older home that will most certainly be pushed over and replaced with a larger home sometime in the future. And that is fine, because the people who do that will (hopefully) abide by the statutes provided by the island.

Below is my current view of the bridge which will eventually be blocked by a bigger home within the statutes.





This is my view from my upstairs balcony currently. The new proposed dock and 50 foot high yacht will begin approximately where the rightmost dock is.

As you can tell, the combination of legitimate change in addition to the proposed super yacht and expansive dock takes the vast majority of the view. As stated earlier we understand and accept change within the statutes of the island.



Above is a picture of the Marco Island Princess cruising down the river, taken from my living room area. The Princess is 91 feet long, with a 20 foot beam; I do not know the actual height, but I am fairly sure it is 35 feet or less. Now imagine a yacht 1.5 times in length and beam, and 50 feet tall. That, along with whatever legitimate dock and boat that is eventually placed directly beside our property, will block a large portion of our view. I have been told by someone on the other side of the canal that in the not too distant past, a homeowner requested a variance to allow the height of his house to be built to exceed 35 feet by 2-3 feet. This variance was denied. I respectfully request that this variance also be denied in part due to view restriction that will be caused by the super yacht and concrete pylons that will be a part of the structure.

The concrete dock that is proposed to be built there is hazardous in itself if there was a major hurricane. I do not want huge concrete pylons or large sections of concrete slamming into our property during a hurricane. In addition, just the amount of water in motion due to the movement of such a large vessel could be detrimental to the docks and seawalls near that property.

Upon sitting on our lanai and observing the river a number of times I have noticed there is a sandbar that appears during afternoons that decreases the actual navigable width of the river. While the dock itself and the yacht causes safety concerns about entering and exiting the canal near us, such a large vessel, along with the sandbar could cause safety issues with vessels using that section of the river. The super yacht will cause it to be difficult for small boaters and kayakers to enter and exit the canal. The sandbar could increase the danger, as there will be less width of the river for boats to spread across the river during certain times of day.

986 Sundrop Court is supposed to be a single family home. After recently transferring ownership of the property into an LLC and labeling the house with the name of the proposed super yacht, the home is supposedly going to be the home for the crew of the vessel. This is not the definition of a single family home. The noises associated with supplying, departing and docking the yacht will be loud; and there will be a lot of increased traffic on Sundrop with vendors supplying the vessel for trips, as well as additional noise from the tenant crew staying at the house.

Finally, I would like to extend an invitation to all members of city council to visit our property and stand on our lanai, and see how our views and therefore property value will be affected. You can contact Mr. Snyder's office directly to get my (Stephanie's) cell phone number, and I will arrange for someone to be there if you would like to see how this personally affects us.

Again, thank you for your time in reviewing our objections. There is room for legitimate growth as the statutes are written. When excessive exceptions are granted, the whole master plan is thrown out the window. Again, we respectfully ask that this exception not be granted and that the small town island atmosphere of our community is maintained.

Thank you,
Stephanie and Skip Bowman