

# **AGENDA**

## **KEY COLONY BEACH CITY COMMISSION**

### **PUBLIC HEARING**

Thursday, April 18<sup>th</sup>, 2024 – 9:30 am

Located at Marble Hall, 600 W. Ocean Drive, Key Colony Beach

& via Zoom Conferencing

**[Zoom Login Information at the end of this Agenda](#)**

1. ***Call to Order, Pledge of Allegiance, Prayer & Roll Call***
2. ***Agenda Additions, Deletions, or Changes***
3. ***Citizen Comments & Correspondence***
4. ***Administration of Oath of Witnesses***
5. ***Disclosure of Ex-Parte Communication – Pg. 1***
6. ***Discussion/Approval of the installation of a 20,000 lb. cradle-style boatlift at the property located at 37 Sadowski Causeway per the recommendation of the Planning & Zoning Board***
  - a. *Presentation by the Building Department - Pgs. 2-4*
  - b. *Statement by Applicant*
  - c. *Planning & Zoning Board Recommendation – Chair George Lancaster*
    - i. *Letter of Recommendation – Pg. 5*
    - ii. *Meeting Minutes from March 20<sup>th</sup>, 2024 – Pgs. 6-10*
  - d. *Commission Discussions*
  - e. *Motion to approve, deny, or approve with conditions*
7. ***Discussion/Disapproval of the installation of a 16,000 lb. cradle-style boatlift at the property located at 948 West Ocean Drive per the recommendation of the Planning & Zoning Board***
  - a. *Presentation by the Building Department – Pgs. 11-77*
  - b. *Statement by Applicant*
  - c. *Planning & Zoning Board Recommendation – Chair George Lancaster*
    - i. *Letter of Recommendation – Pg. 78*
    - ii. *Meeting Minutes from March 20<sup>th</sup>, 2024 – Pgs. 6-10*
  - d. *Commission Discussions*
  - e. *Motion to approve, deny, or approve with conditions*
8. ***Other Business***
9. ***Adjourn***

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***This meeting will be held at Marble Hall, 600 W. Ocean Drive, Key Colony Beach, Florida 33051.***

*Join from a PC, Mac, iPad, iPhone or Android device:*

*Please click this URL to join. <https://us02web.zoom.us/j/87609057989?pwd=enovMVA0N0JHWFJDd3OyvmZkQWlOdz09>*

*Passcode: 419060*

*Or One tap mobile:*

*+13052241968,,87609057989#,,,,\*419060# US*

*+13092053325,,87609057989#,,,,\*419060# US*

*Or join by phone:*

*Dial(for higher quality, dial a number based on your current location):*

*US: +1 305 224 1968 or +1 309 205 3325 or +1 312 626 6799 or +1 646 931 3860 or +1 929 205 6099 or +1 301 715 8592  
or +1 689 278 1000 or +1 719 359 4580 or +1 253 205 0468 or +1 253 215 8782 or +1 346 248 7799 or +1 360 209 5623 or +1  
386 347 5053 or +1 507 473 4847 or +1 564 217 2000 or +1 669 444 9171 or +1 669 900 6833*

*Webinar ID: 876 0905 7989 Passcode: 419060*

## **EX-PARTE COMMUNICATIONS**

An ex-parte communication is defined as:

any contact, conversation, communication, writing, correspondence, memorandum or any other verbal or written communication that takes place outside a public hearing between a member of the public and a member of a quasi-judicial board, regarding matters which are to be heard and decided by said quasi-judicial board.

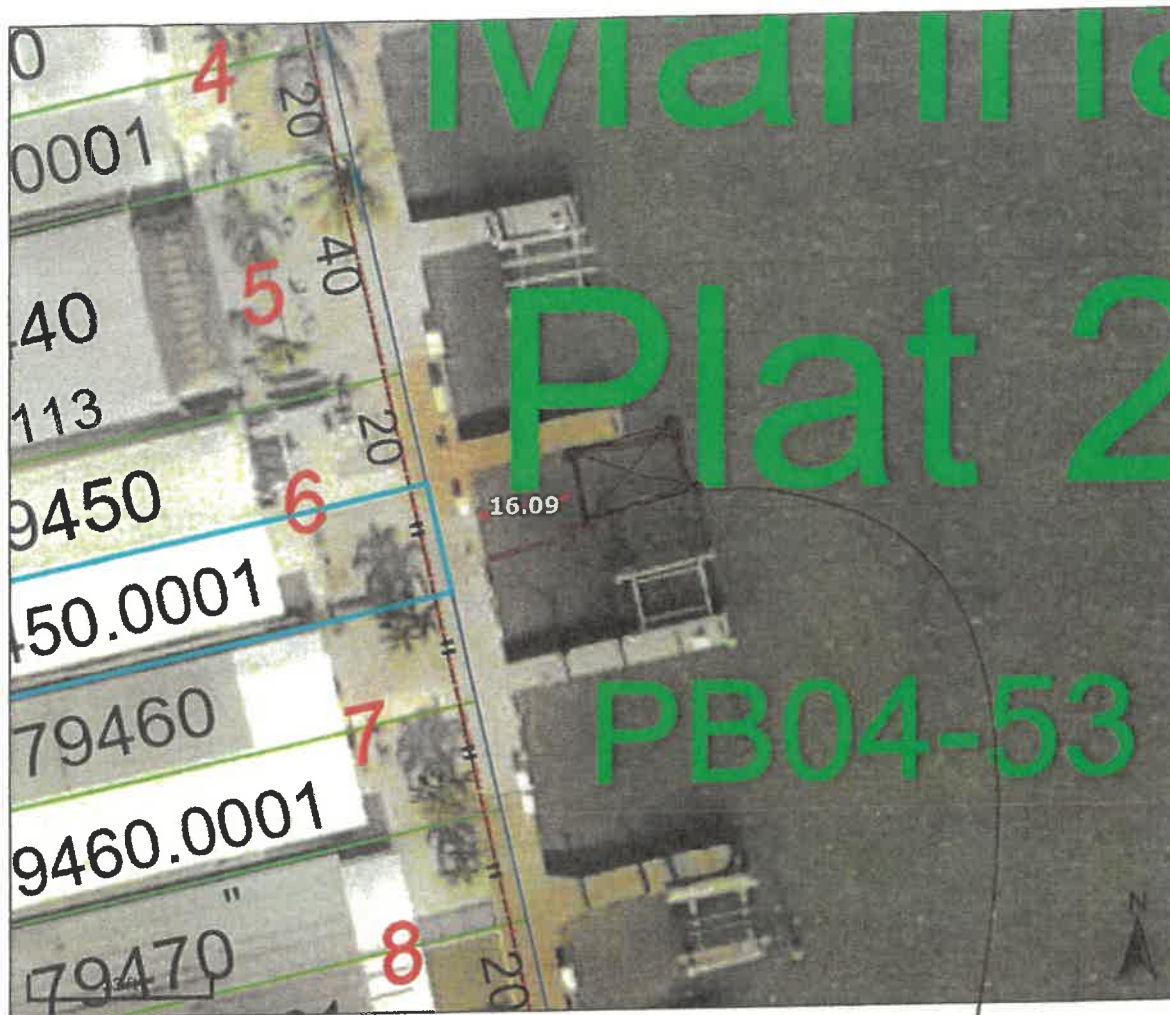
Site visits and expert opinions are also considered ex-parte communications.

In the event that someone contacts a Board Member about a quasi-judicial matter outside of a public meeting, at such time that particular issue is brought before the Board, the Board Member should state on the record:

the existence of any ex-parte communication,  
the nature of the communication,  
the party who originated the ex-parte communication, and  
whether or not the ex-parte communication affects your ability to impartially consider the evidence presented.

Similarly, any correspondence received by a Board Member must be forwarded to the Board Clerk.

Note: The term "Board Member" would include all members of the Code Enforcement Board, the Planning & Zoning Committee, and the City Commission when they are acting in a quasi-judicial capacity (for example, but not limited to, code violation hearings and variance hearings).



Overview



Legend

- Centerline
- Easements
- Hooks
- Lot Lines
- Road Center
- Rights of Way
- Shoreline
- [ ] Condo Building
- Key Names
- [ ] Subdivisions
- [ ] Parcels

Parcel ID 00079450-000100  
 Sec/Twp/Rng 05/66/33  
 Property Address 37 SADOWSKI Cswy  
 KEY COLONY BEACH

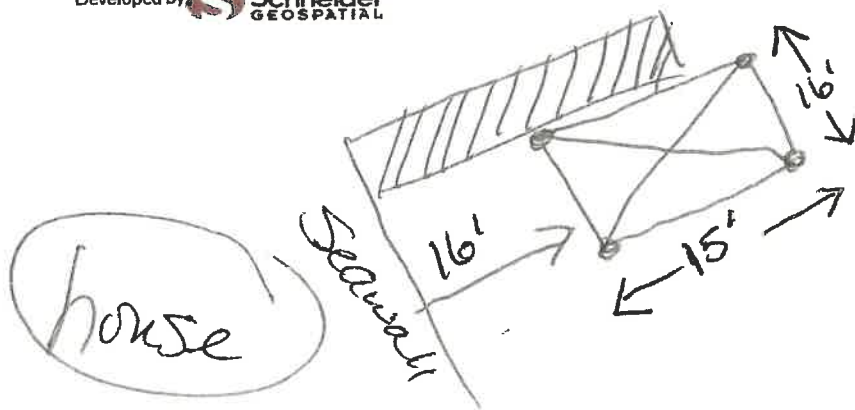
Alternate ID 1086592  
 Class SINGLE FAMILY RESID

Owner Address HALL CRAIG W  
 PO Box 1916  
 Telluride, CO 81435

District 50KC  
 Brief Tax S 1/2 LT 6 MARINA SUBD PLAT NO 2 SHELTER KEY AND ADJ FILL BAY BTM PB4-53 OR142-536 OR143-391 OR239-305 OR392-372  
 Description OR392-374 OR412-835 OR412-836 OR435-208 OR435-209 OR444-360 OR444-361 OR600-561/64 OR625-38/379 OR770-1678  
 OR1144-308 OR1144-309 OR2242-69/70 OR2669-1309D/C OR3185-0855 OR3197-1958  
 (Note: Not to be used on legal documents)

Date created: 3/12/2024  
 Last Data Uploaded: 3/8/2024 6:00:51 AM

Developed by Schneider  
 GEOSPATIAL



*Proposed 20K  
 cradle  
 lift attached  
 to 4 new  
 10" d.d. wood  
 pilings*

305 879 8437  
 Renee - Neptune Boat lifts

On Jan 6, 2024, at 4:18 PM, Ev Mitchell <[emitchell@elward.com](mailto:emitchell@elward.com)> wrote:

Hello Beth

This is Ev Mitchell at 36 Sadowski Causeway.

We have no problem with you having a boat lift put in at 37 Sadowski.

Ev Mitchell

On Jan 6, 2024, at 2:35 PM,

Beth Hall

<[wasserlodge@icloud.com](mailto:wasserlodge@icloud.com)>

wrote:

Ev Mitchell

⏪ ✓ Reply all



**From:** [Tammie Anderson](#)  
**To:** [Silvia Gransee](#)  
**Subject:** FW: [External] 20k boat lift site plan for next meeting  
**Date:** Monday, March 18, 2024 8:57:59 AM

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**From:** Neptune Atlantic <[renee@neptuneatlanticboatlifts.com](mailto:renee@neptuneatlanticboatlifts.com)>  
**Sent:** Monday, March 18, 2024 8:56 AM  
**To:** Brandi Yellin <[clerk4@keycolonybeach.net](mailto:clerk4@keycolonybeach.net)>; Tammie Anderson <[clerk2@keycolonybeach.net](mailto:clerk2@keycolonybeach.net)>; Ed Borysiewicz <[buildingofficial@keycolonybeach.net](mailto:buildingofficial@keycolonybeach.net)>; Ed Borysiewicz <[building4@keycolonybeach.net](mailto:building4@keycolonybeach.net)>  
**Subject:** Re: [External] 20k boat lift site plan for next meeting

Good morning, Ed: Mr. Hall at 37 Sadowski Causeway did get approval from his other neighbor. Please see below. Please let me know if this is approved in your City meeting.

Thanks!

Renee

From: Ting <[jpsh177@gmail.com](mailto:jpsh177@gmail.com)>

Date: March 16, 2024 at 8:48:15 AM EDT

To: "Kristen E. Brenner, Broker" <[duckkeyfl7@gmail.com](mailto:duckkeyfl7@gmail.com)>

Subject: Re: Nieghbors Boat Lift

Please give him my approval

Thank you

Ting

Sent from my iPhone

On Mar 15, 2024, at 9:21 PM, Kristen E. Brenner, Broker <[duckkeyfl7@gmail.com](mailto:duckkeyfl7@gmail.com)> wrote:

No negative impact for a larger motor.

Kristen E. Brenner, Broker/Owner

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Duck Key Real Estate Co.

[www.duckkey.com](http://www.duckkey.com)

Florida Keys Real Estate Group

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Vacation Rentals of the Florida Keys

[www.vacationrentalsofthefloridakeys.com](http://www.vacationrentalsofthefloridakeys.com)

# City of Key Colony Beach

PO Box 510141 Key Colony Beach, Florida • Phone # 305-289-1212 • Fax# 305-289-1767



March 20<sup>th</sup>, 2024

To: The City of Key Colony Beach Board of Commissioners

From: The Key Colony Beach Planning & Zoning Board

Re: Discussion/Approval to install a 20,000 lb. cradle-style boatlift at the property located at 37 Sadowski Causeway.

The Planning & Zoning Board heard the applicant's request for the approval to install a 20,000 lb. cradle-style boatlift at the property located at 37 Sadowski Causeway.

**Motion:** Motion made by Lin Walsh to approve. Chair Lancaster asked for a second. Doug Colonell seconded the motion.

**DISCUSSION:** None.

**ON THE MOTION:** Rollcall vote. Unanimous approval.

**Final Recommendation:** The Planning & Zoning Board recommends to the City of Key Colony Beach Board of Commissioners to approve the requested cradle-style boat lift.

A handwritten signature in black ink that reads "George Lancaster". The signature is written in a cursive style and is positioned above a horizontal line.

George Lancaster, Chair



**MINUTES**  
**PLANNING & ZONING BOARD**  
**REGULAR MEETING & PUBLIC HEARING**

Wednesday, March 20th, 2024 - 9:30 a.m.

Marble Hall, 600 W. Ocean Drive, Key Colony Beach, Florida 33051 & via Zoom Conferencing

- 1. Call to Order, Pledge of Allegiance & Rollcall:** The Key Colony Beach Planning & Zoning Hearing was called to order by Chair George Lancaster followed by the Pledge of Allegiance and Rollcall. **Present:** George Lancaster, Doug Colonell, Bob Glassman, Vice-Chair Lin Walsh. **Also present:** Mayor-City Administrator Joey Raspe, Building Official Ed Borysiewicz, City Attorney Dirk Smits, Administrative Assistant Tammie Anderson, City Clerk Silvia Gransee.
  
- 2. Agenda Additions, Deletions, or Changes:** City Clerk Gransee informed on the following agenda changes:
  - Under Item 7b: Neighbor Approval for 37 Sadowski Causeway
  
  - New Item 10: Discussion/Approval for the business of a Mobile Food Trailer at the ‘Mobil’ Gas Station at 13100-13155 Overseas Highway, to allow Empanada Nation to sell Empanadas and Cuban Coffee.
    - a. Presentation by the Building Department
    - b. Statement by the Applicant
    - c. Planning & Zoning Board Discussion
    - d. Motion to approve, deny, or approve with conditions
  
  - ~~New Item 11: Discussion/Approval of a recommendation for appointment of Kirk Boggs to the Planning & Zoning Board. \*\*Under legal review for residency requirements\*\*~~
  
  - Scrivener’s correction under Item 7: Pages 4-5 and Item 8 Pgs. 6-58
  
- 3. Citizen Comments & Correspondence:** None.
  
- 4. Approval of Minutes:**
  - a. Planning & Zoning Board Meeting Minutes February 21, 2024: Chair Lancaster asked for any changes or Corrections to the minutes. There were none. Chair Lancaster accepted the minutes as written.
  
- 5. Administration of Oath of Witnesses:** City Clerk Gransee administered the Oath of Witness to all testifying.
  
- 6. Disclosure of Ex-Parte Communication:** None.
  
- 7. Discussion/Approval to install a 20,000 lb. cradle-style boatlift at the property located at 37 Sadowski Causeway**
  - a. **Presentation by the Building Department:** Building Official Borysiewicz presented the matter to the Board and recommended approval. Building Official Borysiewicz confirmed no objections from the neighbor and stated for this approval to be similar to other approvals on Sadowski Causeway.
  
  - b. **Statement by Applicant:** None.
  
  - c. **Planning & Zoning Board Discussion:** Bob Glassman asked if the prior boat lift was destroyed during Hurricane Irma. Building Official Borysiewicz had no knowledge but gave confirmation for the lift to be within the prescribed code requirements.

- d. **Motion to approve, deny, or approve with conditions:** Chair Lancaster asked for a motion to approve or deny.

**Motion:** Motion made by Lin Walsh to approve. Chair Lancaster asked for a second. Doug Colonell seconded the motion.

**DISCUSSION:** None.

**ON THE MOTION:** Rollcall vote. Unanimous approval.

City Clerk Gransee informed for the recommendation to be presented to the City Commission on April 18<sup>th</sup>.

**8. Discussion/Approval to install a 16,000 lb. cradle-style boatlift at the property located at 948 West Ocean Drive**

- a. **Presentation by the Building Department:** Chair Lancaster presented the matter to the Board and asked Building Official Borysiewicz to elaborate. Building Official Borysiewicz informed on City Code requirements in addition to needed recommendation for approval from the Planning & Zoning Board and City Commission. Building Official Borysiewicz explained for the proposed cradle lift being unique due to its involvement with riparian rights. Building Official Borysiewicz informed on having knowledge of the property and dockage area since the 1990's and was able to find old documents regarding riparian rights. Building Official Borysiewicz informed off an old survey found in the archives and explained areas depicted in the survey. Building Official Borysiewicz explained the locations of the riparian lines according to the survey and the proposed location for the boat lift. Building Official Borysiewicz further informed off an additional newer survey submitted showing different riparian lines with large discrepancies between the two surveys. Building Official Borysiewicz talked on issues with previous owners and builders where determinations were made that only an about 18 foot boat with a 6 foot beam could be accommodated. Building Official Borysiewicz explained that this explains the Building Departments recommendation that the cradle lift will not fit without going over the riparian lines.  
City Attorney Smits informed for the testimony and evidence submitted in the agenda packet are admitted into the record for evidence.
- b. **Statement by Applicant:** Attorney Matthew Hutchinson introduced himself to the Board on behalf of the applicant, Frank Tricarico. Matthew Hutchinson presented evidence to the Board in support of his testimony. Mr. Hutchinson talked about common law and prior case law on riparian lines as well as ownership and riparian rights. Matthew Hutchinson explained the differences in both surveys and stated for newer survey to be the more accurate one. Mr. Hutchinson gave further details on dimensions of the lines and informed on easements and equitable distribution of the channel. Matthew Hutchinson informed for the cradle lift to fall within the riparian lines according to the newer survey. Matthew Hutchinson explained locations depicted in submitted pictures to show sufficient space. Mr. Hutchinson gave further opinion on submitted evidence and understanding of riparian law. Mr. Hutchinson talked on case law and submitted evidence and asked for approval of the lift.
- c. **Planning & Zoning Board Discussion:** Chair Lancaster asked for clarification on the statement that the easement granted for the house includes a lift and not just dockage. Matthew Hutchinson confirmed and explained easements that were given to the property in question. Matthew Hutchinson explained the granting of riparian rights per Florida Law and stated for the right to include dockage and by extension a lift. Mr. Hutchinson gave further argument in support of an approval for the boat lift.

Chair Lancaster asked Building Official Borysiewicz for his opinion if a boat lift is not included in the easement. Building Official Borysiewicz informed for the property at 948 W. Ocean Drive being a dry lot and for the easements and riparian lines having been drawn up 30 years ago. Building Official Borysiewicz informed for the new survey taking rights from other property owners and for the applicants boat being large and not be able to fit in the measurements of the older survey. Building Official Borysiewicz stated understanding with the purpose of riparian lines but for the easements having been agreed upon a long time ago and do not represent an automatic approval of a boat lift.

City Clerk Gransee confirmed no additional correspondence.

Bob Glassman asked for clarification of boats in the submitted pictures.



City Attorney Smits introduced Attorney Patrick Stevens to the Board.

Patrick Stevens, representative of the property owner to the immediate West of the property in question, introduced himself to the Board and spoke on the matter. Mr. Stevens spoke on knowledge of riparian rights at time of property purchases and explained that the applicant has no riparian rights through his easement. Patrick Stevens stated for the applicant to have an easement which gives the right to boat dockage, using the property to walk through, and the use of electricity. Mr. Patrick Stevens gave further testimony on the rights under an easement and asked for the Board to follow historical and staff reports.

Mr. Matthew Hutchinson rebutted Mr. Patrick Stevens testimony and gave his opinion that riparian rights are part of the easement.

Chair Lancaster recognized Trent Meier, Engineer for the applicant.

City Clerk Gransee administered the Oath of Witness to the witness.

Trent Meier informed on the permitting process and proprietary review by the State of Florida and for the easements and riparian lines having been reviewed and approved by the State of Florida.

City Attorney Smits advised Chair Lancaster for the Boards decision to be based upon all testimony, including staff, submitted evidence, and for the Board to be the factfinder and determiner of law.

City Attorney Smits asked for confirmation that all parties submitted their evidence.

Matthew Hutchinson asked for his evidence to be submitted.

Lin Walsh asked on the Building Official's Borysiewicz opinion on the testimony.

Building Official Borysiewicz stated that the Board has to take all evidence into account and make a recommendation.

Discussion followed on the possibility of a boat on a neighboring property impacting the proposed boat lift. Mr. Patrick Stevens submitted a picture of a boat on the neighboring property into evidence.

Lin Walsh asked on the verbiage in the easements and asked for clarification on the term 'dock'.

City Attorney Smits explained for that verbiage being part of the argument.

Further discussion followed on other possible locations for the boat. Matthew Hutchinson explained ownership of neighboring properties. The Board continued to examine the submitted picture.

Chair Lancaster asked for a motion for a recommendation to the City Commission to either approve or disapprove.

Building Official Borysiewicz stated to stand by the staff report but for the Board to have the final determination.

The Board did further examination of the provided evidence.

Matthew Hutchinson gave further argument in support of the boat lift.

Lin Walsh clarified the argument being for the boat in the water or on a boat lift.

Building Official Borysiewicz gave his opinion that at 37.5 foot vessel does not fit within the riparian lines in the newer survey.

Chair Lancaster stated for the Board having to decide which survey to recommend to the Commission to look at. Mr. Matthew Hutchinson informed of the matter being an ongoing dispute and former Code Officer Goldman having been involved.

Matthew Hutchinson submitted additional evidence. There were no objections.

Building Official Borysiewicz gave his opinion on boat dimensions and for the boat not being able to leave without crossing the riparian lines.

Mr. Patrick Stevens rebutted the submitted evidence.

Chair Lancaster recognized Trent Meier.

Engineer Trent Meier testified that there are no rules against navigating over riparian lines. Trent Meier explained the purpose of the riparian lines to not allow to built an obstruction or block someone's riparian line.

- d. Motion to approve, deny, or approve with conditions:** Chair Lancaster asked for a motion.

**MOTION:** Motion made by Bob Glassman to disapprove. Chair Lancaster asked for a second. Doug Colonell seconded the motion.

**DISCUSSION:** Chair Lancaster restated the motion. City Attorney Smits clarified the motion of agreement to disagree.

**ON THE MOTION:** Rollcall vote. Unanimous approval.

City Clerk Gransee confirmed the recommendation for disapproval to be heard at the next City Commission meeting April 18<sup>th</sup>.

**9. Discussion/Approval of a request for an architecture review for the property located at 1000 W. Ocean Drive, Key Colony Beach, Florida.**

**a. Presentation by the Building Department:** Building Official Borysiewicz spoke on the history of the property and existing ground floor duplex facing 10<sup>th</sup> Street. Building Official Borysiewicz explained for the prior 2-story portion having been substantially damaged and consequently demolished. Building Official Borysiewicz explained the owner of the vacant duplex to desire to rebuilt a structure. Building Official Borysiewicz gave further details on the proposed structure and for the opinion of staff to need a review of harmonious in nature and architectural review. Building Official Borysiewicz stated for both owners being in attendance and the purpose for the hearing is to discuss architectural compliance and harmonious neighborhood compliance.

**b. Statement by Applicant:** Jack Bridges, representative of the applicant, asked the Board to table the discussion for the time being, for additional plans are being submitted to City staff to provide more options.

**c. Planning & Zoning Board Discussion:** Attorney Jack Bridges informed to be standing in for Attorney Theron Simmons and was notable to give details on the matter.

- d. Motion to approve, deny, or approve with conditions:** Chair Lancaster asked for a motion to table the matter.

**MOTION:** Motion made by Lin Walsh to table the matter. Chair Lancaster asked for a second. Bob Glassman seconded the motion.

**DISCUSSION:** None.

**ON THE MOTION:** Rollcall vote. Unanimous approval.

**10. Discussion/Approval for the business of a Mobile Food Trailer at the 'Mobil' Gas Station at 13100 13155 Overseas Highway, to allow Empanada Nation to sell Empanadas and Cuban Coffee.**

**a. Presentation by the Building Department:** Building Official Borysiewicz introduced the matter to the Board and explained the location not being in a permitted or prohibited use area and asking for a review from the Board.

**b. Statement by the Applicant:** None.

**c. Planning & Zoning Board Discussion:** The Board discussed the possibility of a one-time approval and location of the business. Building Official Borysiewicz recalled a prior approval for a food truck after Hurricane Irma and for it having been a temporary permission. City Attorney Smits confirmed the ability to put a stipulation of time on the approval.

- d. Motion to approve, deny, or approve with conditions:** Chair Lancaster asked for a motion.

**MOTION:** Motion made by Lin Walsh to recommend to the City Commission to consider approval for 6 month.  
Chair Lancaster asked for a second. Doug Colonell seconded the motion.

**DISCUSSION:** None.

**ON THE MOTION:** Rollcall vote. Unanimous approval.

**10. Other Business**

**11. Adjourn:** The meeting adjourned at 10:40 am.

**Respectfully submitted,**  
*Silvia Gransee*  
City Clerk

DRAFT



## STAFF REPORT

**Request:** Construction of a 4-post Cradle-style Boat Lift

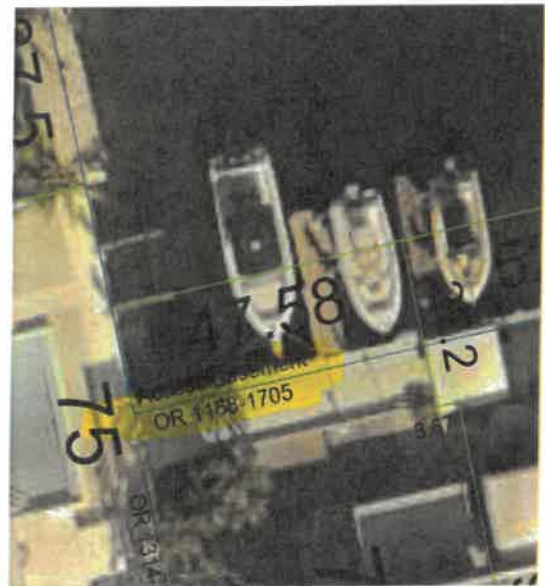
**Property Owner:** Mr. Frank Tricarico and Mrs. Rosalie Tricarico

**Address:** 948 W. Ocean and associated Access Easement

**Property:** "The Easterly Half together with access thereto across the Westerly one-half of the easement reserved in the instrument recorded in Official Records Book 1288, Page 914 of the Public Records of Monroe County, Florida."



**Owner's Property**



**Access Easement**

**Relevant Code Sections:** Division 3 – Docks, Piers, and Mooring Equipment, Section 5-41, "Boat Lifts" and Section 5-44, "All other boat lifting devices." Section 5-44 states, "The installation of all other boat lifts in the city waterway, **including cradle lifts**, shall require approval of the City Commission..." (emphasis added).

**Analysis:** The Applicant in question owns an access easement at the endcap of the canal between 9<sup>th</sup> and 10<sup>th</sup> street in the City of Key Colony Beach. The Applicant's address is 948 W. Ocean Drive; and the associated access easement allows the otherwise landlocked parcel water access via the easement in question. There are six (6) slips at the end of the canal; and four (4) have elevator-style lifts including the slips on either side of the slip dedicated to the Applicant's use. The Applicant argues that an elevator lift would be impractical due to the fact that such a lift would render the finger pier dedicated to this slip unusable for both parties the pier services. This led to the request for a cradle-style lift.

In the City of Key Colony Beach, boatlifts over 16,000 pounds and lifts other than elevator-style lifts require approval by the City Commission (KCB LDRs Sections 5-43(1) and 5-44). Boats and boat lifts must be contained within the property boundaries and riparian lines; and no boat or lift may protrude onto neighboring properties or across riparian lines (KCB LDRs Section 5-43(9)). The Applicant's proposed lift is an 18,000 lb cradle-style lift that will be approximately 14.5 feet across at the outside of the pilings and 10.5 feet inside.

The easement document states the following:

**"The right-of-way easement, rights, and privileges herein shall only be used for the following purposes:**

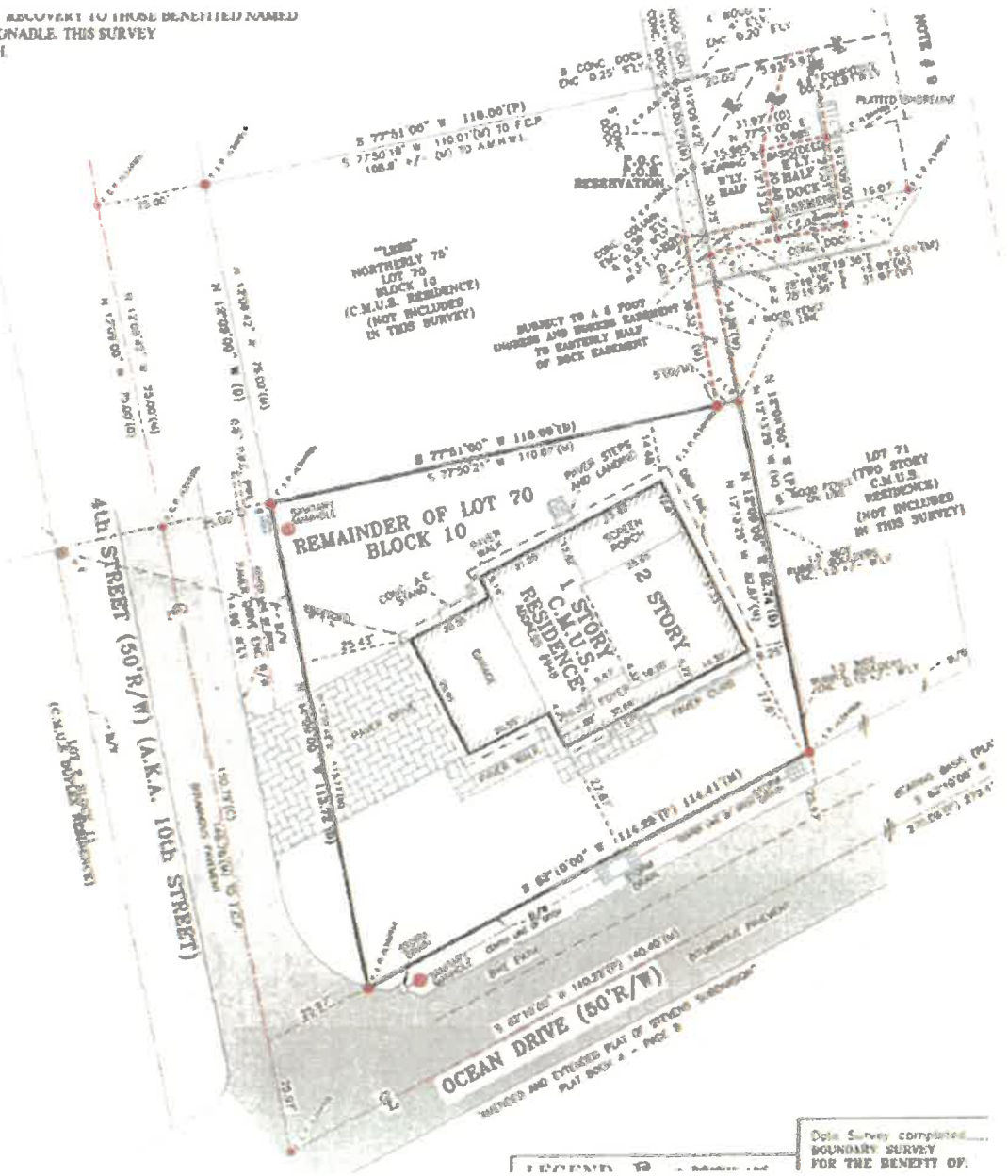
- 1. For pedestrian ingress and egress solely for the purpose of going to and from not more than two (2) boats which may be docked, either temporarily or permanently, within the easement area;**
- 2. For the placing, constructing, operating, repairing, maintaining, rebuilding, replacing, relocating, and removing a single electrical transmission line and a single water line for the purpose of serving and maintaining the boat(s) docked within the easement area."**

This language is silent on the allowance or prohibition of construction of any sort of boat lift, regardless of the style of said lift. The Applicant's adjacent neighbor at 938 W. Ocean Drive has provided Staff with a legal document from 2017 drafted by Attorney John S. Yudin, attorney for the former property owners at 150 10<sup>th</sup> Street. This letter opines that the language is permissive (that is, spelling out what is allowed in writing – and anything NOT in writing is prohibited); and that the lack of language regarding approval to construct boat lifts means they are not permitted.

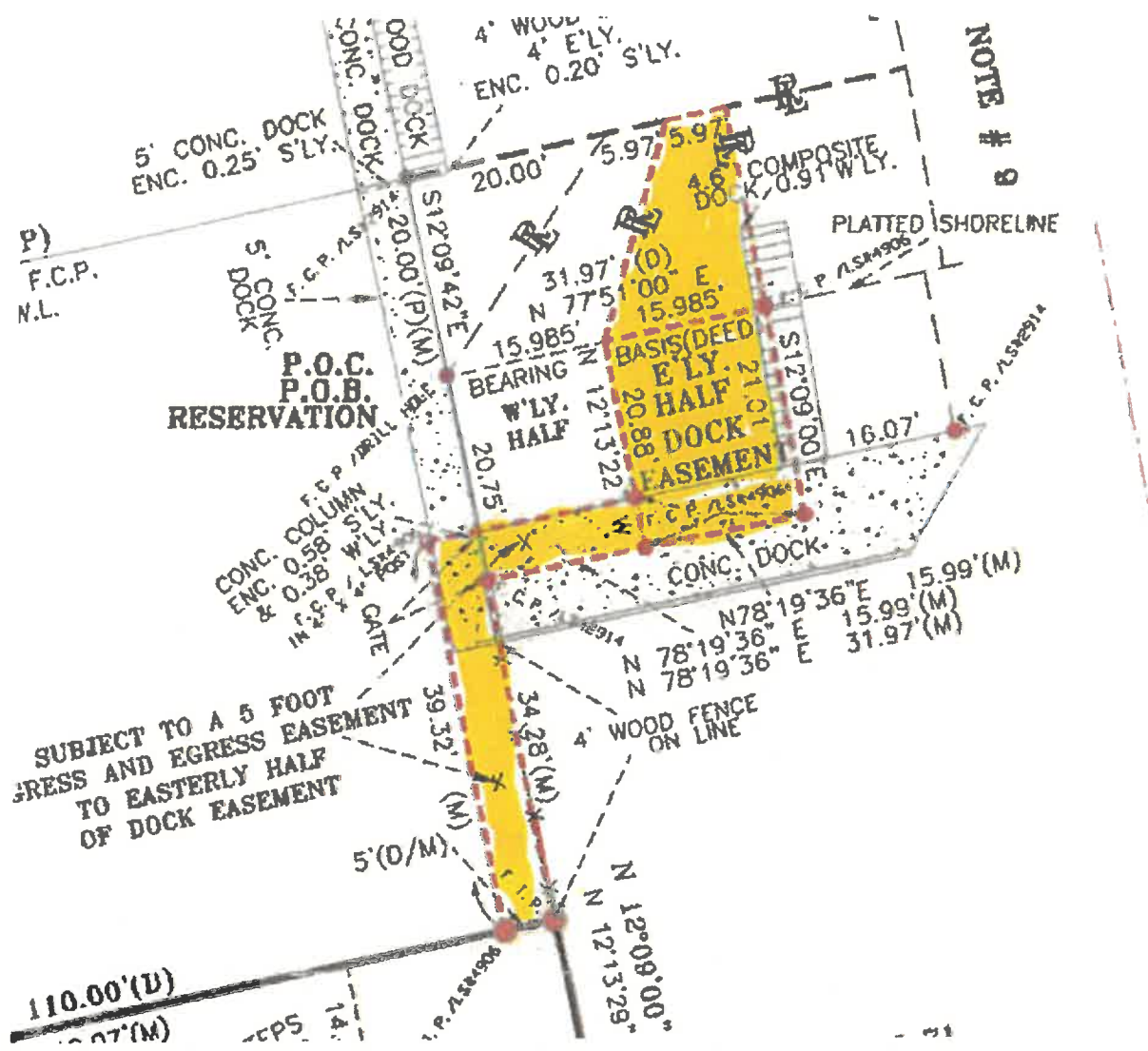
The dock for the property at 160 10<sup>th</sup> Street lies across its riparian boundaries, limiting access to the slip at 150 10<sup>th</sup> Street. Essentially, due to the nature of the existing dock and boat lift, if the Applicant is permitted to construct the proposed lift, access to the existing slip at 150 10<sup>th</sup> street will be negatively impacted.

Finally, Staff performed archival research and discovered a survey performed by John Grimes dated 2/15/17. Please see the clip of the survey and the zoomed-in section with the applicant's easement highlighted.

1) LIMITATION OF LIABILITY RECOVERY TO THOSE BENEFITED NAMED  
 7) THIS SURVEY IS NOT ASSIGNABLE. THIS SURVEY  
 SUBJECT TO A TITLE SEARCH.







Staff notes that the Applicant is unable to construct an elevator-style lift. Staff also notes that a cradle-style lift as proposed could not be permitted due to the location of elements of the lift beyond the Applicant's riparian rights.

Based on Staff research and the fact that the Applicant's proposed lift does not meet the minimum requirements set forth in the code with all elements of the lift and vessel completely contained within its own property (Section 5-43(9)), Staff recommends denial of the Applicant's request.



# INSTALL 16K 4 POST CRADLE LIFT

948 WOCEAN Dr, KEY COLONY BEACH



PROJECT LOCATION



**A** LOCATION MAP  
SCALE: NTS.



**B** VICINITY MAP  
SCALE: NTS.

## SITE DATA / PROJECT LOCATION:

**SITE ADDRESS:** 948 W OCEAN Dr, KEY COLONY BEACH  
**PARCEL NO.:** 00076160-000000  
**LEGAL DESC.:** BK 10 SLY 113FT LT 70 AMD PLAT OF KEY COLONY BEACH FIRST ADDN PB4-11  
 SHELTER KEY OR466-444 OR710-764 OR940-2261 OR960-2452 OR1093-2286  
 OR1299-709 OR1288-913 OR1438-502C OR1438-503 OR1628-868  
 OR2654-2114/19 OR2670-964/65 OR2771-866/67 OR3079-2370  
**OWNER / S:** FRANK & ROSALIE TRICARICO  
**ZONING:** SINGLE FAMILY RESID (0100)

## DRAWING INDEX:

- C - 01 PROJECT INFORMATION
- C - 02 GENERAL NOTES
- C - 03 SITE PLAN 01
- C - 04 SITE PLAN 02
- C - 05 DETAILED SECTIONS

## SCOPE OF WORK:

### NEW CONSTRUCTION

INSTALL 16K 4 POST CRADLE LIFT W/ (4) 12" DIA. TIMBER PILING



PROJECT TITLE:	NO.	DESCRIPTION	REV. DATE	SHEET CONTENT:	SHEET NO.:		
INSTALL 16K 4 POST CRADLE LIFT 948 W OCEAN Dr, KEY COLONY BEACH <small>LOCATION: 948 W OCEAN Dr, KEY COLONY BEACH Parcel ID - 00076160-000000</small>	01	Cover Sheet	10 - 31 - 2023	PROJECT INFORMATION	<table border="1"> <tr> <td>01</td> </tr> <tr> <td>C 05</td> </tr> </table>	01	C 05
	01						
C 05							
					DATE: 10/31/2023		



**RAPID PERMITS AND ENGINEERING**  
 ADDRESS: PO Box 610873, Key Colony Beach,  
 CONTACT: 306-918-1400  
 EMAIL: info@rapidpermits.com

# GENERAL NOTES

## GENERAL REQUIREMENTS

1. Prior to starting any work the Contractor shall review these plans and site conditions and notify the Engineer if any discrepancies are discovered or conflicts with these plans, specifications, or dimensions which affect the execution of construction or safety.
2. This set of plans is solely intended to be utilized for construction at the specified location.
3. The Contractor shall not make any changes and shall request additional information required for construction from the Engineer of Record.
4. The Contractor shall be responsible for obtaining Florida Utility Credits before prior to performing any construction activities in any areas which underground utilities may be present. The Engineer of Record shall not be responsible for providing the location of utilities.
5. The Contractor shall be responsible for providing and implementing the necessary permits and approvals for the construction process and performs all work in accordance with the standards and requirements of the 2020 Florida Building Code, amendments, recommendations, local energy and utility codes and ordinances, and applicable enforcement within these plans.
6. The Contractor must complete the construction in accordance with the building, Electrical Energy Requirements of the Florida Model Energy Code.
7. Quality of the work must meet or exceed the industry standard practices.
8. Any deviations from these plans shall be reviewed and approved by the Engineer of Record.
9. All work shall be completed in accordance with the applicable codes, specifications, and standards.
10. The Contractor shall maintain the existing conditions, structural integrity, and safety of the structure building but not limited to the specifications or dimensions which affect the execution of construction or safety.
11. The Contractor shall coordinate their work with all other trades in order to avoid scheduling conflicts.
12. The Engineer of Record certifies this document shall not be held liable for any structural or clear related design building but not limited to damages to the structure, permanent, clear related delays, and structural items that result from the construction in accordance with the applicable specifications of this certified document. The Contractor shall notify the Engineer of Record if any conditions or issues arise that do not adhere to this certified document.
13. The Engineer certifies this document shall not be held liable for any structural or clear related design building but not limited to damages to the structure, permanent, clear related delays, and structural items that result from the construction in accordance with the applicable specifications of this certified document. The Contractor shall notify the Engineer of Record if any conditions or issues arise that do not adhere to this certified document.
14. All work shall be done in compliance with the FPD 2020 7th Edition. Any details not shown on this plan shall not be to be assumed by others. The engineer shall not be made liable for details not shown on any are not included in the scope of work. The scope of work is limited to the details specified on the indicated sheets. To verify the reality or applicability of the work or adjacent, contact the engineer.
15. For the utility, meet with the provider of permit, but not meeting plan.
16. All permits to be obtained in advance of any work.
17. All permits to be obtained in advance of any work.
18. Engineer of Record to confirm and approve project plan before the commencement of any work following the installation of plot.

## HARDWARE NOTES

1. Hardware shall meet or exceed 304 Stainless Steel properties or be Zinc plated for use around dissimilar metals, unless otherwise specified.
2. All connections shall have stainless steel nuts and washers or A307 Approved treated for use in contact areas.
3. All connections and fasteners shall be suitable for use and compatible with primers treated wood.
4. Apply a lead brush between the wood surface on any connector or hardware that is in contact with primers treated wood.
5. All connections and fasteners shall be manufactured by Simpson Strong-Tie or an approved equal and installed as per the manufacturers recommendations prior to loading the structure.
6. All structural members shall have a minimum of 1/2" thickness and be galvanized for corrosion protection.
7. All hardware shall meet or exceed 304 Stainless Steel Properties unless otherwise specified.
8. All structural members shall be members for hurricane protection.

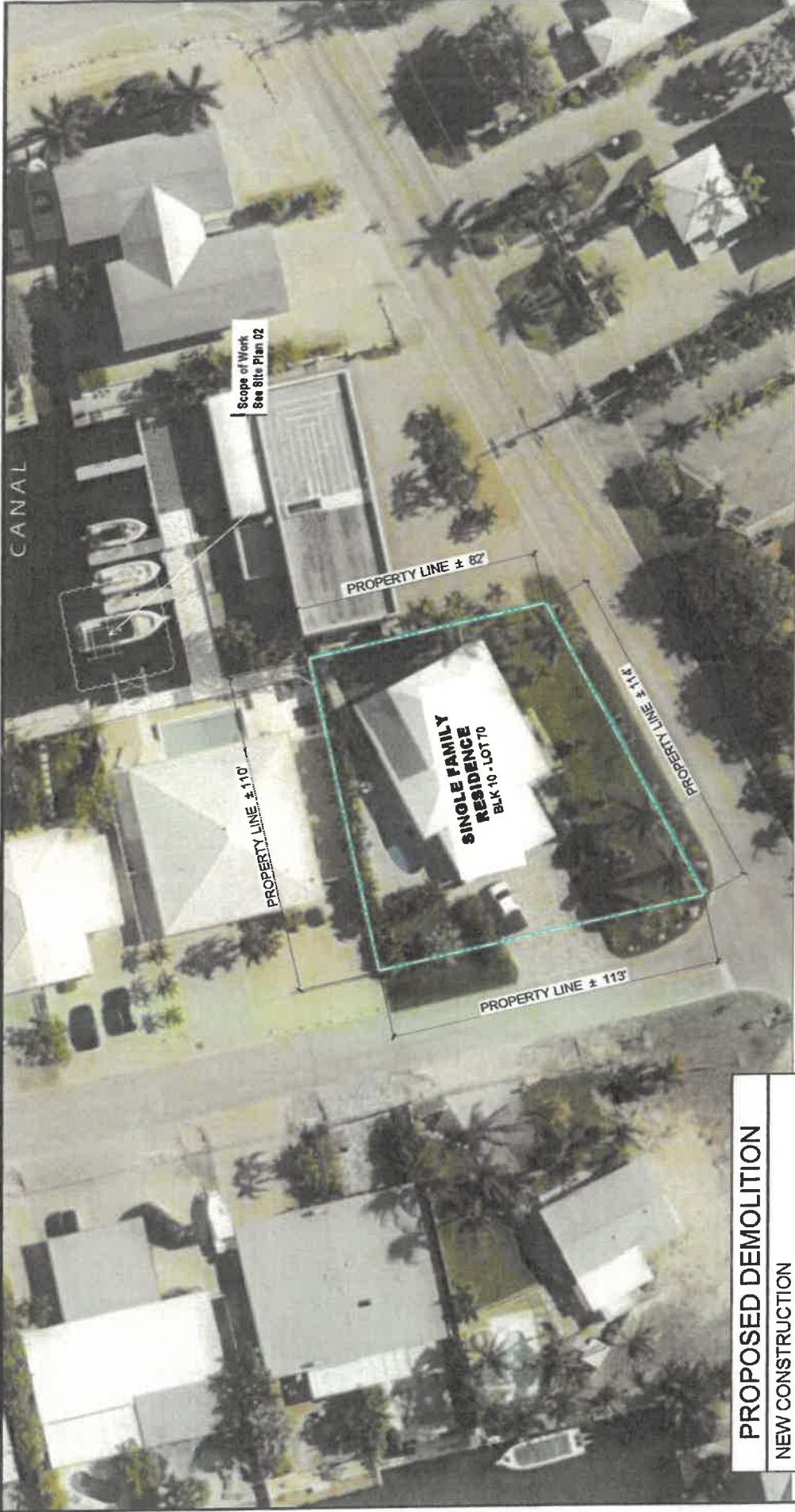


PROJECT TITLE:		NO.	DESCRIPTION	REV. DATE	SHEET CONTENT:	SHEET NO.:
INSTALL 16K 4 POST CRADLE LIFT 948 W OCEAN DR, KEY COLONY BEACH		01	General Notes	10 - 31 - 2023	GENERAL NOTES	
LOCATION : 948 W OCEAN DR, KEY COLONY BEACH PERM ID - 007706-00000					DATE: 10/31/2023	



ADDRESS: PO Box #10073, Key Colony Beach,  
FL 32909  
CONTACT: 305-916-1400  
EMAIL: info@rapidpermits.com





**PROPOSED DEMOLITION**

**NEW CONSTRUCTION**

· INSTALL 16K 4-POST CRADLE LIFT W  
(4) 12" DIA. TIMBER PILING

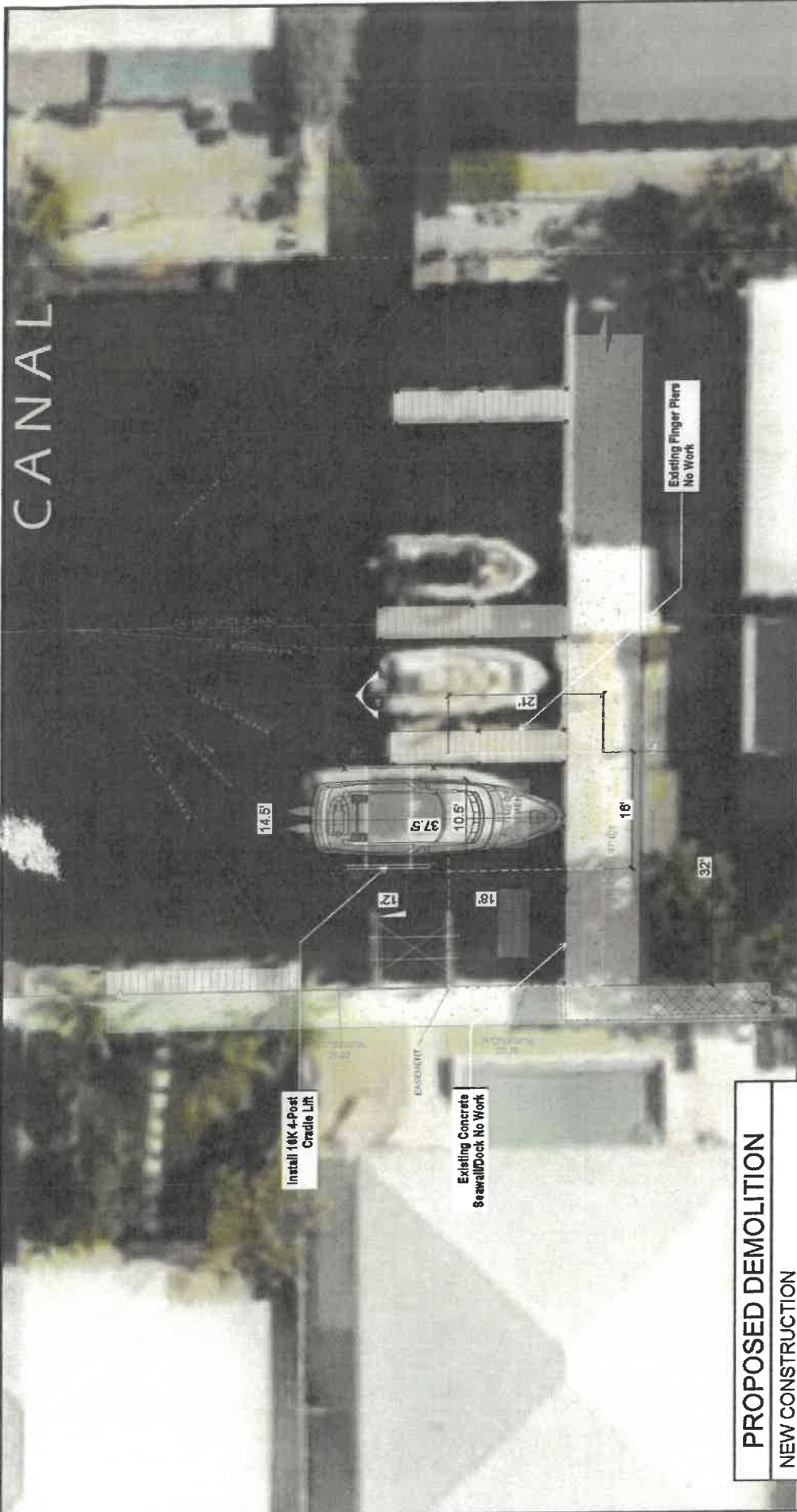


948 W OCEAN DR  
**SITE PLAN 01**  
SCALE: 4" = 100'



	<b>RAPID PERMITS AND ENGINEERING</b> <small>ADDRESS: PO Box 610073, Key Colony Beach, FL 33409          CONTACT: 305-316-1400          EMAIL: info@rapidpermits.com</small>	<b>PROJECT TITLE:</b> INSTALL 16K 4 POST CRADLE LIFT 948 W OCEAN DR, KEY COLONY BEACH <small>LOCATION : 948 W OCEAN DR, KEY COLONY BEACH          Parcel ID - 087016400000</small>	<b>NO.</b> 01	<b>DESCRIPTION</b> Site Plan 01	<b>REV. DATE</b> 10 - 31 - 2023	<b>SHEET CONTENT:</b> SITE PLAN	<b>SHEET NO.:</b> 
		<b>DATE:</b> 10/31/2023					

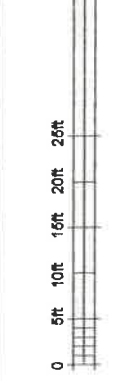
CANAL



**PROPOSED DEMOLITION**

**NEW CONSTRUCTION**

INSTALL 16K 4-POST CRADLE LIFT W/  
(4) 12" DIA. TIMBER PILINGS



948 W OCEAN DR  
**SITE PLAN 02**

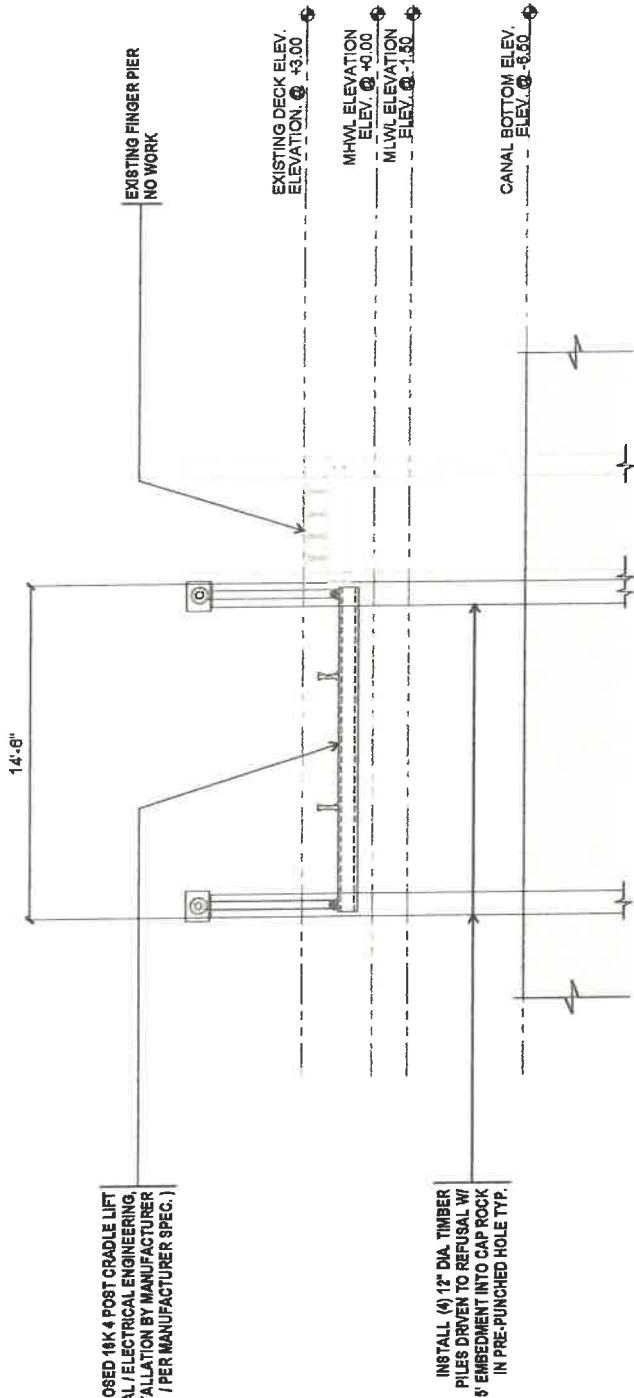
SCALE: 5" = 50'

C-04



	<b>RAPID PERMITS AND ENGINEERING</b> ADDRESS: PO Box 519571, Key Colony Beach, FL 33051 CONTACT: 305-516-1400 EMAIL: info@rapidpermits.com	<b>PROJECT TITLE:</b> INSTALL 16K 4 POST CRADLE LIFT 948 W OCEAN DR, KEY COLONY BEACH	<b>NO.</b> 01 02 03	<b>DESCRIPTION</b> Site Plan 02 Site Plan 02 Site Plan 02	<b>REV. DATE</b> 10 - 31 - 2023 11 - 01 - 2023 11 - 06 - 2023	<b>SHEET CONTENT:</b> SITE PLAN	<b>SHEET NO.:</b> C 04 C 05
		<b>LOCATION:</b> 948 W OCEAN DR, KEY COLONY BEACH Parcel ID - 6076150-00000				<b>DATE:</b> 10/31/2023	






INSTALL PROPOSED 16K 4 POST CRADLE LIFT  
(8 STRUCTURAL / ELECTRICAL ENGINEERING,  
SPACING, AND INSTALLATION BY MANUFACTURER  
(PER MANUFACTURER SPEC.)

INSTALL (4) 12" DIA. TIMBER  
PILES DRIVEN TO REFUSAL W/  
9" EMBEDMENT INTO CAP ROCK  
IN PRE-PUNCHED HOLE TYP.

Location: **SECTION DETAIL A**  
SCALE: 1/4" = 1'



	<b>RAPID PERMITS AND ENGINEERING</b> ADDRESS: PO Box 510573, Key Colony Beach, FL 32951 CONTACT: 386-918-1400 EMAIL: info@rapidpermits.com	PROJECT TITLE:		SHEET CONTENT:		SHEET NO.:	
		INSTALL 16K 4 POST CRADLE LIFT 948 W OCEAN Dr, KEY COLONY BEACH LOCATION : 948 W OCEAN Dr, KEY COLONY BEACH Parcel ID : 007616-000000		NO. DESCRIPTION 01 Detailed Sections 10 - 31 - 2023 02 Detailed Sections 11 - 01 - 2023 03 Detailed Sections 11 - 06 - 2023		REV. DATE 10 - 31 - 2023 11 - 01 - 2023 11 - 06 - 2023	DETAILED SECTIONS C 05 / 05
		DATE: 10/31/2023					



Joanne M. Foster, B.C.S.  
Attorney at Law

John S. Yudin  
Attorney at Law

August 24, 2017

Thomas D. Wright  
City Attorney, City of Key Colony Beach  
P.O. Box 510141  
Key Colony Beach, FL 33051-0141

RE: In water structures at 948 W Ocean Dr , Key Colony Beach, FL

Dear Mr. Wright:

Our firm represents Gary & Denise Furtak with regard to this matter. The Furtaks own property which adjoins 948 W Ocean Dr , (hereinafter the "948 property"). I believe you are familiar with the issue at hand by virtue of the fact your office conducted the closing on both properties.

The purpose of this letter is to formally notify the City of Key Colony Beach that the 948 property is subject to various covenants, conditions and most importantly restrictions which absolutely preclude the construction of new in water structures in the adjacent canal. Accordingly, the owner of the 948 property lacks the necessary property rights and/or legal authority to obtain a permit from the City to install a boatlift in the canal.

For your convenience, I have attached the following documents:

- deed for 948 W. Ocean Dr.
- ORB 1314 pg. 2079
- ORB 1288 pg. 914

As you will recall the 948 property is a non-waterfront property. Thus, any rights to access the water must be derived through a publically recorded conveyance. The deed for the 948 property provides as follows:

"Together with the Easement reserved in the instrument recorded in Official Records Book 1314, Page 2079 of the Public Records of Monroe County, Florida.

Together with the Easterly one-half together with access thereto across the westerly one-half of the Easement reserved in the instrument recorded in Official Records Book 1288, Page 914, of the Public Records of Monroe County, Florida, as shown on the survey drawing by John Paul Grimes, III dated February 6, 1995."

55 East Ocean Boulevard • Stuart, Florida 34994  
772-286-7372 • 772-220-3318 fax

GuyYudinLaw.com

Thus, water access for the 948 property is limited to the rights granted in the easements recorded in ORB 1314 pg. 2079 and ORB 1288 pg. 914. No where in either of those easements is the owner of the 948 property granted any legal right or authority to construct a boat lift.

In fact, ORB 1314 pg. 2079 specifically provides:

**“...unless the then respective owners of the Easterly Half and Westerly Half of said easement shall hereafter agree otherwise in writing, there shall be no docks or dolphin poles constructed within any portion of the property described in the Reservation of Easement as described in Official Record Book 1168, at Page 1705 of the Public Records of Monroe County, Florida, except those in existence as of June 30, 1994.”**

Furthermore, ORB 1288 pg. 914 expressly provides:

**“The right-of-way, easement, rights and privileges herein shall only be used for the following purposes:**

1. For pedestrian ingress and egress solely for the purpose of going to and from not more than two (2) boats which may be docked, either temporarily or permanently, within the easement area; and,
2. For the placing, constructing, operating, repairing, maintaining, rebuilding, replacing, relocating, and removing electrical transmission lines and water lines for the purpose of serving and maintaining a single boat docked within the Easterly Half of that Reservation of Easement...”

Summarily, as you can see the ORB 1314 pg. 2079 easement specifically provides no new docks or dolphins poles may be installed without the consent of the Furtaks who own the Westerly Half of the easement (ORB 2828 pg.1515) In other words, the easement area must remain as it was in 1994 unless there is a written agreement between the two easement owners. As you are probably aware, no such written agreement exists.

Furthermore, the express language of ORB 1288 pg. 914 specifies the easement may only be used to dock boats, not put boats on boatlifts. Installation of a boatlift would therefore impermissibly exceed the specific scope of the easement, as well exceeding the historical scope of use of the easement.

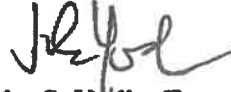
Based on the foregoing, our clients would request immediate notice if the City receives a permit application from the owner of the 948 property for installation of a boat lift or any other in water structure as they have no intention of allowing any structure beyond that contemplated in the recorded easements.



Should there be any further questions, or if you wish to discuss the matter further, please do not hesitate to contact me. Thank you in advance for your anticipated cooperation.

Sincerely,

GUY YUDIN & FOSTER, LLP.

A handwritten signature in black ink, appearing to read 'J. Yudin', written over the printed name below.

John S. Yudin, Esq.  
For the firm

Cc: client



# FLORIDA DEPARTMENT OF Environmental Protection

Southeast District Office  
3301 Gun Club Road, MSC 7210-1  
West Palm Beach, FL 33406  
561-681-6600

**Ron DeSantis**  
Governor

**Jeanette Nunez**  
Lt. Governor

**Shawn Hamilton**  
Secretary

December 7, 2023

Frank Tricarico  
948 W Ocean Dr  
Key Colony Beach FL 33051  
[rosalietricarico@icloud.com](mailto:rosalietricarico@icloud.com)

File No.:44-0327656-002-EE, Monroe County

Dear Frank Tricarico:

On November 16, 2023, we received your request for verification of exemption to perform the following activities: install a boat lift to at a single family residence. The project is located in a man-made canal, Class III Waters, adjacent to 948 W Ocean Dr, Key Colony Beach (Section 05, Township 66 South, Range 33 East), in Monroe County (Latitude N 24° 43' 9.5592, Longitude W -81° 1' 20.7456).

Your request has been reviewed to determine whether it qualifies for (1) a regulatory exemption, (2) proprietary authorization (related to state-owned submerged lands), and (3) federal approval that may be necessary for work in wetlands or waters of the United States.

**Your project qualifies for all three.** However, this letter does not relieve you from the responsibility of obtaining other federal, state, or local authorizations that may be required for the activity.

If you change the project from what you submitted, the authorization(s) granted may no longer be valid at the time of commencement of the project. Please contact us prior to beginning your project if you wish to make any changes.

If you have any questions regarding this matter, please contact William Lange at 561-681-6618 or [William.Lange@FloridaDEP.gov](mailto:William.Lange@FloridaDEP.gov).

[www.floridadep.gov](http://www.floridadep.gov)

### **1. Regulatory Review – VERIFIED**

Based on the information submitted, the Department has verified that the activity as proposed is exempt under Chapter 62-330.051(5)(h), Florida Administrative Code of the Florida Statutes from the need to obtain a regulatory permit under Part IV of Chapter 373 of the Florida Statutes.

This exemption verification is based on the information you provided the Department and the statutes and rules in effect when the information was submitted. This verification may not be valid if site conditions materially change, the project design is modified, or the statutes or rules governing the exempt activity are amended. In the event you need to re-verify the exempt status for the activity, a new request and verification fee will be required. Any substantial modifications to the project design should be submitted to the Department for review, as changes may result in a permit being required.

### **2. Proprietary Review - NOT REQUIRED**

The activity does not require further authorization under Chapter 253 of the Florida Statutes, or Chapters 18-20 or 18-21 of the Florida Administrative Code.

### **3. Federal Review - APPROVED**

Your proposed activity as outlined in your application and attached drawings qualifies for Federal authorization pursuant to the State Programmatic General Permit VI-R1, and a SEPARATE permit or authorization will not be required from the Corps. Please note that the Federal authorization expires on July 27, 2026. However, your authorization may remain in effect for up to 1 additional year, if provisions of Special Condition 15 of the SPGP VI-R1 permit instrument are met. You, as permittee, are required to adhere to all General Conditions and Special Conditions that may apply to your project (attached). A copy of the SPGP VI-R1 with all terms and conditions and the General Conditions may be found at <https://www.saj.usace.army.mil/Missions/Regulatory/Source-Book/>.

Authority for review an agreement with the USACOE entitled “Coordination Agreement Between the U. S. Army Corps of Engineers (Jacksonville District) and the Florida Department of Environmental Protection, or Duly Authorized Designee, State Programmatic General Permit”, Section 10 of the Rivers and Harbor Act of 1899, and Section 404 of the Clean Water Act.

### **Additional Information**

Please retain this letter. The activities may be inspected by authorized state personnel in the future to ensure compliance with appropriate statutes and administrative codes. If the activities are not in compliance, you may be subject to penalties under Chapter 373, F.S., and Chapter 18-14, F.A.C.

## **NOTICE OF RIGHTS**

This action is final and effective on the date filed with the Clerk of the Department unless a petition for an administrative hearing is timely filed under Sections 120.569 and 120.57, F.S., before the deadline for filing a petition. On the filing of a timely and sufficient petition, this action will not be final and effective until further order of the Department. Because the administrative hearing process is designed to formulate final agency action, the hearing process may result in a modification of the agency action or even denial of the application.

### **Petition for Administrative Hearing**

A person whose substantial interests are affected by the Department's action may petition for an administrative proceeding (hearing) under Sections 120.569 and 120.57, F.S. Pursuant to Rules 28-106.201 and 28-106.301, F.A.C., a petition for an administrative hearing must contain the following information:

- (a) The name and address of each agency affected and each agency's file or identification number, if known;
  - (b) The name, address, and telephone number of the petitioner; the name, address, and telephone number of the petitioner's representative, if any, which shall be the address for service purposes during the course of the proceeding; and an explanation of how the petitioner's substantial interests are or will be affected by the agency determination;
  - (c) A statement of when and how the petitioner received notice of the agency decision;
  - (d) A statement of all disputed issues of material fact. If there are none, the petition must so indicate;
  - (e) A concise statement of the ultimate facts alleged, including the specific facts that the petitioner contends warrant reversal or modification of the agency's proposed action;
  - (f) A statement of the specific rules or statutes that the petitioner contends require reversal or modification of the agency's proposed action, including an explanation of how the alleged facts relate to the specific rules or statutes; and
  - (g) A statement of the relief sought by the petitioner, stating precisely the action that the petitioner wishes the agency to take with respect to the agency's proposed action.
- The petition must be filed (received by the Clerk) in the Office of General Counsel of the Department at 3900 Commonwealth Boulevard, Mail Station 35, Tallahassee, Florida 32399-3000, or via electronic correspondence at [Agency\\_Clerk@dep.state.fl.us](mailto:Agency_Clerk@dep.state.fl.us). Also, a copy of the petition shall be mailed to the applicant at the address indicated above at the time of filing.

### **Time Period for Filing a Petition**

In accordance with Rule 62-110.106(3), F.A.C., petitions for an administrative hearing by the applicant and persons entitled to written notice under Section 120.60(3), F.S., must be filed within 21 days of receipt of this written notice. Petitions filed by any persons other than the applicant, and other than those entitled to written notice under Section 120.60(3), F.S., must be

filed within 21 days of publication of the notice or within 21 days of receipt of the written notice, whichever occurs first. You cannot justifiably rely on the finality of this decision unless notice of this decision and the right of substantially affected persons to challenge this decision has been duly published or otherwise provided to all persons substantially affected by the decision. While you are not required to publish notice of this action, you may elect to do so pursuant Rule 62-110.106(10)(a).

The failure to file a petition within the appropriate time period shall constitute a waiver of that person's right to request an administrative determination (hearing) under Sections 120.569 and 120.57, F.S., or to intervene in this proceeding and participate as a party to it. Any subsequent intervention (in a proceeding initiated by another party) will be only at the discretion of the presiding officer upon the filing of a motion in compliance with Rule 28-106.205, F.A.C. If you do not publish notice of this action, this waiver will not apply to persons who have not received written notice of this action.

#### Extension of Time

Under Rule 62-110.106(4), F.A.C., a person whose substantial interests are affected by the Department's action may also request an extension of time to file a petition for an administrative hearing. The Department may, for good cause shown, grant the request for an extension of time. Requests for extension of time must be filed with the Office of General Counsel of the Department at 3900 Commonwealth Boulevard, Mail Station 35, Tallahassee, Florida 32399-3000, or via electronic correspondence at Agency\_Clerk@dep.state.fl.us, before the deadline for filing a petition for an administrative hearing. A timely request for extension of time shall toll the running of the time period for filing a petition until the request is acted upon.

#### Mediation

Mediation is not available in this proceeding.

#### FLAWAC Review

The applicant, or any party within the meaning of Section 373.114(1)(a) or 373.4275, F.S., may also seek appellate review of this order before the Land and Water Adjudicatory Commission under Section 373.114(1) or 373.4275, F.S. Requests for review before the Land and Water Adjudicatory Commission must be filed with the Secretary of the Commission and served on the Department within 20 days from the date when this order is filed with the Clerk of the Department.

#### Judicial Review

Once this decision becomes final, any party to this action has the right to seek judicial review pursuant to Section 120.68, F.S., by filing a Notice of Appeal pursuant to Florida Rules of Appellate Procedure 9.110 and 9.190 with the Clerk of the Department in the Office of General Counsel (Station #35, 3900 Commonwealth Boulevard, Tallahassee, Florida 32399-3000) and by filing a copy of the Notice of Appeal accompanied by the applicable filing fees with the appropriate district court of appeal. The notice must be filed within 30 days from the date this action is filed with the Clerk of the Department.

**EXECUTION AND CLERKING**

Executed in West Palm Beach, Florida.

**STATE OF FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION**

---

William Lange  
Environmental Manager  
Southeast District

**Enclosures:**

Attachment A- Specific Exemption Rule  
Special Conditions for Federal Authorization for SPGP VI-R1  
General Conditions for Federal Authorization for SPGP VI-R1  
Project drawings, 5 pages

**CERTIFICATE OF SERVICE**

The undersigned duly designated deputy clerk hereby certifies that this document and all attachments, including all copies, were sent to the addressee and to the following listed persons:

FDEP – Norva Blandin, Danielle Sattelberger, Natalie Nguyen  
Kristin Erickson, [kristie@rapidpermitting.com](mailto:kristie@rapidpermitting.com)

Additional Mailings:  
NMFS, [nmfs.ser.statewideprogrammatic@noaa.gov](mailto:nmfs.ser.statewideprogrammatic@noaa.gov)  
US Army Corp, [SPGP@usace.army.mil](mailto:SPGP@usace.army.mil)

**FILING AND ACKNOWLEDGMENT**

FILED, on this date, pursuant to Section 120.52(7), F.S., with the designated Department clerk, receipt of which is hereby acknowledged.

Vanessa Osborne  
Clerk

12-07-2023  
Date

**62-330.051 Exempt Activities.**

The activities meeting the limitations and restrictions below are exempt from permitting. However, if located in, on, or over state-owned submerged lands, they are subject to a separate authorization under Chapters 253 and 258, F.S., and Chapters 18-18, 18-20, and 18-21, F.A.C., as applicable.

(5) Dock, Pier, Boat Ramp and Other Boating-related Work –

(h) The installation of a pile-supported boat lift within an existing mooring area at a docking facility that is legally in existence, provided:

1. Such installation does not conflict with a condition of a permit issued thereunder;
2. The boat lift does not include additional structures, such as platforms, cat walks, and roofs.

*Rulemaking Authority 373.026(7), 373.043, 373.4131, 373.4145, 403.805(1) FS. Law Implemented 373.406, 373.4131, 373.4145, 373.415, 403.813(1) FS. History—New 10-1-13, Amended 6-1-18.*



### **Special Conditions for Federal Authorizations for SPGP VI-R1**

1. Authorization, design and construction must adhere to the terms of the SPGP VI instrument including the General Conditions for All Projects, Special Conditions for All Projects, Applicable activity-specific special conditions, Procedure and Work Authorized sections.
2. Design and construction must adhere to the PDCs for In-Water Activities (Attachment 28, from PDCs AP.7 through AP11, inclusive, of JAXBO) (Reference: JAXBO PDC AP.1.).
3. All activities must be performed during daylight hours (Reference: JAXBO PDC AP.6.).
4. For all projects involving the installation of piles, sheet piles, concrete slab walls or boatlift I-beams (Reference Categories A, B and C of JAXBO *PDCs for In-Water Noise from Pile and Sheet Pile Installation*, page 86):
  - a. Construction methods limited to trench and fill, pilot hole (auger or drop punch), jetting, vibratory, and impact hammer (however, impact hammer limited to installing no more than 5 per day).
  - b. Material limited to wood piles with a 14-inch diameter or less, concrete piles with a 24-inch diameter/width or less, metal pipe piles with a 36-inch diameter or less, metal boatlift I-beams, concrete slab walls, vinyl sheet piles, and metal sheet piles.
  - c. Any installation of metal pipe or metal sheet pile by impact hammer is not authorized (Reference: Categories D and E of JAXBO *PDCs for In-Water Noise from Pile and Sheet Pile Installation*, page 86.).
  - d. Projects within the boundary of the NOAA Florida Keys National Marine Sanctuary require prior approval from the Sanctuary (Reference: JAXBO PDCs AP.14 and A1.6).
5. The Permittee shall comply with the “Standard Manatee Conditions for In-Water Work – 2011” (Attachment 29).
6. No structure or work shall adversely affect or disturb properties listed in the National Register of Historic Places or those eligible for inclusion in the National Register. Prior to the start of work, the Applicant/Permittee or other party on the Applicant’s/Permittee’s behalf, shall conduct a search of known historical properties by contracting a professional archaeologist, and contacting the Florida Master Site File at 850-245-6440 or SiteFile@dos.state.fl.us. The Applicant/Permittee can also research sites in the National Register Information System (NRIS). Information can be found at

<http://www.cr.nps.gov/nr/research>.

- a. If, during the initial ground disturbing activities and construction work, there are archaeological/cultural materials unearthed (which shall include, but not be limited to: pottery, modified shell, flora, fauna, human remains, ceramics, stone tools or metal implements, dugout canoes or any other physical remains that could be associated with Native American cultures or early colonial or American settlement), the Permittee shall immediately stop all work in the vicinity and notify the Compliance and Review staff of the State Historic Preservation Office at 850-245- 6333 and the Corps Regulatory Archeologist at 904-232-3270 to assess the significance of the discovery and devise appropriate actions, including salvage operations. Based on the circumstances of the discovery, equity to all parties, and considerations of the public interest, the Corps may modify, suspend, or revoke the permit in accordance with 33 C.F.R. § 325.7.
  - b. In the unlikely event that human remains are identified, the remains will be treated in accordance with Section 872.05, Florida Statutes; all work in the vicinity shall immediately cease and the local law authority, and the State Archaeologist (850-245-6444) and the Corps Regulatory Archeologist at 904-232-3270 shall immediately be notified. Such activity shall not resume unless specifically authorized by the State Archaeologist and the Corps.
7. The Permittee is responsible for obtaining any “take” permits required under the U.S. Fish and Wildlife Service’s regulations governing compliance with these laws. The Permittee should contact the appropriate local office of the U.S. Fish and Wildlife Service to determine if such “take” permits are required for a particular activity.
  8. Mangroves. The design and construction of a Project must comply with the following (Reference: JAXBO PDCs AP.3 and AP.12.):
    - a. All projects must be sited and designed to avoid or minimize impacts to mangroves.
    - b. Mangrove removal must be conducted in a manner that avoids any unnecessary removal and is limited to the following instances:
      - (1) Removal to install up to a 4-ft-wide walkway for a dock.
      - (2) Removal of mangroves above the mean high water line (MHWL) provided that the tree does not have any prop roots that extend into the water below the MHWL.
      - (3) Mangrove trimming. Mangrove trimming refers to the removal (using hand equipment such as chain saws and/or machetes) of lateral branches (i.e., no alteration of the trunk of the tree) in a manner that ensures survival of the tree.
        - (a) Projects with associated mangrove trimming waterward of the MHWL are

authorized if the trimming: (a) occurs within the area where the authorized structures are placed or will be placed (i.e., removal of branches that overhang a dock or lift), (b) is necessary to provide temporary construction access, and (c) is conducted in a manner that avoids any unnecessary trimming.

(b) Projects proposing to remove red mangrove prop roots waterward of the MHWL are not authorized, except for removal to install the dock walkways as described above.

9. For Projects authorized under this SPGP VI in navigable waters of the U.S., the Permittee understands and agrees that, if future operations by the United States require the removal, relocation, or other alteration, of the structures or work herein authorized, or if, in the opinion of the Secretary of the Army or his authorized representative, said structure or work shall cause unreasonable obstruction to the free navigation of the navigable waters, the Permittee will be required, upon due notice from the Corps of Engineers, to remove, relocate, or alter the structural work or obstructions caused thereby, without expense to the United States. No claim shall be made against the United States on account of any such removal or alteration.
10. Notifications to the Corps. For all authorizations under this SPGP VI, including Self-Certifications, the Permittee shall provide the following notifications to the Corps:
  - a. Commencement Notification. Within 10 days from the date of initiating the work authorized by this permit the Permittee shall submit a completed "Commencement Notification" form (Attachment 8).
  - b. Corps *Self-Certification Statement of Compliance* form. Within 60 days of completion of the work authorized by this permit, the Permittee shall complete the "Self-Certification Statement of Compliance" form (Attachment 9) and submit it to the Corps. In the event that the completed work deviates in any manner from the authorized work, the Permittee shall describe the deviations between the work authorized by this permit and the work as constructed on the "Self-Certification Statement of Compliance" form. The description of any deviations on the "Self-Certification Statement of Compliance" form does not constitute approval of any deviations by the Corps.
  - c. Permit Transfer. When the structures or work authorized by this permit are still in existence at the time the property is transferred, the terms and conditions of this permit will continue to be binding on the new owner(s) of the property. To validate the transfer of this permit and the associated liabilities associated with compliance with its terms and conditions, have the transferee sign and date the enclosed form (Attachment 10).
  - d. Reporting Address. The Permittee shall submit all reports, notifications, documentation, and correspondence required by the general and special conditions of this permit to the following address.

- (1) For standard mail: U.S. Army Corps of Engineers, Regulatory Division,

Enforcement Section, P.O. Box 4970, Jacksonville, FL, 32232-0019.

(2) For electronic mail: SAJ-RD-Enforcement@usace.army.mil (not to exceed 10 MB). The Permittee shall reference this permit number, SAJ-2015-2575 on all submittals.

11. The District Engineer reserves the right to require that any request for authorization under this SPGP VI be evaluated as an Individual Permit. Conformance with the terms and conditions of the SPGP VI does not automatically guarantee Federal authorization.
12. On a case-by-case basis, the Corps may impose additional Special Conditions which are deemed necessary to minimize adverse environmental impacts.
13. Failure to comply with all conditions of the SPGP VI constitutes a violation of the Federal authorization.
14. The SPGP VI will be valid through the expiration date unless suspended or revoked by issuance of a public notice by the District Engineer. The Corps, in conjunction with the Federal resource agencies, will conduct periodic reviews to ensure that continuation of the permit during the period ending expiration date, is not contrary to the public interest. The SPGP VI will not be extended beyond the expiration date but may be replaced by a new SPGP. If revocation occurs, all future applications for activities covered by the SPGP VI will be evaluated by the Corps.
15. If the SPGP VI expires, is revoked, or is terminated prior to completion of the authorized work, authorization of activities which have commenced or are under contract to commence in reliance upon the SPGP VI will remain in effect provided the activity is completed within 12 months of the date the SPGP VI expired or was revoked.

**Special Conditions for Shoreline Stabilization activities.**

16. Shoreline stabilization structures other than vertical seawalls shall be no steeper than a 2 horizontal:1 vertical slope (Reference: JAXBO PDC A1.1.4).
17. Placement of backfill is limited to those situations where it is necessary to level the land behind seawalls or riprap.
18. Living shoreline structures and permanent wave attenuation structures can only be constructed out of the following materials: oyster breakwaters, clean limestone boulders or stone (sometimes contained in metal baskets or cages to contain the material), small mangrove islands, biologs, coir, rock sills, and pre-fabricated structures made of concrete and rebar that are designed in a manner so that they do not trap sea turtles, smalltooth sawfish, or sturgeon (Reference: JAXBO PDC A7.5).
  - a. Reef balls or similar structures are authorized if they are not open on the bottom, are

open-bottom structures with a top opening of at least 4 ft, or are pre-fabricated structures, such as reef discs stacked on a pile, and are designed in a manner that would not entrap sea turtles.

b. Oyster reef materials shall be placed and constructed in a manner that ensures that materials will remain stable and that prevents movement of materials to surrounding areas (e.g., oysters will be contained in bags or attached to mats and loose cultch must be surrounded by contained or bagged oysters or another stabilizing feature) (Reference: JAXBO PDC A7.2.).

c. Oyster reef materials shall be placed in designated locations only (i.e., the materials shall not be indiscriminately dumped or allowed to spread outside of the reef structure) (Reference: JAXBO PDC A7.3.)

d. Wave attenuation structures must have 5 ft gaps at least every 75 ft in length as measured parallel to the shoreline and at the sea floor, to allow for tidal flushing and species movement (Reference: JAXBO PDC A7.6.).

e. Other materials are not authorized by this SPGP VI (Reference: JAXBO PDC A7.5.).

**Special Conditions for Boat Ramp activities.**

19. Restrictions on Dredged Material and Disposal: Excavation is limited to the area necessary for site preparation. All excavated material shall be removed to an area that is not waters of the United States, as that term is defined and interpreted under the Clean Water Act, including wetlands (Reference: JAXBO PDC A6.2.).

20. Turbidity: The length of new boat ramps and repair and replacement of existing boat ramps to make them longer should ensure a water depth at the end of the ramp is deep enough to minimize sediment resuspension associated with launching vessels in shallow water (Reference: JAXBO PDC A6.5.).

**Special Conditions for Docks, Piers, Associated Facilities, and other Minor Piling-Supported Structures.**

21. Chickees must be less than 500 ft<sup>2</sup> and support no more than 2 slips (Reference: JAXBO PDC A2.1.6.).

22. The design and construction of a Project over marsh (emergent vegetation) must comply with the following:

a. The piling-supported structure shall be aligned so as to have the smallest over-marsh footprint as practicable.

- b. The over-marsh portion of the piling-supported structure (decking) shall be elevated to at least 4 feet above the marsh floor.
  - c. The width of the piling-supported is limited to a maximum of 4 feet. Any exceptions to the width must be accompanied by an equal increase in height requirement.
23. Mangroves. For pile-supported structures, the following additional requirements for mangroves found in the joint U.S. Army Corps of Engineers'/National Marine Fisheries Service's "Construction Guidelines in Florida for Minor Piling-Supported Structures Constructed in or over Submerged Aquatic Vegetation (SAV), Marsh or Mangrove Habitat" U.S. Army Corps of Engineers/National Marine Fisheries Service updated November 2017 (Attachment 11) shall apply:
- a. The width of the piling-supported structure is limited to a maximum of 4 feet.
  - b. Mangrove clearing is restricted to the width of the piling-supported structure.
  - c. The location and alignment of the piling-supported structure should be through the narrowest area of the mangrove fringe.
24. Regarding SAV, the design and construction of a Project must comply with the following:
- a. A pile supported structure
    - (1) that is located on a natural waterbody (i.e. outside an artificial waterway that was excavated for boating access and is bordered by residential properties); and
    - (2) that is within the range of seagrass (estuarine waters within all coastal counties except for Nassau, Duval, St Johns, Flagler and Volusia north of Ponce Inlet), but outside of the range of Johnson's seagrass (the range of Johnson's seagrass is defined as Turkey Creek/Palm Bay south to central Biscayne Bay in the lagoon systems on the east coast of Florida) will be constructed to the following standards:
      - (a) If no survey is performed in accordance with the methods described in the Procedure section of this document, section I.3, then SAV is presumed present and the pile-supported structure must comply with, or provide a higher level of protection than, the protective criteria in the joint U.S. Army Corps of Engineers'/National Marine Fisheries Service's "*Construction Guidelines in Florida for Minor Piling-Supported Structures Constructed in or over Submerged Aquatic Vegetation (SAV), Marsh or Mangrove Habitat*" U.S. Army Corps of Engineers/National Marine Fisheries Service updated November 2017 (Attachment 11). For the purposes of SPGP, two uncovered boatlifts are allowed.

(i) If the pile supported structure is currently serviceable, repair and replacement may occur in the same footprint without completion of a benthic survey.

(ii) Boatlifts and minor structures in Monroe County may be installed within existing boat slips without completion of a SAV survey. Boatlift accessory structures, like catwalks, shall adhere to *“Construction Guidelines in Florida for Minor Piling- Supported Structures Constructed in or over Submerged Aquatic Vegetation (SAV), Marsh or Mangrove Habitat”* U.S. Army Corps of Engineers/National Marine Fisheries Service updated November 2017 (Attachment 11) if a SAV survey has not been completed.

(iii) A marginal dock may be constructed a maximum of 5 feet overwater, as measured from the waterward face (wet face) of the seawall).

(b) If a survey is performed in accordance with the methods described in the Procedure section of this document, section I.3, and SAV is present (including seagrass, tidal freshwater SAV and emergent vegetation), then the pile-supported structure must comply with, or provide a higher level of protection than, the protective criteria in the joint U.S. Army Corps of Engineers’/National Marine Fisheries Service’s *“Construction Guidelines in Florida for Minor Piling-Supported Structures Constructed in or over Submerged Aquatic Vegetation (SAV), Marsh or Mangrove Habitat”* U.S. Army Corps of Engineers/National Marine Fisheries Service updated November 2017 (Attachment 11). For the purposes of this permit, two uncovered boatlifts are allowed.

(i) If the pile supported structure is currently serviceable, repair and replacement may occur in the same footprint without completion of a benthic survey.

(ii) Boatlifts may be installed within existing boat slips without completion of a SAV survey.

(iii) A marginal dock may be constructed a maximum of 5 feet overwater, as measured from the waterward face (wet face) of the seawall).

(c) If a survey is performed in accordance with the methods described in the Procedure section of this document, section I.3, and SAV is absent (including seagrass, tidal freshwater SAV and emergent vegetation), then no design restrictions are required and boatlifts may include a cover.

(d) A pile supported structure

(i) that is located on a natural waterbody (i.e. outside an artificial waterway that was excavated for boating access and is bordered by residential properties); and

(ii) that is within the range of Johnson’s seagrass (the range of Johnson’s seagrass is defined as Turkey Creek/Palm Bay south to central Biscayne Bay in the lagoon systems on the east coast of Florida) but not within Johnson’s seagrass critical habitat will be constructed to the following standards:



(iii) If no survey is performed in accordance with the methods described in the Procedure section of this document, section I.3, then seagrass is presumed present and the pile-supported structure must comply with or provide a higher level of protection than, the protective criteria in the joint U.S. Army Corps of Engineers'/National Marine Fisheries Service's "Construction Guidelines in Florida for Minor Piling-Supported Structures Constructed in or over Submerged Aquatic Vegetation (SAV), Marsh or Mangrove Habitat" U.S. Army Corps of Engineers/National Marine Fisheries Service updated November 2017 (Attachment 11) with the sole exception of the number of allowable boat lifts. For the purposes of this permit, two uncovered boatlifts are allowed.

(e) If a survey is performed in accordance with the methods described in the Procedure section of this document, section I.3, and SAV is present (including seagrass, tidal freshwater SAV and emergent vegetation), THEN pile-supported structure must comply with or provide a higher level of protection than, the protective criteria in the joint U.S. Army Corps of Engineers'/National Marine Fisheries Service's "Construction Guidelines in Florida for Minor Piling-Supported Structures Constructed in or over Submerged Aquatic Vegetation (SAV), Marsh or Mangrove Habitat" U.S. Army Corps of Engineers/National Marine Fisheries Service updated November 2017 (Attachment 11). For the purposes of this permit, two uncovered boatlifts are allowed.

(f) If a survey is performed in accordance with the methods described in the procedure section of this document, section I.3, and SAV is absent (including seagrass, tidal freshwater SAV and emergent vegetation), THEN no design restrictions are required and boatlifts may include a cover.

(g) A pile supported structure located within Johnson's seagrass critical habitat will be constructed to the following standards:

(i) If no survey is performed in accordance with the methods described in the Procedure section of this document, section I.3, then seagrass is presumed present and the pile-supported structure must comply with or provide a higher level of protection than, the protective criteria in the joint U.S. Army Corps of Engineers'/National Marine Fisheries Service's "Construction Guidelines in Florida for Minor Piling-Supported Structures Constructed in or over Submerged Aquatic Vegetation (SAV), Marsh or Mangrove Habitat" U.S. Army Corps of Engineers/National Marine Fisheries Service updated November 2017 (Attachment 11) with the sole exception of the number of allowable boat lifts. For the purposes of this permit, two uncovered boatlifts are allowed.

(ii) If a survey is performed in accordance with the methods described in the Procedure section of this document, section I.3, and SAV is absent and the project is

1. A dock replacement in the same footprint, no design restrictions are required.
2. A new dock or dock expansion THEN pile-supported structure must comply with or provide a higher level of protection than, the protective criteria in the

joint U.S. Army Corps of Engineers'/National Marine Fisheries Service's "Construction Guidelines in Florida for Minor Piling-Supported Structures Constructed in or over Submerged Aquatic Vegetation (SAV), Marsh or Mangrove Habitat" U.S. Army Corps of Engineers/National Marine Fisheries Service updated November 2017 (Attachment 11). For the purposes of this permit, two uncovered boatlifts are allowed.

(iii) If a survey is performed in accordance with the methods described in the Procedure section of this document, section I.3, and SAV is present (including seagrass, tidal freshwater SAV and emergent vegetation), then pile-supported structure must comply with or provide a higher level of protection than, the protective criteria in the joint U.S. Army Corps of Engineers'/National Marine Fisheries Service's "Construction Guidelines in Florida for Minor Piling-Supported Structures Constructed in or over Submerged Aquatic Vegetation (SAV), Marsh or Mangrove Habitat" U.S. Army Corps of Engineers/National Marine Fisheries Service updated November 2017 (Attachment 11). For the purposes of this permit, two uncovered boatlifts are allowed.

25. North Atlantic Right Whale. The attached North Atlantic Right Whale Information Form (Attachment 30) describes the presence of North Atlantic right whales in the area and the Federal regulations governing the approach to North Atlantic right whales. The FDEP or Designee will attach the North Atlantic Right Whale Information Form to their authorizations for any dock project (new construction, repair, or replacement) at a private residence located within 11 nautical miles of an inlet that leads to areas within the known range of North Atlantic right whale. These zones, with an 11 nm radius, are described by the North Atlantic Right Whale Educational Sign Zones, Attachment 7 (from Section 2.1.1.4 of JAXBO, pages 31 and 32, inclusive). (Reference JAXBO PDC A2.4).
26. Educational Signs. For commercial, multi-family, or public facilities, and marine events, signs must be posted as described below (Reference: These replicate JAXBO PDCs A.2.2 and A.2.2.1 to A.2.2.3., inclusive, within the table PDCs Specific to Activity 2 - Pile Supported Structures and Anchored Buoys, starting on page 112.):
- a. For commercial, multi-family, or public facilities, and marine events, signs must be posted in a visible location(s), alerting users of listed species in the area susceptible to vessel strikes and hook-and-line captures. The most current version of the signs that must be downloaded and sign installation guidance are available at:  
(<https://www.fisheries.noaa.gov/southeast/consultations/protected-species-educational-signs>). The signs required to be posted by area are stated below:  
<https://www.fisheries.noaa.gov/southeast/consultations/protected-species-educational-signs>

(1) All projects in Florida shall use the Save Sea Turtle, Sawfish, and Dolphin sign. These signs shall include contact information to the sea turtle and marine mammal

stranding networks and smalltooth sawfish encounter database.

(2) Projects within the North Atlantic right whale educational sign zone shall post the Help Protect North Atlantic Right Whales sign.

(3) On the east coast of Florida, projects located within the St. Johns River and those occurring north of the St. Johns River to the Florida-Georgia line shall post the Report Sturgeon sign. On the west coast of Florida, projects occurring from the Cedar Key, Florida north to the Florida-Alabama line.

27. Monofilament Recycling Bins. For commercial, multi-family, or public facilities, monofilament recycling bins must be provided as described below (Reference: The below replicates PDC A.2.3 within the table PDCs Specific to Activity 2 –Pile Supported Structures and Anchored Buoys, the PDC itself on page 113 of the JAXBO.):

a. For commercial, multi-family, or public facilities, monofilament recycling bins must be provided at the docking facility to reduce the risk of turtle or sawfish entanglement in, or ingestion of, marine debris. Monofilament recycling bins must:

(1) Be constructed and labeled according to the instructions provided at <http://mrrp.myfwc.com>.

(2) Be maintained in working order and emptied frequently (according to <http://mrrp.myfwc.com> standards) so that they do not overflow.

28. Lighting for docks installed within visible distance of ocean beaches. If lighting is necessary, then turtle-friendly lighting shall be installed. Turtle-friendly lighting is explained and examples are provided on the Florida Fish and Wildlife Conservation Commission website: <http://myfwc.com/wildlifehabitats/managed/sea-turtles/lighting/> (Reference: JAXBO PDC A2.8.).

29. Construction Location. Project construction shall take place from uplands or from floating equipment (e.g., barge); prop or wheel-washing is prohibited (Reference: JAXBO PDC A2.9.).

30. Aids to Navigation (ATONs). ATONs must be approved by and installed in accordance with the requirements of the U.S. Coast Guard (i.e., 33 C.F.R., chapter I, subchapter C, part 66, Section 10 of the Rivers and Harbors Act, and any other pertinent requirements) (Reference: JAXBO PDC A2.5.).

31. Aids to Navigation (ATONs) in Acropora critical habitat. The distance from ATONs to ESA-listed corals and Acropora critical habitat (Attachment 20) shall ensure there are no impacts to the corals or the essential feature of Acropora critical habitat from the movement of buoys and tackle. The appropriate distance shall be based on the size of the anchor chain or other tackle to be installed to secure the buoy to its anchor, particularly when the design of the ATON does not prohibit the contact of tackle with the marine

40. Preventing Device Relocation. The scientific survey device, including any related equipment and anchors, shall be inspected and any required maintenance performed at least twice a year and following storm events that may have moved or dislodged the structure to ensure that equipment and anchors are still in place and have not moved to areas containing ESA-listed corals.

**General Conditions for All Projects:**

1. The time limit for completing the work authorized ends on July 27, 2026.
2. You must maintain the activity authorized by this permit in good condition and in conformance with the terms and conditions of this permit. You are not relieved of this requirement if you abandon the permitted activity, although you may make a good faith transfer to a third party in compliance with General Condition 4 below. Should you wish to cease to maintain the authorized activity or should you desire to abandon it without a good faith transfer, you must obtain a modification of this permit from this office, which may require restoration of the area.
3. If you discover any previously unknown historic or archeological remains while accomplishing the activity authorized by this permit, you must immediately notify this office of what you have found. We will initiate the Federal and State coordination required to determine if the remains warrant a recovery effort or if the site is eligible for listing in the National Register of Historic Places.
4. If you sell the property associated with this permit, you must obtain the signature of the new owner on the enclosed form (Attachment 10) and forward a copy of the permit to this office to validate the transfer of this authorization.
5. If a conditioned water quality certification has been issued for your project, you must comply with the conditions specified in the certification as special conditions to this permit.
6. You must allow representatives from this office to inspect the authorized activity at any time deemed necessary to ensure that it is being or has been accomplished in accordance with the terms and conditions of your permit.

**Further Information:**

1. Limits of this authorization.
  - a. This permit does not obviate the need to obtain other Federal, State, or local authorizations required by law.
  - b. This permit does not grant any property rights or exclusive privileges.

- c. This permit does not authorize any injury to the property or rights of others.
  - d. This permit does not authorize interference with any existing or proposed Federal projects.
2. Limits of Federal Liability. In issuing this permit, the Federal Government does not assume any liability for the following:
  - a. Damages to the permitted project or uses thereof as a result of other permitted or unpermitted activities or from natural causes.
  - b. Damages to the permitted project or uses thereof as a result of current or future activities undertaken by or on behalf of the United States in the public interest.
  - c. Damages to persons, property, or to other permitted or unpermitted activities or structures caused by the activity authorized by this permit.
  - d. Design or Construction deficiencies associated with the permitted work.
  - e. Damage claims associated with any future modification, suspension, or revocation of this permit.
3. Reliance on Applicant's Data: The determination of this office that issuance of this permit is not contrary to the public interest was made in reliance on the information you provided.
4. Reevaluation of Permit Decision: This office may reevaluate its decision on this permit at any time the circumstances warrant. Circumstances that could require a reevaluation include, but are not limited to, the following:
  - a. You fail to comply with the terms and conditions of this permit.
  - b. The information provided by you in support of your permit application proves to have been false, incomplete, or inaccurate (see 3 above).
  - c. Significant new information surfaces which this office did not consider in reaching the original public interest decision.
5. Such a reevaluation may result in a determination that it is appropriate to use the suspension, modification, and revocation procedures contained in 33 CFR 325.7 or enforcement procedures such as those contained in 33 CFR 326.4 and 326.5. The referenced enforcement procedures provide for the issuance of an administrative order requiring you comply with the terms and conditions of your permit and for the initiation of legal action where appropriate. You will be required to pay for any corrective measures ordered by this office, and if you fail to comply with such directive, this office may in certain situations (such as those specified in 33 CER 209.170) accomplish the

corrective measures by contract or otherwise and bill you for the cost.

6. When the structures or work authorized by this permit are still in existence at the time the property is transferred, the terms and conditions of this permit will continue to be binding on the new owner(s) of the property. To validate the transfer of this permit and the associated liabilities associated with compliance with its terms and conditions, have the transferee sign and date the enclosed form.
  
7. The Permittee understands and agrees that, if future operations by the United States require the removal, relocation, or other alteration, of the structures or work herein authorized, or if, in the opinion of the Secretary of the Army or his authorized representative, said structure or work shall cause unreasonable obstruction to the free navigation of the navigable waters, the Permittee will be required, upon due notice from the U.S. Army Corps of Engineers, to remove, relocate, or alter the structural work or obstructions caused thereby, without expense to the United States. No claim shall be made against the United States on account of any such removal, relocation or alteration.

**Department of the Army Permit Transfer for SPGP VI-R1**

PERMITEE: \_\_\_\_\_

PERMIT NUMBER: \_\_\_\_\_ DATE: \_\_\_\_\_

ADDRESS/LOCATION OF PROJECT:

\_\_\_\_\_

\_\_\_\_\_  
(Subdivision)

(Lot)

(Block)

When the structures or work authorized by this permit are still in existence at the time the property is transferred, the terms and conditions of this permit will continue to be binding on the new owner(s) of the property. Although the construction period for works authorized by Department of the Army permits is finite, the permit itself, with its limitations, does not expire.

To validate the transfer of this permit and the associated responsibilities associated with compliance with its terms and conditions, have the transferee sign and date below and mail to the U.S. Army Corps of Engineers, Enforcement Branch, Post Office Box 4970, Jacksonville, FL 32232-0019.

\_\_\_\_\_  
(Transferee Signature)

\_\_\_\_\_  
(Date)

\_\_\_\_\_  
(Name Printed)

\_\_\_\_\_  
(Street address)

\_\_\_\_\_  
(Mailing address)

\_\_\_\_\_  
(City, State, Zip Code)

## STANDARD MANATEE CONDITIONS FOR IN-WATER WORK 2011

The permittee shall comply with the following conditions intended to protect manatees from direct project effects:

- a. All personnel associated with the project shall be instructed about the presence of manatees and manatee speed zones, and the need to avoid collisions with and injury to manatees. The permittee shall advise all construction personnel that there are civil and criminal penalties for harming, harassing, or killing manatees which are protected under the Marine Mammal Protection Act, the Endangered Species Act, and the Florida Manatee Sanctuary Act.
- b. All vessels associated with the construction project shall operate at "Idle Speed/No Wake" at all times while in the immediate area and while in water where the draft of the vessel provides less than a four-foot clearance from the bottom. All vessels will follow routes of deep water whenever possible.
- c. Siltation or turbidity barriers shall be made of material in which manatees cannot become entangled, shall be properly secured, and shall be regularly monitored to avoid manatee entanglement or entrapment. Barriers must not impede manatee movement.
- d. All on-site project personnel are responsible for observing water-related activities for the presence of manatee(s). All in-water operations, including vessels, must be shutdown if a manatee(s) comes within 50 feet of the operation. Activities will not resume until the manatee(s) has moved beyond the 50-foot radius of the project operation, or until 30 minutes elapses if the manatee(s) has not reappeared within 50 feet of the operation. Animals must not be herded away or harassed into leaving.
- e. Any collision with or injury to a manatee shall be reported immediately to the FWC Hotline at 1-888-404-3922. Collision and/or injury should also be reported to the U.S. Fish and Wildlife Service in Jacksonville (1-904-731-3336) for north Florida or Vero Beach (1-772-562-3909) for south Florida, and to FWC at [ImperiledSpecies@myFWC.com](mailto:ImperiledSpecies@myFWC.com)
- f. Temporary signs concerning manatees shall be posted prior to and during all in-water project activities. All signs are to be removed by the permittee upon completion of the project. Temporary signs that have already been approved for this use by the Florida Fish and Wildlife Conservation Commission (FWC) must be used (see [MyFWC.com/manatee](http://MyFWC.com/manatee)). One sign which reads *Caution: Boaters* must be posted. A second sign measuring at least 8 1/2" by 11" explaining the requirements for "Idle Speed/No Wake" and the shut down of in-water operations must be posted in a location prominently visible to all personnel engaged in water-related activities. Questions concerning these signs can be sent to the email address listed above.



## CAUTION: MANATEE HABITAT

**All project vessels**  
**IDLE SPEED / NO WAKE**

When a manatee is within 50 feet of work  
all in-water activities must

**SHUT DOWN**

Report any collision with or injury to a manatee:

Wildlife Alert:

**1-888-404-FWCC(3922)**

cell \*FWC or #FWC





UNITED STATES DEPARTMENT OF  
COMMERCE  
National Oceanic and Atmospheric Administration  
NATIONAL MARINE FISHERIES SERVICE  
Southeast Regional Office  
263 13th Avenue South  
St. Petersburg, FL 33701

## SEA TURTLE AND SMALLTOOTH SAWFISH CONSTRUCTION CONDITIONS

The permittee shall comply with the following protected species construction conditions:

- a. The permittee shall instruct all personnel associated with the project of the potential presence of these species and the need to avoid collisions with sea turtles and smalltooth sawfish. All construction personnel are responsible for observing water-related activities for the presence of these species.
- b. The permittee shall advise all construction personnel that there are civil and criminal penalties for harming, harassing, or killing sea turtles or smalltooth sawfish, which are protected under the Endangered Species Act of 1973.
- c. Siltation barriers shall be made of material in which a sea turtle or smalltooth sawfish cannot become entangled, be properly secured, and be regularly monitored to avoid protected species entrapment. Barriers may not block sea turtle or smalltooth sawfish entry to or exit from designated critical habitat without prior agreement from the National Marine Fisheries Service's Protected Resources Division, St. Petersburg, Florida.
- d. All vessels associated with the construction project shall operate at "no wake/idle" speeds at all times while in the construction area and while in water depths where the draft of the vessel provides less than a four-foot clearance from the bottom. All vessels will preferentially follow deep-water routes (e.g., marked channels) whenever possible.
- e. If a sea turtle or smalltooth sawfish is seen within 100 yards of the active daily construction/dredging operation or vessel movement, all appropriate precautions shall be implemented to ensure its protection. These precautions shall include cessation of operation of any moving equipment closer than 50 feet of a sea turtle or smalltooth sawfish. Operation of any mechanical construction equipment shall cease immediately if a sea turtle or smalltooth sawfish is seen within a 50-ft radius of the equipment. Activities may not resume until the protected species has departed the project area of its own volition.
- f. Any collision with and/or injury to a sea turtle or smalltooth sawfish shall be reported immediately to the National Marine Fisheries Service's Protected Resources Division (727-824-5312) and the local authorized sea turtle stranding/rescue organization.

- g. Any special construction conditions, required of your specific project, outside these general conditions, if applicable, will be addressed in the primary consultation.
- h. Any collision(s) with and/or injuries to any whale, or sturgeon occurring during the construction of a project, shall be reported immediately to NMFS's Protected Resources Division (PRD) at (727-824-5312).
- i. Reports to NMFS's Protected Resources Division (PRD) may be made by email to [takereport.nmfsser@noaa.gov](mailto:takereport.nmfsser@noaa.gov).
- j. Sea turtle and marine stranding/rescue organizations' contact information is available by region at <http://www.nmfs.noaa.gov/pr/health/networks.htm>.
- k. Smalltooth sawfish encounters shall be reported to <http://www.flmnh.ufl.edu/fish/sharks/sawfish/sawfishencounters.html>.
- l. All work must occur during daylight hours.



938 W. OCEAN DR

659406 11150 0339

This instrument prepared by:  
David P. Kirwan, P.A.  
Attorney at Law  
P. O. Box 67  
Marathon, Florida 33050

**WARRANTY DEED** (Statutory Form - Section 689.02 F.S.)

**THIS INDENTURE**, Made this 15<sup>th</sup> day of October, 1990, **BETWEEN**  
**EVERETT W. BOY, JR.**, a married man  
of the County of \_\_\_\_\_, State of \_\_\_\_\_, grantor, and

**JOHN P. MAHONY and MARIE J. MAHONY**, his wife  
whose post office address is  
P. O. Box 492, Key Colony Beach, FL 33051  
of the County of \_\_\_\_\_, State of \_\_\_\_\_, grantees.

**WITNESSETH**, That said grantor, for and in consideration of the sum of TBN  
(\$10.00) DOLLARS, and other good and valuable considerations to said grantor in  
hand paid by said grantees, the receipt whereof is hereby acknowledged, has granted,  
bargained and sold to the said grantees, and grantees's heirs and assigns forever, the  
following described land, situate, lying and being in Monroe County, Florida, to-wit:

Situated in the City of Key Colony Beach, County of Monroe and State of Florida and  
known as being an easterly portion of Lot 71, Block 10 of the Amended Plat of Key  
Colony Beach First Addition, said easterly portion being particularly described by  
metes and bounds as follows:

Commencing on the northerly right-of-way line of Ocean Drive at it's intersection  
with the easterly right-of-way line of 4th Street a.k.a. 10th Street as shown by the  
"Amended Plat of Key Colony Beach First Addition" recorded in Plat Book 4 at Page  
11 of Monroe County Florida Public Records, bear North 62°10'00" East along the  
said northerly right-of-way line of Ocean Drive 166.43 feet to the point of beginning  
of that certain easterly portion of Lot 71, Block 10 of the "Amended Plat of Key  
Colony Beach First Addition" herein intended to be described, said point of  
beginning being also distant South 62°10'00" West 166.39 feet measured along said  
northerly right-of-way line of Ocean Drive from its intersection with the westerly  
right-of-way line of 3rd Street a.k.a. 9th Street as shown by the said "Amended Plat  
of Key Colony Beach First Addition", from said point of beginning bear North  
11°28'28" West 96.52 feet on a line which equally bifurcates a duplex dwelling  
structure constructed on said Lot 71, Block 10; thence bear South 78°15'30" West 3.67  
feet; thence bear North 12°09'34" West 27.20 feet to a point on the northerly line of  
said Lot 71, Block 10; thence bear North 77°50'43" East along said northerly line of  
said Lot 71, Block 10, 52.42 feet to the northeasterly corner thereof; thence bear South  
12°05'43" East along the easterly line of said Lot 71, Block 10, 109.76 feet to a point on  
the aforesaid northerly right-of-way line of Ocean Drive; thence bear South  
62°10'00" West along the said northerly right-of-way line of Ocean Drive 51.99 feet  
back to the point of beginning.

The subject property is not the homestead of the grantor. The grantor's address is  
51 Cove Road, West Dennis, Massachusetts.

and said grantor does hereby fully warrant the title to said land, and defend the same  
against the lawful claims of all persons whatsoever.  
\*Grantor and "grantees" are used for singular or plural, as context requires.

**RESERVATION OF EASEMENT**

**THERE IS EXPRESSLY RESERVED UNTO THE GRANTOR, EVERETT  
W. BOY, JR.**, his heirs, executors, administrators, successors and assigns, an  
easement and right-of-way upon and across the following portion of the real  
property conveyed by this Warranty Deed:

DS Paid 225.00 Date 10-18-90  
MONROE COUNTY  
DANNY L. BOULAGE, CLERK CIR. CT.  
By Colleen Kennedy, D.C.

FILED FOR RECORD  
OCT 18 PM 4 13  
DANNY L. BOULAGE  
CLERK CIR. CT.  
MONROE COUNTY, FLA.

Situated in the City of Key Colony Beach, County of Monroe and State of Florida and known as being an easement over, under, and upon a northeasterly portion of Lot 71, Block 10 of the Amended Plat of Key Colony Beach First Addition as shown by plat recorded in Plat Book 4, Page 11 of Monroe County, Florida Public Records, said easement being particularly described as follows:

Commencing on the northeasterly corner of Lot 71, Block 10 of the Amended Plat of Key Colony Beach First Addition as shown by plat recorded in Plat Book 4, Page 11 of Monroe County, Florida Public Records, said corner being also the POINT OF BEGINNING of the easement herein intended to be described: from said point of beginning bear South 77 degrees, 51 minutes, 00 seconds West along the northerly line of said Lot 71, Block 10, 36.32 feet; thence bear South 12 degrees, 09 minutes, 00 seconds East and parallel to the easterly line of said Lot 71, Block 10, 21.29 feet; thence bear North 78 degrees, 19 minutes 36 seconds East 36.32 feet to a point on the said easterly line of Lot 71, Block 10; thence bear North 12 degrees, 09 minutes, 00 seconds West along the said easterly line of Lot 71, Block 10, 21.29 feet back to the point of beginning.

The right-of way, easement, rights and privileges herein shall only be used for the following purposes:

1. For pedestrian ingress and egress solely for the purpose of going to and from not more than two (2) boats which may be docked, either temporarily or permanently, within the easement area; and
2. For the placing, constructing, operating, repairing, maintaining, rebuilding, replacing, relocating, and removing a single electrical transmission line and a single water line for the purpose of serving and maintaining the boat(s) docked within the easement area.

The easement, rights and privileges granted herein shall be perpetual.

The parties acknowledge that Grantor is the fee simple owner of the following-described property which is adjacent to that real property which is being conveyed by this Warranty Deed:

Lot 1, Block 10, KEY COLONY BEACH, 1st Addition as recorded in Plat Book 4, Page 11 of the Public Records of Monroe County, Florida.

It is the intention of the parties to this conveyance that the easement herein reserved shall inure to the benefit of all subsequent grantees of any part of Lot 1, Block 10, KEY COLONY BEACH, 1st Addition as recorded in Plat Book 4, Page 11 of the Public Records of Monroe County, Florida.

It is expressly agreed and understood that the easement, rights and privileges herein reserved to Grantor are limited to those stated above and shall not include the right to use for storage of any kind, swim, to clean fish, or to lounge on the dock within the area of the easement.

The cost of placement of the electrical transmission line and water pipe within the easement area shall be borne solely by the Grantor. Grantor shall indemnify and hold the Grantee harmless from any cost, expense or liability by reason of the original cost and construction of said electrical transmission line and water pipe or by reason of the subsequent use or maintenance of either the electrical transmission line or water pipe.

If it shall become necessary to repair or rebuild the dock located within the easement, the cost of such repairing or rebuilding shall be at the expense of both the Grantor and Grantee, in equal shares, if the damage is due to normal wear and tear or a natural disaster. If, however, damage to the dock is caused by the Grantor then such damage shall be repaired solely at the Grantor's expense. Further, if damage to the dock is caused by the Grantee then such damage shall be repaired solely at the Grantee's expense.

Grantee shall continue to enjoy the property which is the subject of this easement for any and all purposes which do not interfere with and prevent the use by Grantor of this easement.

659404  
This easement shall be binding on, and shall inure to the benefit of, the heirs, executors, administrators, successors and assigns of the respective parties to this Warranty Deed.

IN WITNESS WHEREOF, Grantor has hereunto set grantor's hand and seal the day and year first above written.

Signed, sealed and delivered in our presence:

*Monte R. Pappalardo*  
Witness  
*Veter H. [unclear]*  
Witness

*Everett W. Boy, Jr.* (Seal)  
Everett W. Boy, Jr.

State of Massachusetts  
County of Barnstable

I HEREBY CERTIFY that on this day before me, an officer duly qualified to take acknowledgements, personally appeared Everett W. Boy, Jr. to me known to be the person described in and who executed the foregoing instrument and acknowledged before me that he executed the same. WITNESS my hand and official seal in the County and State last aforesaid, the day of October, 1990.

*[Signature]*  
Notary Public  
My commission expires: *[unclear]*

Parcel ID Number:  
Grantor #1 TR: 199-16-3308  
Grantor #2 TR: 166-22-0441

Recorded in Official Record Book  
in Barnstable County, Mass.  
Based Verified  
BARRY L. KOL  
Clerk Circuit Court

2  
1  
2

848148

OFF REC 1314 PAGE 2082

952  
132  
595

This instrument prepared by:  
David P. Kirwan, P.A.  
Attorney at Law  
P. O. Box 67  
Marathon, Florida 33050

**WARRANTY DEED** (Statutory Form - Section 689.02 F.S.)

**THIS INDENTURE**, Made this 30th day of June, 1994, **BETWEEN**  
**MICHAEL T. CAUSLEY and PAMELA L. CAUSLEY**, husband and wife  
of the County of \_\_\_\_\_, State of \_\_\_\_\_, grantor\*, and

**POL E. RAYNAL, II and PAULA E. HNATYK**, as joint tenants with rights of  
survivorship  
whose post office address is 597 Neff Road, Grosse Pointe City, MI 48230  
of the County of \_\_\_\_\_, State of \_\_\_\_\_, grantee\*,

**WITNESSETH**, That said grantor, for and in consideration of the sum of  
**TEN (\$10.00) DOLLARS**, and other good and valuable considerations to said  
grantor in hand paid by said grantee, the receipt whereof is hereby  
acknowledged, has granted, bargained and sold to the said grantee, and  
grantee's heirs and assigns forever, the following described land, situate,  
lying and being in Monroe County, Florida, to-wit:

The Northerly 75 Feet of Lot 70, Block 10 of the **AMENDED PLAT OF KEY**  
**COLONY BEACH FIRST ADDITION**, according to the Plat thereof as recorded  
in Plat Book 4, Page 11, of the Public Records of Monroe County, Florida.

**AND**

The Westerly Half of that Reservation of Easement as described in Official  
Record Book 1168 at Page 1705 of the Public Records of Monroe County,  
Florida.

Grantor and Grantee covenant and agree that, unless the then respective  
owners of the Easterly Half and Westerly Half of said easement shall hereafter  
agree otherwise in writing, there shall be no docks or dolphin poles  
constructed within any portion of the property described in the Reservation  
of Easement as described in Official Record Book 1168 at Page 1705 of the  
Public Records of Monroe County, Florida, except those in existence on the  
date of this conveyance.

**THIS CONVEYANCE IS SUBJECT TO ALL OF THE TERMS AND**  
**CONDITIONS OF THE RESERVATION OF EASEMENT CONTAINED**  
**IN THAT CERTAIN WARRANTY DEED FROM GAIL V.**  
**BORYSIEWICZ JOINED BY HER HUSBAND EDWARD A.**  
**BORYSIEWICZ TO MICHAEL T. CAUSLEY AND PAMELA L.**  
**CAUSLEY DATED JUNE 30, 1994.**

DS Paid 595.00 Date 7-12-94  
MONROE COUNTY  
DANNY L. KOLHAGE, CLERK OF CIR. CL.  
By [Signature]

FILED FOR RECORD  
94  
AUG 11 21  
MONROE COUNTY, FLA.



848148

OFF REC 1314 PAGE 2083

and said grantor does hereby fully warrant the title to said land, and will defend the same against the lawful claims of all persons whomsoever.

\*"Grantor" and "grantee" are used for singular or plural, as context requires.

IN WITNESS WHEREOF, Grantor has hereunto set grantor's hand and seal the day and year first above written.

Signed, sealed and delivered in our presence:

Thomas D. Wright (Seal)  
Printed Name: Thomas D. Wright Michael T. Causley  
Witness

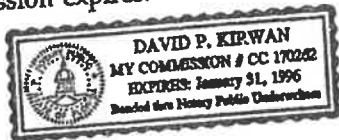
David P. Kirwan (Seal)  
Printed Name: David P. Kirwan Pamela L. Causley  
Witness

State of Florida  
County of Monroe

The foregoing instrument was acknowledged before me this 20<sup>th</sup> day of June, 1994, by Michael T. Causley and Pamela L. Causley, who are personally known to me or who have produced their Florida driver's licenses as identification.

David P. Kirwan  
Notary Public

My commission expires:



Recorded in Official Records  
in Monroe County, Florida  
Record Verified  
DANNY L. ROEHAGE  
Clerk Circuit Court



567 K

3969.00  
18.50  
3987.50

Doc# 2070640 04/06/2016 4:17PM  
Filed & Recorded in Official Records of  
MONROE COUNTY AMY HEAVILIN

04/06/2016 4:17PM  
DEED DOC STAMP CL: Krys \$3,969.00

Doc# 2070640  
Bk# 2780 Pg# 1108

Prepared by and return to:  
Thomas D. Wright  
Attorney at Law  
Law Offices of Thomas D. Wright Chartered  
Post Office Box 500309  
Marathon, FL 33050  
305-743-8118  
File Number: 16-134  
Will Call No.:

Parcel Identification No. 0076150-000100

[Space Above This Line For Recording Data]

### Warranty Deed

(STATUTORY FORM - SECTION 689.02, F.S.)

**This Indenture** made this 25th day of March, 2016 between Pol E. Raynal, II, individually and as Trustee of The Pol E. Raynal, II Revocable Trust dated 12/18/00 as restated in its entirety on 10/22/02, joined by his wife, Mary Patricia Raynal whose post office address is Post Office Box 510377, Key Colony Beach, FL 33051 of the County of Monroe, State of Florida, grantor\*, and Gary A. Furtak and Denise A. Furtak, husband and wife whose post office address is 3832 Violet Drive, Philadelphia, PA 19154 of the County of Philadelphia, State of Pennsylvania, grantee\*,

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

The Northerly 75 feet of Lot 70, Block 10, Amended Plat of Key Colony Beach First Addition, according to the Plat thereof as recorded in Plat Book 4, Page 11, of the Public Records of Monroe County, Florida.

And

The Westerly half of that Reservation of Easement as described in Official Record 1168, Page 1705, of the Public Records of Monroe County, Florida, and as recorded in Official Records 1314, page 2082 of the Public Records of Monroe County, Florida.

and said grantor does hereby fully warrant the title to said land, and will defend the same against lawful claims of all persons whomsoever.

\* "Grantor" and "Grantee" are used for singular or plural, as context requires

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

DoubleTime

Signed, sealed and delivered in our presence:

Michele Brossard  
Witness Name: Michele Brossard  
Susan M. Lotley  
Witness Name: Susan M. Lotley

Pol E. Raynal  
Pol E. Raynal, II, Trustee  
Mary Patricia Raynal  
Mary Patricia Raynal

State of Florida  
County of Monroe

The foregoing instrument was acknowledged before me this 25th day of March, 2016 by Pol E. Raynal, II, individually and as Trustee of The Pol E. Raynal, II Revocable Trust dated 12/18/100 as restated in its entirety on 10/22/02/ who  is personally known or  has produced a driver's license as identification.) and Mary Patricia Raynal

Michele Brossard

[Notary Seal]

Notary Public

Printed Name: \_\_\_\_\_

My Commission Expires: \_\_\_\_\_



MONROE COUNTY  
OFFICIAL RECORDS

Doc# 2101589 12/02/2016 2:43PM  
Filed & Recorded in Official Records of  
MONROE COUNTY AMY HEAVILIN

18.50  
07.00  
19.50

Prepared by and return to:  
Thomas D. Wright  
Attorney at Law  
Law Offices of Thomas D. Wright Chartered  
Post Office Box 500309  
Marathon, FL 33050  
305-743-8118  
File Number: 16-134  
Will Call No.:

12/02/2016 2:43PM  
DEED DOC STAMP CL: Krys \$0.70

Doc# 2101589  
Bk# 2828 Pg# 1515

Parcel Identification No. 0076150-000100

[Space Above This Line For Recording Date]

### Corrective Warranty Deed

(STATUTORY FORM - SECTION 689.02, F.S.)

This Indenture made this 23 day of November, 2016 between Pol E. Raynal, II, individually and as Trustee of The Pol E. Raynal, II Revocable Trust dated 12/18/00 as restated in its entirety on 10/22/02, joined by his wife, Mary Patricia Raynal whose post office address is Post Office Box 510377, Key Colony Beach, FL 33051 of the County of Monroe, State of Florida, grantor\*, and Gary A. Furtak and Denise A. Furtak, husband and wife whose post office address is 3832 Violet Drive, Philadelphia, PA 19154 of the County of Philadelphia, State of Pennsylvania, grantee\*,

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

The Northerly 75 feet of Lot 70, Block 10, Amended Plat of Key Colony Beach First Addition, according to the Plat thereof as recorded in Plat Book 4, Page 11, of the Public Records of Monroe County, Florida.

And

The Westerly half of that Reservation of Easement as described in Official Record 1168, Page 1705, of the Public Records of Monroe County, Florida, and as recorded in Official Records 1314, page 2082 of the Public Records of Monroe County, Florida.

Subject to and together with the covenants contained within the instrument recorded in Official Records 1314, page 2079 of the Public Records of Monroe County, Florida, to-wit:

Grantor and Grantee covenant and agree that, unless the then respective owners of the Easterly Half and Westerly Half of said easement shall hereafter agree otherwise in writing, there shall be no docks or dolphin poles constructed within any portion of the property described in the Reservation of Easement as described in Official Record Book 1168, at Page 1705 of the Public Records of Monroe County, Florida, except those in existence as of June 30, 1994.

This conveyance is subject to all of the terms and conditions of the reservation of easement contained in that certain Warranty Deed from Gail V. Borysiewicz joined by her husband Edward A. Borysiewicz to Michael T. Causley and Pamela L. Causley dated June 30, 1994. And also that Warranty Deed recorded in Official Record Book 1314, page 2082 of the Public Records of Monroe County, Florida.

This Deed is being re-executed and re-recorded in order to add the additional language that was inadvertently omitted from the prior deed recorded in Official Records 2790, Page 1108 of the Public Records of Monroe County, Florida.

DoubleTimes

and said grantor does hereby fully warrant the title to said land, and will defend the same against lawful claims of all persons whomsoever.

\* "Grantor" and "Grantee" are used for singular or plural, as context requires.

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

Signed, sealed and delivered in our presence:

Ashley Sanchez  
Witness Name: Ashley Sanchez

Crystal Adkins  
Witness Name: Crystal Adkins

Pol E. Raynal, II TR  
Pol E. Raynal, II, individually and as Trustee

Mary Patricia Raynal  
Mary Patricia Raynal

State of Virginia  
County of Virginia

The foregoing instrument was acknowledged before me this 23 day of November, 2016 by Pol E. Raynal, II, individually and as Trustee of the The Pol E. Raynal, II Revocable Trust dated 12/18/100 as restated in its entirety on 10/22/02 and Mary Patricia Raynal, who  is personally known or  has produced a driver's license as identification.

[Notary Seal]



Cynthia T. Cooke  
Notary Public

Printed Name: Cynthia T. Cooke

My Commission Expires: 12/31/2018



Joanne M. Foster, B.C.S.  
Attorney at Law

John S. Yudin  
Attorney at Law

August 24, 2017

Thomas D. Wright  
City Attorney, City of Key Colony Beach  
P.O. Box 510141  
Key Colony Beach, FL 33051-0141

RE: In water structures at 948 W Ocean Dr , Key Colony Beach, FL

Dear Mr. Wright:

Our firm represents Gary & Denise Furtak with regard to this matter. The Furtaks own property which adjoins 948 W Ocean Dr , (hereinafter the "948 property"). I believe you are familiar with the issue at hand by virtue of the fact your office conducted the closing on both properties.

The purpose of this letter is to formally notify the City of Key Colony Beach that the 948 property is subject to various covenants, conditions and most importantly restrictions which absolutely preclude the construction of new in water structures in the adjacent canal. Accordingly, the owner of the 948 property lacks the necessary property rights and/or legal authority to obtain a permit from the City to install a boatlift in the canal.

For your convenience, I have attached the following documents:

- deed for 948 W. Ocean Dr.
- ORB 1314 pg. 2079
- ORB 1288 pg. 914

As you will recall the 948 property is a non-waterfront property. Thus, any rights to access the water must be derived through a publically recorded conveyance. The deed for the 948 property provides as follows:

"Together with the Easement reserved in the instrument recorded in Official Records Book 1314, Page 2079 of the Public Records of Monroe County, Florida.

Together with the Easterly one-half together with access thereto across the westerly one-half of the Easement reserved in the instrument recorded in Official Records Book 1288, Page 914, of the Public Records of Monroe County, Florida, as shown on the survey drawing by John Paul Grimes, III dated February 6, 1995."

55 East Ocean Boulevard • Stuart, Florida 34994  
772-286-7372 • 772-220-3318 fax

GuyYudinLaw.com

Thus, water access for the 948 property is limited to the rights granted in the easements recorded in ORB 1314 pg. 2079 and ORB 1288 pg. 914. No where in either of those easements is the owner of the 948 property granted any legal right or authority to construct a boat lift.

In fact, ORB 1314 pg. 2079 specifically provides:

“...unless the then respective owners of the Easterly Half and Westerly Half of said easement shall hereafter agree otherwise in writing, there shall be no docks or dolphin poles constructed within any portion of the property described in the Reservation of Easement as described in Official Record Book 1168, at Page 1705 of the Public Records of Monroe County, Florida, except those in existence as of June 30, 1994.”

Furthermore, ORB 1288 pg. 914 expressly provides:

“The right-of-way, easement, rights and privileges herein shall only be used for the following purposes:

1. For pedestrian ingress and egress solely for the purpose of going to and from not more than two (2) boats which may be docked, either temporarily or permanently, within the easement area; and,
2. For the placing, constructing, operating, repairing, maintaining, rebuilding, replacing, relocating, and removing electrical transmission lines and water lines for the purpose of serving and maintaining a single boat docked within the Easterly Half of that Reservation of Easement...”

Summarily, as you can see the ORB 1314 pg. 2079 easement specifically provides no new docks or dolphins poles may be installed without the consent of the Furtaks who own the Westerly Half of the easement (ORB 2828 pg..1515) In other words, the easement area must remain as it was in 1994 unless there is a written agreement between the two easement owners. As you are probably aware, no such written agreement exists.

Furthermore, the express language of ORB 1288 pg. 914 specifies the easement may only be used to dock boats, not put boats on boatlifts. Installation of a boatlift would therefore impermissibly exceed the specific scope of the easement, as well exceeding the historical scope of use of the easement.

Based on the foregoing, our clients would request immediate notice if the City receives a permit application from the owner of the 948 property for installation of a boat lift or any other in water structure as they have no intention of allowing any structure beyond that contemplated in the recorded easements.

Should there be any further questions, or if you wish to discuss the matter further, please do not hesitate to contact me. Thank you in advance for your anticipated cooperation.

Sincerely,

GUY YUDIN & FOSTER, LLP.



John S. Yudin, Esq.  
For the firm

Cc: client

10/17/2017

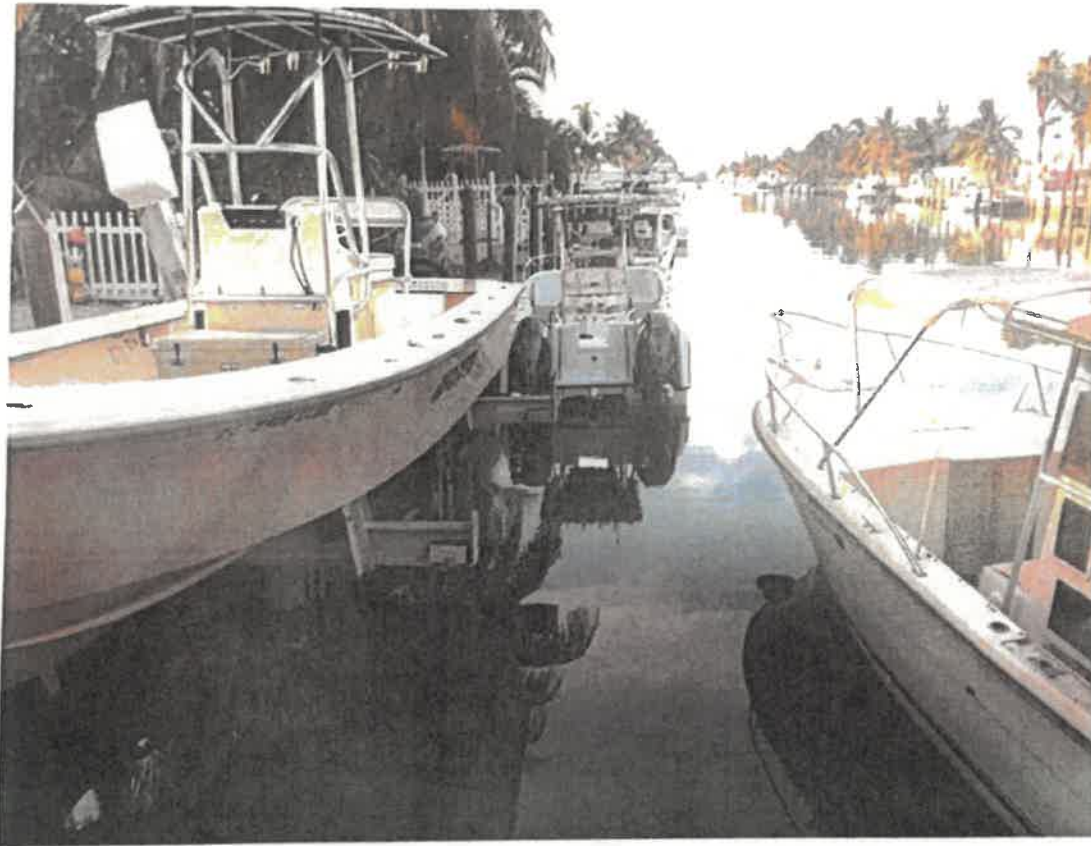
Mail - store3991@theupsstore.com

## Boat pictures

Gary Furtak <gary.furtak@yahoo.com>

Tue 10/17/2017 8 59 AM

to The UPS Store #3991 <store3991@theupsstore.com>.





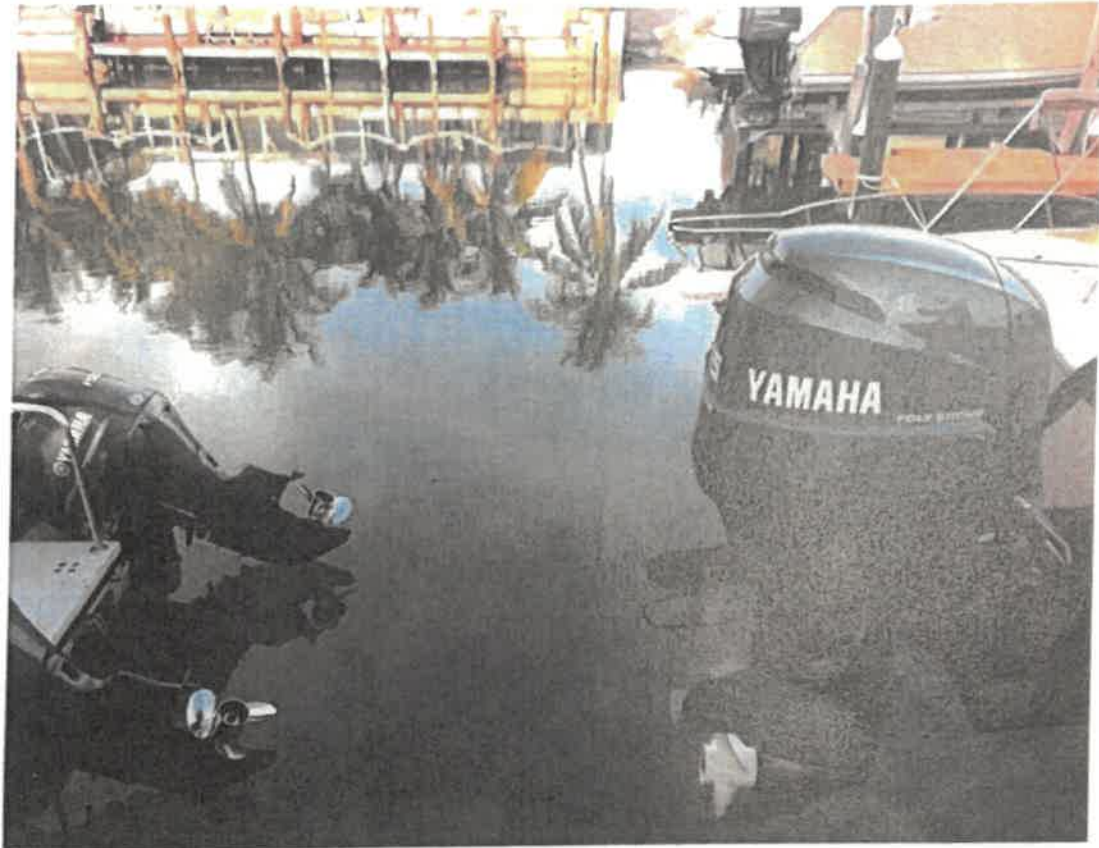
10/17/2017

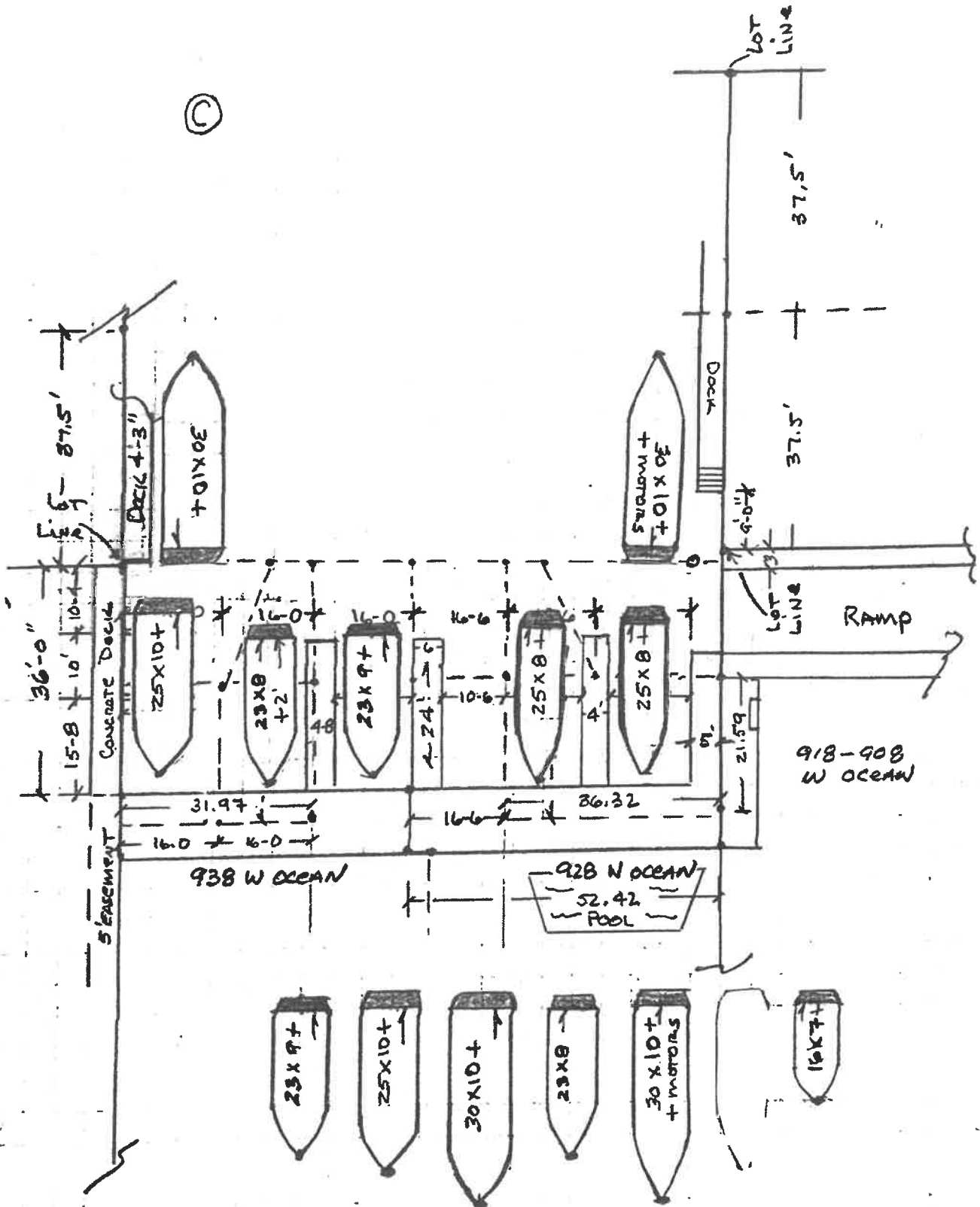
Mail - store3991@theupsstore.com



10/17/2017

Mail - store3991@theupsstore.com

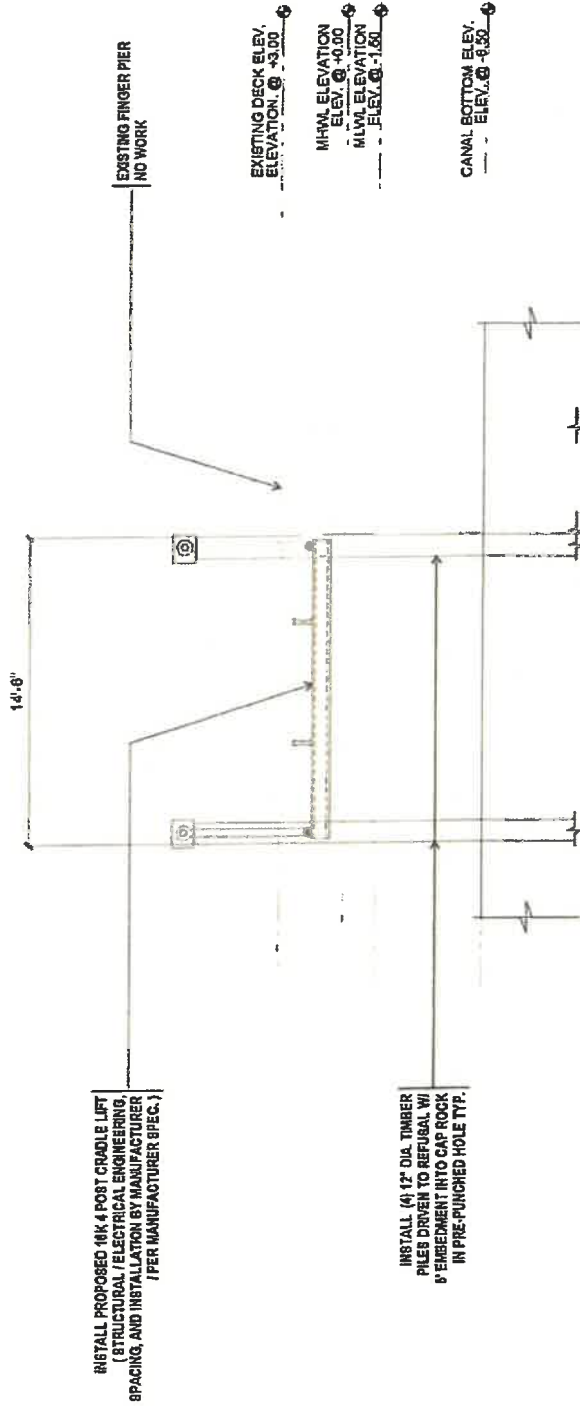




3-4-2017  
 Scale = 20

Agenda Item 8 - 3-20-2024 P#7  
 Hutchinsou Testimony A

948 W. Ocean



Location: **A**  
**SECTION DETAILS**  
 SCALE: 1/4" = 1'

PROJECT TITLE:		SHEET NO.:	
INSTALL 16K 4 POST CRADLE LIFT 948 W OCEAN Dr, KEY COLONY BEACH		C 05 / 05	
LOCATION: 148 W OCEAN DR, KEY COLONY BEACH PERMID: 1487515-2886		DATE: 10/31/2023	
NO.	DESCRIPTION	REV. DATE	SHEET CONTENT:
01	Detailed Sections	10 - 31 - 2023	DETAILED SECTIONS
02	Detailed Sections	11 - 01 - 2023	
03	Detailed Sections	11 - 06 - 2023	

**RAPID PERMITS AND ENGINEERING**  
 ADDRESS: PO Box 610073, Key Colony Beach, FL 33051  
 CONTACT: 305-215-1100  
 EMAIL: info@rapidpermits.com





CANAL



**PROPOSED DEMOLITION**

**NEW CONSTRUCTION**

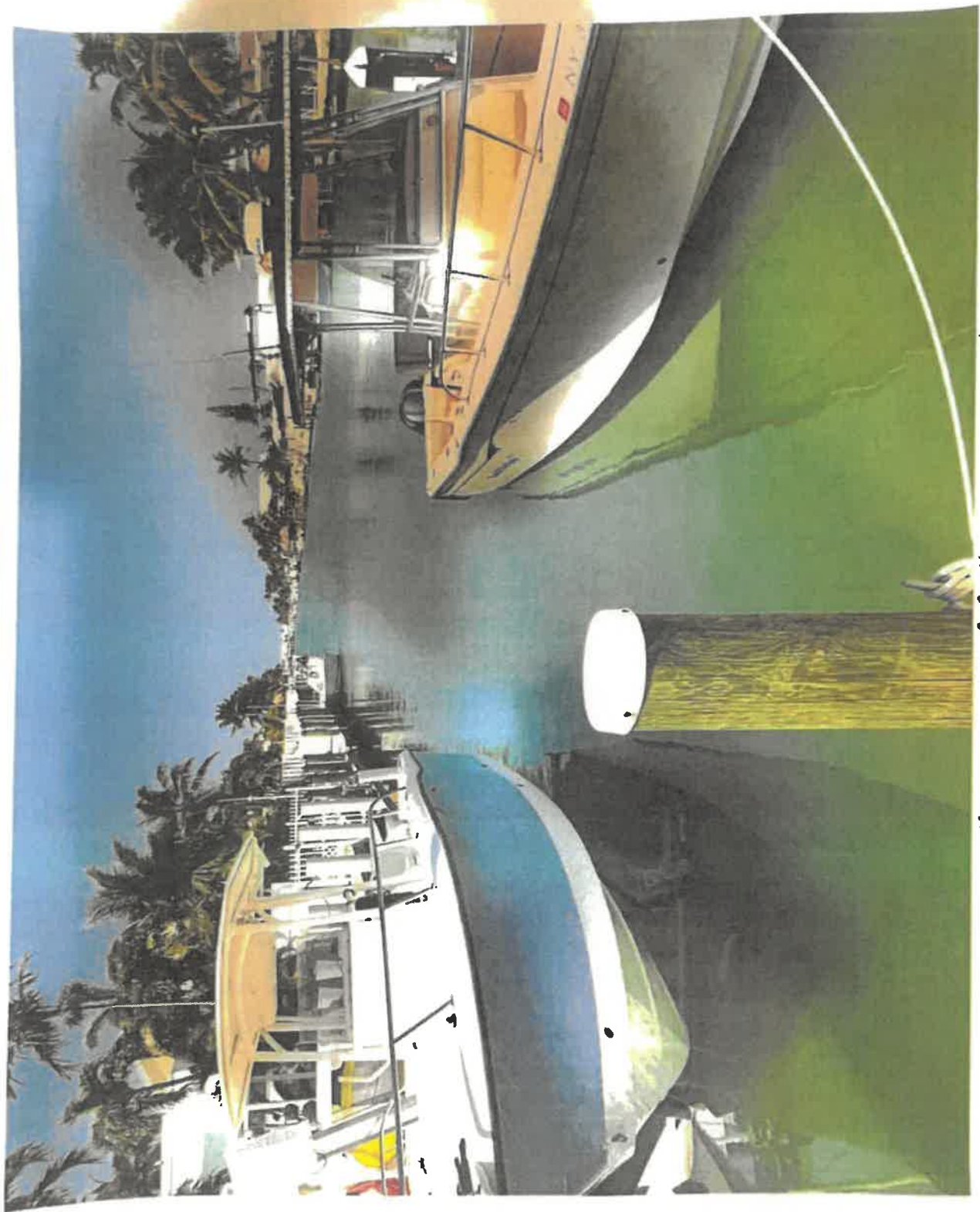
- INSTALL 16K 4-POST CRADLE LIFT W/ (4) 12" DIA. TIMBER PILING



948 W OCEAN DR  
**SITE PLAN 02**  
 SCALE: 5" = 50'

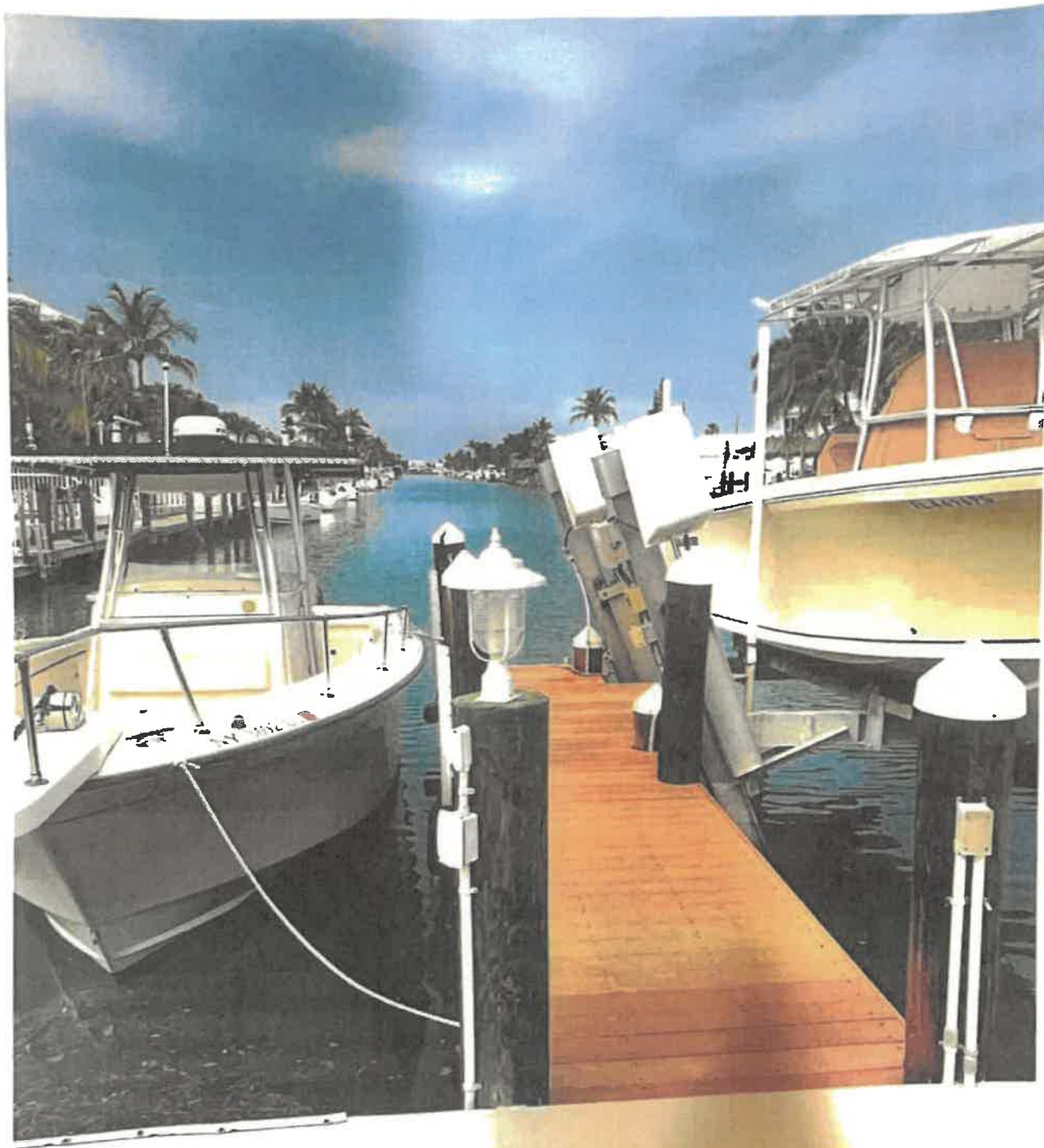
C-04

	<b>RAPID PERMITS AND ENGINEERING</b> ADDRESS: PO Box 610373, Key Colony Beach, FL 33461 CONTACT: 888-915-1108 EMAIL: rpe@rapidpermits.com		PROJECT TITLE: <b>INSTALL 16K 4 POST CRADLE LIFT</b> 948 W OCEAN DR, KEY COLONY BEACH LOCATION: 948 W OCEAN DR, KEY COLONY BEACH Parcel ID: 8887613-00010	NO. DESCRIPTION 01 Site Plan 02 02 Site Plan 02 03 Site Plan 02	REV. DATE 10 - 31 - 2023 11 - 01 - 2023 11 - 06 - 2023	SHEET CONTENT: SITE PLAN	SHEET NO.: C 04 05



TAKEN MARCH 17, 2024

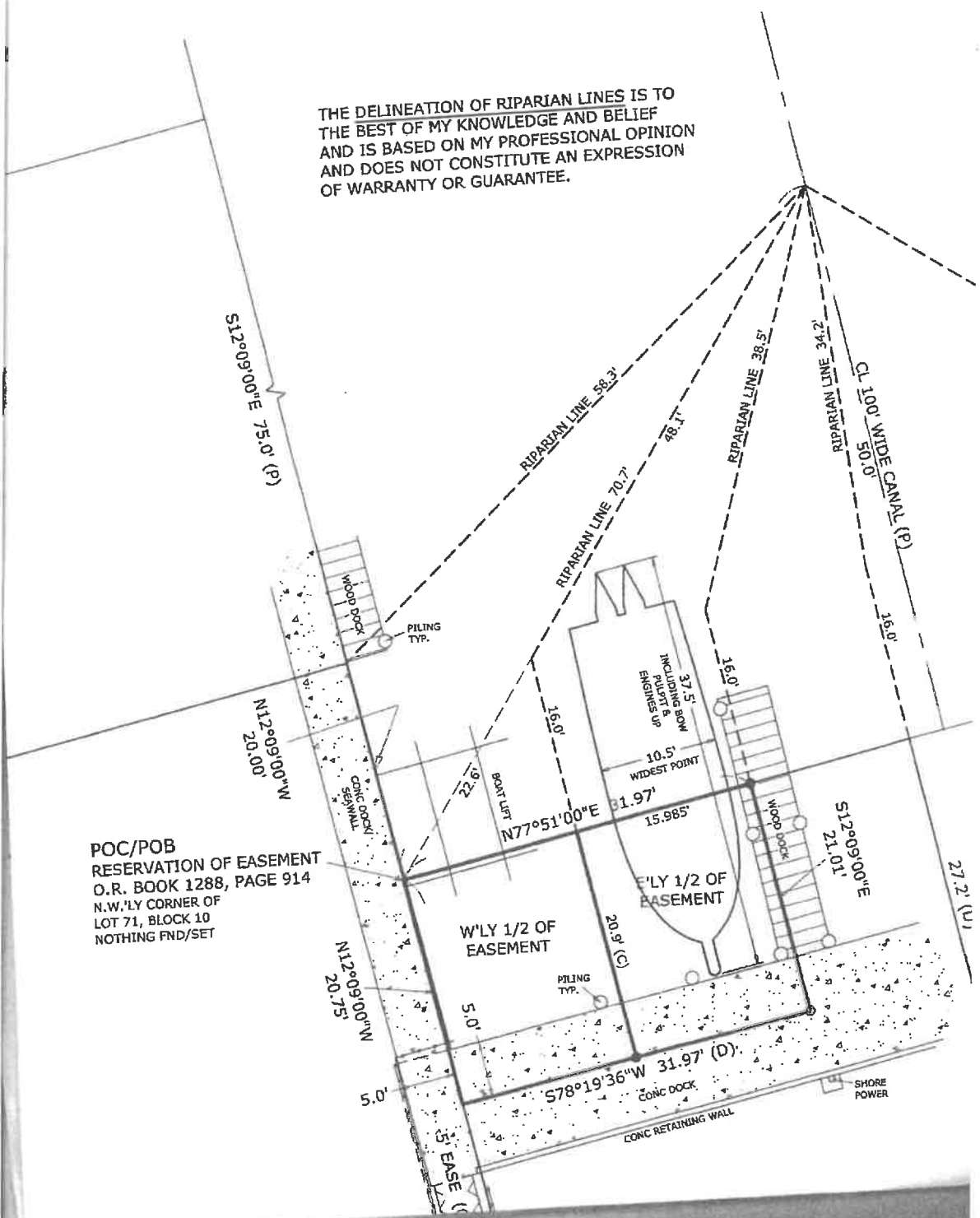




Q48 W.O.D. Left

Right 938 W.O.D.

THE DELINEATION OF RIPARIAN LINES IS TO THE BEST OF MY KNOWLEDGE AND BELIEF AND IS BASED ON MY PROFESSIONAL OPINION AND DOES NOT CONSTITUTE AN EXPRESSION OF WARRANTY OR GUARANTEE.



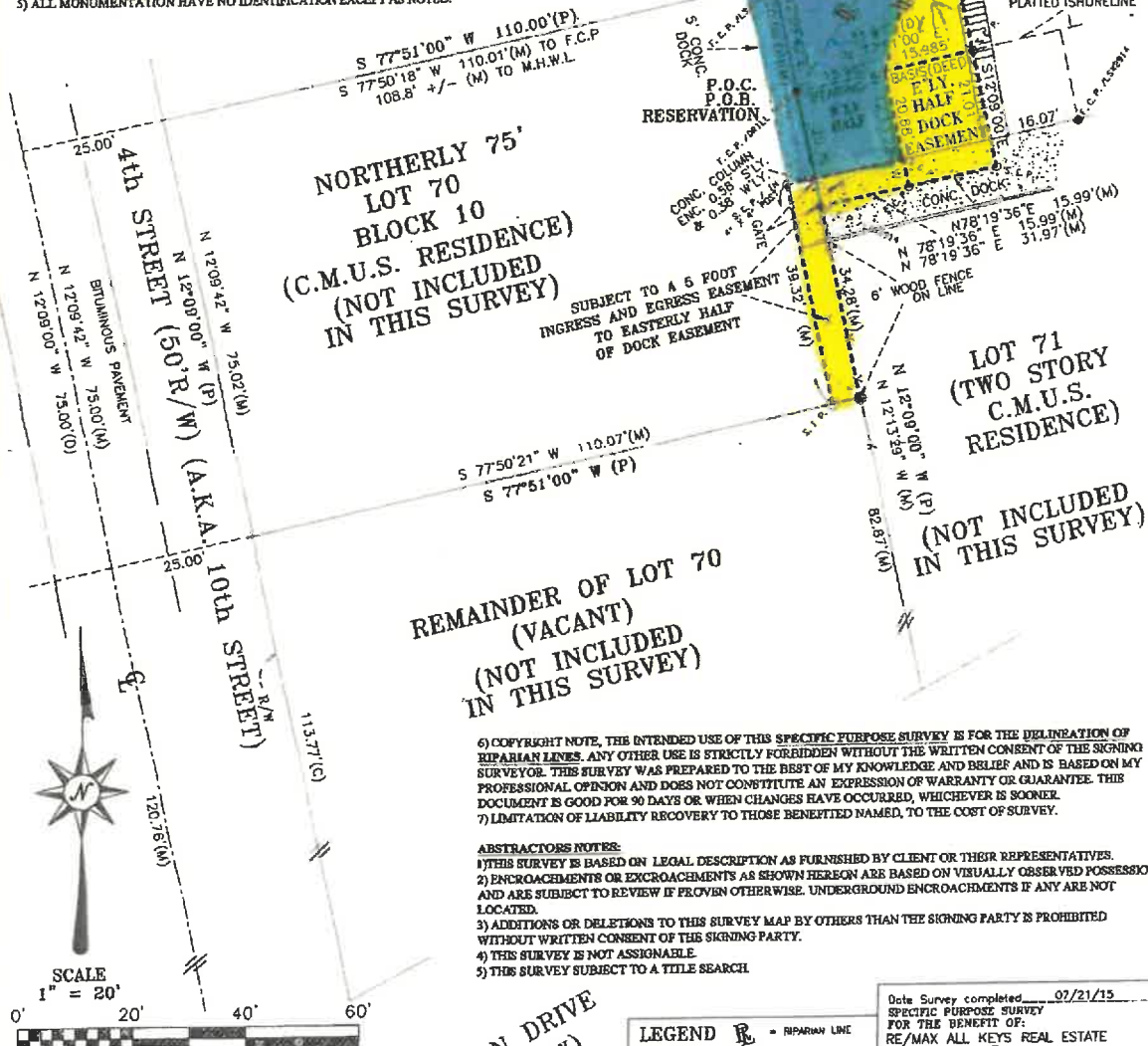
LEGAL DESCRIPTION AS FURNISHED BY CLIENT: OFFICIAL RECORDS BOOK 2670, PAGE 964

TOGETHER WITH THE EASTERLY ONE-HALF OF SITUATED IN THE CITY OF KEY COLONY BEACH, COUNTY OF MONROE AND STATE OF FLORIDA AND KNOWN AS BEING AN EASEMENT OVER, UNDER, AND UPON A NORTHWESTERLY PORTION OF LOT 71, BLOCK 10, OF THE AMENDED PLAT OF KEY COLONY BEACH FIRST ADDITION AS SHOWN BY PLAT RECORDED IN PLAT BOOK 4, PAGE 11 OF MONROE COUNTY, FLORIDA, PUBLIC RECORDS, SAID EASEMENT BEING PARTICULARLY DESCRIBED AS FOLLOWS: COMMENCING ON THE NORTHWESTERLY CORNER OF LOT 71, BLOCK 10 OF THE AMENDED PLAT OF KEY COLONY BEACH FIRST ADDITION AS SHOWN BY PLAT RECORDED IN PLAT BOOK 4, PAGE 11 OF MONROE COUNTY, FLORIDA, PUBLIC RECORDS, SAID CORNER BEING ALSO THE POINT OF BEGINNING OF THE EASEMENT HEREIN INTENDED TO BE DESCRIBED; FROM SAID POINT OF BEGINNING BEAR NORTH 77°51'00" EAST ALONG THE NORTHERLY LINE OF SAID LOT 71, BLOCK 10, 31.97 FEET; THENCE BEAR SOUTH 12°09'00" EAST AND PARALLEL TO THE WESTERLY LINE OF SAID LOT 71, BLOCK 10, 21.01 FEET; THENCE BEAR SOUTH 78°19'36" WEST 31.97 FEET TO A POINT ON THE SAID WESTERLY LINE OF LOT 71, BLOCK 10; THENCE BEAR NORTH 12°09'00" WEST ALONG THE SAID WESTERLY LINE OF LOT 71, BLOCK 10, 20.75 FEET BACK TO THE POINT OF BEGINNING.

TOGETHER WITH AN EASEMENT AND RIGHT-OF-WAY UPON AND ACROSS THE FOLLOWING PORTION OF THE REAL PROPERTY CONVEYED BY THIS WARRANTY DEED: THE EASTERLY 5.00 FEET OF THE SOUTHERLY 39.32 FEET OF THE NORTHERLY 75 FEET OF LOT 70, BLOCK 10 OF THE AMENDED PLAT OF KEY COLONY BEACH FIRST ADDITION, ACCORDING TO THE PLAT THEREOF AS RECORDED IN PLAT BOOK 4, PAGE 11, OF THE PUBLIC RECORDS OF MONROE COUNTY, FLORIDA, TOGETHER WITH THE SOUTHERLY 5.00 FEET OF THE WESTERLY ONE HALF OF THAT RESERVATION OF EASEMENT AS DESCRIBED IN OFFICIAL RECORD BOOK 1168 AT PAGE 1705 OF THE PUBLIC RECORDS OF MONROE COUNTY, FLORIDA.

**SURVEYORS NOTES:**

- 1) NORTH ARROW AND BEARING BASIS N 77°51'00" E AS PER DEED, AS NOTED.
- 2) DIMENSIONS (MEASUREMENTS) ARE SHOWN TO THE NEAREST ONE HUNDREDTH OF A FOOT (4/10) AS MEASURED HORIZONTALLY IN ACCORDANCE WITH UNITED STATES STANDARD (FOLLOWING ZEROS MAY NOT BE SHOWN). BEARINGS ARE SHOWN TO THE NEAREST ONE SECOND, WHERE REQUIRED. ALL ANGLES ARE 90 DEGREES UNLESS OTHERWISE NOTED.
- 3) THE FOLLOWING DEVIATION FROM THE STANDARD OF 18 INCHES MINIMUM LENGTH OF SET PIPE MAY HAVE BEEN USED AS ALL PIPES WERE AT LEAST 18 INCHES AND/OR DRIVEN TO REFUSAL AND CUT TO BE FLUSH WITH EXISTING GRADE.
- 4) THE EXPECTED USE OF THIS PROPERTY, AS CLASSIFIED IN THE MINIMUM TECHNICAL STANDARDS (54-17.05) OF THE STATE OF FLORIDA, IS RESIDENTIAL. THE MINIMUM RELATIVE DISTANCE ACCURACY FOR THIS TYPE OF BOUNDARY SURVEY IS ONE FOOT IN 7,500 FEET, THE ACCURACY WAS ACHIEVED BY A REDUNDANCY OF FIELD MEASUREMENTS AND CALCULATIONS OF A CLOSED GEOMETRIC FIGURE BY COMPUTER MAPPING TECHNOLOGY AND WAS FOUND TO EXCEED THE STATE REQUIREMENT.
- 5) ALL MONUMENTATION HAVE NO IDENTIFICATION EXCEPT AS NOTED.



**ABBREVIATIONS**

C.M.U.S. = CONCRETE MASONRY UNIT STRUCTURE	P-T-C- = AERIAL POWER, TELEPHONE, AND/OR CABLE LINES
AC = AIR CONDITIONER	LY. = ERLY
A.K.A. = ALSO KNOWN AS	ID. = IDENTIFICATION
BALC. = BALCONY	P.O.C. = POINT OF COMMENCEMENT
CANT. = CANTILEVER	P.O.B. = POINT OF BEGINNING
CL. = CENTERLINE	P.C. = POINT OF CURVE
C.L.F. = CHAIN LINK FENCE	P.I. = POINT OF INTERSECTION TYP.
CONC. = CONCRETE	P.T. = POINT OF TANGENT
ENC. = ENCROACHMENT	R.M. = REFERENCE MONUMENT
(C) = CALCULATED	R/W = RIGHT-OF-WAY
(D) = DEED/DESCRIPTION	SO. = SQUARE
(P) = PLAT	T.S.M. = TEMPORARY BENCH MARK
(M) = MEASURED	TYP. = TYPICAL

OCEAN DRIVE  
(50' R/W)

**LEGEND**

● (with 'R')	= RIPARIAN LINE
● (with 'F.C.P.')	= FOUND CONTROL POINT
● (with 'S.C.P.')	= SET CONTROL POINT
● (with 'SS')	= SS SCREW/DISC #4906
● (with '3/4")	= FOUND 3/4" PIPE
● (with '3/4" CAP')	= SET 3/4" PIPE / 15#4906
● (with '5/8" REBAR')	= FOUND 5/8" REBAR
● (with '5/8" CAP')	= SET 5/8" PIPE / 15#4906
● (with 'PERM')	= PERMANENT REFERENCE MONUMENT
● (with 'P.P.')	= POWER POLE / BENCH MARK
● (with 'CONC')	= INDICATES CONCRETE
--- (dashed line)	= BROKEN LINE (NOT TO SCALE)

Date Survey completed 07/21/13  
SPECIFIC PURPOSE SURVEY  
FOR THE BENEFIT OF:  
RE/MAX ALL KEYS REAL ESTATE  
C/O STEVE SMITH,

NOT VALID WITHOUT  
SIGNATURE AND THE  
ORIGINAL RASIED SEAL  
OF A FLORIDA LICENSED  
SURVEYOR AND MAPPER

*Paul Grimes III*  
PAUL GRIMES III, REGISTERED  
FLORIDA SURVEYOR & MAPPER, NO. 4908

J.P. GRIMES, SURVEYOR AND MAPPER  
P.O. BOX 310403, #14 8th STREET  
KEY COLONY BEACH, FL. 33051-0403  
PH. (305) 743-4510  
FAX (305) 743-3277 P.N. 150702

THE SURVEY DEPICTED HERE IS NOT COVERED BY PROFESSIONAL LIABILITY INSURANCE



369 So.3d 356  
District Court of Appeal of Florida, Fifth District.

Craig A. MARLOWE, Appellant,  
v.  
CITY OF ST. AUGUSTINE, Kevin Van Dyke, Marcy  
A. Van Dyke, Paul A. Leonard and Susan J. Leonard,  
Trustees of the Leonard Family Revocable Living  
Trust Dated 23rd January, 2007, et al., Appellees.

Case No. 5D21-2407  
I  
September 8, 2023

### Synopsis

**Background:** Waterfront property owner brought declaratory judgment action against neighbors and city in which he sought a declaration as to his riparian rights appurtenant to nearby properties purportedly owned by city and neighbors, particularly his right to build his own dock that accessed navigable waters of nearby creek, sought an injunction ordering neighbors to remove their docks and restraining them from further interfering with his riparian rights, and sought to quiet title and declaration that he owned accreted property adjacent to his upland property. The Circuit Court, 7th Judicial Circuit, St. Johns County, *Kenneth J. Janesk, II, J.*, grant summary judgment in favor of city and neighbors and denied owner's motion for attorney's fees. Owner appealed.

**Holdings:** The District Court of Appeal, *Lambert, J.*, held that:

trial court did not lack subject matter jurisdiction over owner's declaratory judgment action against city;

service by publication was sufficient for owner to obtain default judgment against non-party in separate quiet title action;

triable issues existed as to whether city or non-party owned easternmost portion of platted property; and

seven-year limitations period for actions to recover or possession of real property did not apply.

Reversed and remanded.

**Procedural Posture(s):** On Appeal; Motion for Summary Judgment; Motion for Declaratory Judgment; Motion for Rehearing; Motion for Clarification.

\*358 On Appeal from the Circuit Court for St. Johns County. *Kenneth J. Janesk, Judge.* LT Case No. 2005-CA-0186

### Attorneys and Law Firms

*Michael J. Korn, of Korn & Zehmer, P.A., Jacksonville, for Appellant.*

*Isabelle C. Lopez, City Attorney, St. Augustine, and Michael Cavendish, of Cavendish Partners, P.A., Jacksonville, for Appellee, City of Saint Augustine.*

*Rebecca Bowen Creed, of Creed & Gowdy, P.A., Jacksonville, and Bruce B. Humphrey and Lauren E. Howell, of Birchfield & Humphrey, Ponte Vedra Beach, for Appellees, Kevin Van Dyke and Marcy A. Van Dyke.*

*Gary S. Edinger, of Benjamin, Aaronson, Edinger & Patanzo, P.A., Gainesville, for Appellees, Paul A. Leonard and Susan J. Leonard, Trustees of the Leonard Family Revocable Living Trust Dated 23rd January, 2007.*

### ON APPELLANT'S MOTION FOR REHEARING OR CLARIFICATION

*Lambert, J.*

\*359 Appellant has timely moved for rehearing or clarification "as to certain limited, discrete elements of [this court's] July 14, 2023 opinion ... [that] do not affect the outcome of this appeal." We conclude that a minor clarification of the original opinion is appropriate; and, therefore, we issue the following revised opinion to provide additional clarity. Appellant's motion is otherwise denied. No further motions for rehearing will be entertained.

Craig A. Marlowe appeals the final summary judgment entered against him and in favor of the City of St. Augustine (the "City") and Kevin and Marcy A. Van Dyke (the "Van Dykes"). Marlowe also appeals the order denying his motion for attorney's fees as a sanction against the City, filed pursuant to section 57.105(1), Florida Statutes (2020). We affirm, without further discussion, the order denying Marlowe's section 57.105(1) motion for attorney's fees. However, for the reasons that follow, we reverse the final summary judgment

The Florida Supreme Court's opinion in *Hayes v. Bowman*, 91 So. 2d 795 (Fla. 1957), is instructive. The parties in that case disputed the proper location of riparian or littoral lanes. *Id.* at 798. Each party used different angles to prolong their property line into an available channel. *Id.* The Florida Supreme Court recognized the bedrock common law riparian rights of "an unobstructed view" and "access," holding 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.

*Id.* at 801.

The court, however, observed the difficulty at times in protecting and establishing these rights, holding:

It is absolutely impossible to formulate a mathematical or geometrical rule that can be applied to all situations of this nature. The angles (direction) of side lines of lots bordering navigable waters are limited only by the number of points on a compass rose. Seldom, if ever, is the thread of a channel exactly or even approximately parallel to the shoreline of the mainland. These two conditions make the mathematical or geometrical certainly [sic] implicit in the rules recommended by the contesting parties literally impossible. We must therefore search elsewhere for a solution to this admittedly difficult problem.

*Id.*

In other words, the court appeared to appreciate that when determining riparian rights, there is no exclusive right to any geometrically drawn "riparian lane." In some circumstances, such as with a relatively straight shoreline and consistently straight navigable channel, those rights might *look like* or take the shape of straight "lanes" with docks, but that is often not true:

\*368 Riparian rights do not necessarily extend into the waters according to upland boundaries nor do such rights under all conditions extend at right angles to the shore line. Our own precedents are completely inconsistent with the appellees' view that such rights extend over an area measured by lines at right angles to the Channel. It should be borne in mind that littoral or riparian rights are appurtenances to ownership of the uplands. They are not founded on ownership of the submerged lands. It is for this reason, among others that we cannot define the area within which the rights are to be enjoyed with mathematical exactitude or by a metes and bounds description.

*Id.* at 802.

From these principles, we conclude that the fact that the Van Dykes' property is not directly adjacent to Marlowe's property does not show, beyond a genuine dispute of material fact, that a determination of Marlowe's riparian rights could not possibly affect the Van Dykes' own riparian rights. The trial court, therefore, erred in entering summary judgment in favor of the Van Dykes on this basis.

The trial court also held that Marlowe's claim against the Van Dykes to set the riparian rights was barred by the seven-year statute of limitations codified in section 95.12. This statute provides, in its entirety:

No action to recover real property or its possession shall be maintained unless the person seeking recovery or

824 So.2d 208

District Court of Appeal of Florida,  
Fourth District.

SHORE VILLAGE PROPERTY OWNERS'  
ASSOCIATION, INC., Sandra Henry,  
Rebecca Farris and Robert Ruston, Appellants,

v.

The STATE OF FLORIDA DEPARTMENT  
OF ENVIRONMENTAL PROTECTION,  
George I. Waidner, Jr., Peter Anania,  
and Delores Anania, Appellees.

No. 4D01-3205.

|

July 10, 2002.

|

Rehearing Denied Sept. 4, 2002.

#### Synopsis

Property owners' association and individual property owners filed declaratory judgment action against other property owners, seeking declaration that access easement included riparian rights. After court trial, the Circuit Court for the Nineteenth Judicial Circuit, Martin County, Ben L. Bryan, Jr., J., determined existence of riparian rights, but also determined that rights did not include building of dock. On cross-appeals, the District Court of Appeal, May, J., held that: (1) issue of whether riparian rights permitted building of dock was tried by consent of parties; (2) easement included riparian rights; (3) plaintiffs were not entitled to build proposed dock; and (4) riparian rights include building of dock to have access to navigable waters.

Affirmed.

#### Attorneys and Law Firms

\*209 William E. Guy, Jr. and John S. Yudin, of Guy & Yudin, LLP, Stuart, for appellants.

Kenneth G. Spillias, and Kevin S. Hennessy of Lewis, Longman & Walker, P.A., West Palm Beach, for appellees.

#### Opinion

MAY, J.

The ancient doctrine of riparian rights in today's world sets the stage for this appeal. The main appeal contests the trial court's ability not only to declare the existence of riparian rights, but to what extent those rights included the building of a specific dock. The cross-appeal disputes the court's ruling on the existence of riparian rights as part of an easement, and claims that by finding an unfair burden on the servient tenement, there can be no riparian rights. We affirm the trial court's order in all respects.

Shore Village is located on Hutchinson Island. It is approximately two hundred feet wide from North to South and extends from A1A to the Indian River. In 1964, Shore Village was owned as one contiguous parcel by the Hutchinson Isle Land Company [HILC]. HILC subdivided the property into eleven parcels. Each abutting parcel was burdened with a ten-foot easement, creating a twenty-foot wide easement running through the center of the abutting properties.

The easement was created by the following language:

TOGETHER with an easement and right of way for road purposes over, on and under the following described parcel of land extending from the West right of way line of State Road A1A to the waters of the Indian River;

A strip of land 20 feet wide lying 10 feet on each side of the following described center line;

\*210 STARTING at the point where the South line of the north 200 feet of the South 700 feet of Government Lot 3, Section 30, Township 37 South, Range 42 East intersects the Westerly right of way line of State Road A1A, a distance of 112.05 feet for the point of beginning; thence run North 89° 26' 30" West a distance of 770.50 feet more or less to the waters of the Indian River....

In 1971, the lot owners of Shore Village constructed a dock. The dock fell into disrepair, and sometime in the 1980's some of the property owners funded the repair and extension of the dock. In 1993, a storm destroyed part of the dock, and it again fell into disrepair.

On July 1, 1998, one of the lot owners contracted to repair the dock. Remnants of the old dock were removed and construction began. One of the landowners adjacent to the Indian River complained to the Department of Environmental Protection [DEP]. The DEP red-tagged the project and construction came to a halt.

Some of the Shore Village property owners incorporated a property owners' association in November, 1998. The new association applied to the DEP for a permit to resume work, which was denied. The Shore Village Property Owners' Association and three individual property owners then filed a declaratory judgment action against the two property owners adjacent to the Indian River and the DEP. The complaint asked for the court to declare that the easement included riparian rights. The DEP was dismissed from the action prior to trial.

The trial court heard testimony and reviewed evidence over the course of a two-day trial. The court specifically determined the existence of riparian rights within the easement, but that those rights did not include the building of a dock as proposed by the plans admitted into evidence.

The Shore Village Property Owners' Association and the individual plaintiffs filed this appeal and argue that the trial court exceeded its authority by ruling on whether the riparian rights permitted the building of the proposed dock. They contend that this issue was not pled and therefore cannot be ruled upon. The defendants argue, however, that the issues were tried by consent. We agree.

"The general rule is that a judgment based upon matters entirely outside the pleadings cannot stand." *Alternative Dev. Inc. v. St. Lucie Club and Apartment Homes Condo. Ass'n, Inc.*, 608 So.2d 822, 825 (Fla. 4th DCA 1992). This record, however, is replete with written motions, evidence, and argument concerning this issue, which was not objected to by the plaintiffs. Clearly, this issue was tried by the consent of the parties.

The next issue is raised in the cross appeal. The defendants argue that the trial court incorrectly found that the easement included riparian rights. Based upon *Cartish v. Soper*, 157 So.2d 150 (Fla. 2nd DCA 1963), we affirm the trial court's order in this regard.

In *Cartish*, the Second District addressed the issue of whether riparian rights were included in an easement. It reviewed similar language, which stated: "The tract of land marked 'Private Parkway' ... extended to the waters of Boca Ciega Bay...." The Second District stated:

[I]t is clear that such riparian rights necessary and incidental to

access and egress from the Bay were implicit in the reservation of the Parkway. Just as accreted land would necessarily be burdened by the easement as a necessary implication of the reservation, so too the \*211 right to build a dock to facilitate access to the waters is implied.

*Id.* at 153-54. We agree with the reasoning and holding in *Cartish*. And, while the language is not identical in our case, it is sufficiently similar to warrant the same result.

We next address whether the trial court properly disallowed the proposed dock in this case. The result on this issue is dictated by *Avery Dev. Corp. v. Village by the Sea Condo. Apartments, Inc.*, 567 So.2d 447 (Fla. 4th DCA 1990). "[T]he owner of the access easement cannot increase the burden on ... [a servient tenement] to any greater extent than reasonably necessary and contemplated at the time the access easement was granted." *Id.* at 448-49. Here, the trial court found that the proposed "dock of the height and length shown on the plans injuriously increases the burden upon the servient tenement." We cannot say on this record that the trial court's finding was clearly erroneous.

The final issue to address is whether riparian rights necessarily include the building of a dock. This court has already addressed this issue in *Tewksbury v. City of Deerfield Beach*, 763 So.2d 1071 (Fla. 4th DCA 1999). "In Florida, riparian rights include '(1) general use of the water adjacent to the property, (2) to wharf out to navigability, (3) to have access to navigable waters and (4) the right to accretions.'" *Id.* at 1071 (quoting *Belvedere Dev. Corp. v. Dep't of Transp.*, 476 So.2d 649 (Fla.1985)). The Second District reached the same conclusion in *Cartish*. In short, riparian rights include the building of a dock to have access to navigable waters. Any future plans should first be directed to the DEP for review.

For the foregoing reasons, the trial court's order is affirmed.

FARMER and KLEIN, JJ., concur.

All Citations

824 So.2d 208, 27 Fla. L. Weekly D1590



818827

REC 1280 MAR 09 1994

BOOK 1487, Page 50, Date 1-7-94  
MONROE COUNTY  
DEED RECORDS  
M. J. ...

This instrument Prepared by:  
James R. Keller, Attorney  
2807 Overseas Highway  
Marathon, Florida 33050

1342  
1487, 50

**WARRANTY DEED**  
(Statutory Form -- Section 689.02 F.S.)

This Indenture, made this 7 day of January, 1994, between, EDWARD A. BORYSIWICZ, a married man, joined by his wife, GAIL V. BORYSIWICZ, of the County of Monroe and State of Florida, hereinafter referred to as 'Grantor', and WILLIAM C. RISBERG and M. CATHERINE RISBERG, husband and wife, whose Social Security Numbers are [redacted] and [redacted], respectively, and whose post office address is R.O. Box 519, 819, Key Colony Beach, Florida, 33451-0919, hereinafter jointly and severally referred to as 'Grantee',

Witnesseth: That said Grantor, for and in consideration of the sum of Ten Dollars (\$10.00), and other good and valuable considerations to said Grantor in hand paid by said Grantee, the receipt whereof is hereby acknowledged, has granted, bargained and sold to the said Grantee, and Grantee's heirs and assigns forever, the following described land, lying and being in Monroe County, Florida, to-wit:

Lot 71, Block 10, of the Amended Plat of Key Colony Beach First Addition, LESS the Easterly portion more particularly described by metes and bounds as follows:

Commencing on the northerly right-of-way line of Ocean Drive at its intersection with the easterly right-of-way line of 4th Street a.k.a. 10 Street as shown by the "Amended Plat of Key Colony Beach First Addition" recorded in Plat Book 4, at Page 11 of Monroe County, Florida, Public Records, bear North 62°10'00" East along the said northerly right-of-way line of Ocean Drive 166.43 feet to the point of beginning of that certain easterly portion of Lot 71, Block 10 of the "Amended Plat of Key Colony Beach First Addition" herein intended to be described, said point of beginning being also distant South 62°10'00" West 166.39 feet measured along said northerly right-of-way line of Ocean Drive from its intersection with the westerly right-of-way line of 3rd Street a.k.a. 9th Street as shown by said "Amended Plat of Key Colony Beach First Addition", from said point of beginning bear North 11°28'28" West 46.62 feet on a line which equally bifurcates a duplex dwelling structure constructed on said Lot 71, Block 10; thence bear South 78°13'50" West 3.67 feet; thence bear North 12°09'34" West 27.20 feet to a point on the northerly line of said Lot 71, Block 10; thence bear North 77°50'43" East along said northerly line of Lot 71, Block 10, 52.42 feet to the northeasterly corner thereof; thence bear South 12°05'43" East along the easterly line of said Lot 71, Block 10, 109.76 feet to a point on the aforesaid northerly right-of-way line of Ocean Drive; thence bear South 62°10'00" West along the said northerly right-of-way line of Ocean Drive 51.99 feet back to the point of beginning.

Parcel Number: 00076160-000000; Alternate Key Number: 1081831

**RESERVATION OF EASEMENT**

THERE IS EXPRESSLY RESERVED UNTO THE GRANTOR, EDWARD A. BORYSIWICZ and GAIL V. BORYSIWICZ, husband and wife, their heirs, executors, administrators, successors and assigns, AN EASEMENT and right-of-way, upon and across the following portion of the real property conveyed by this Warranty Deed:

Situated in the City of Key Colony Beach, County of Monroe and State of Florida and known as being an easement over, under, and upon a northwesterly por-

818827 SEC 1288 THE 0915

tion of Lot 71, Block 10, of the Amended Plat of Key Colony Beach First Addition as shown by plat recorded in Plat Book 4, Page 11 of Monroe County, Florida, Public Records, said easement being particularly described as follows:

Commencing on the northwesterly corner of Lot 71, Block 10 of the Amended Plat of Key Colony Beach First Addition as shown by plat recorded in Plat Book 4, Page 11 of Monroe County, Florida, Public Records, said corner being also the POINT OF BEGINNING of the easement herein intended to be described; from said point of beginning bear North 77°51'00" East along the northerly line of said Lot 71, Block 10, 31.97 feet; thence bear South 12°09'00" East and parallel to the westerly line of said Lot 71, Block 10, 21.01 feet; thence bear South 78°19'26" West 31.97 feet to a point on the said westerly line of Lot 71, Block 10; thence bear North 12°09'00" West along the said westerly line of Lot 71, Block 10, 20.75 feet back to the point of beginning.

The right-of-way, easement, rights and privileges herein shall only be used for the following purposes:

1. For pedestrian ingress and egress solely for the purpose of going to and from not more than two (2) boats which may be docked, either temporarily or permanently, within the easement area; and,
2. For the placing, constructing, operating, repairing, maintaining, rebuilding, replacing, relocating, and removing electrical transmission lines and water lines for the purpose of serving and maintaining the boat(s) docked within the easement area.

The easement, rights and privileges granted herein shall be perpetual.

The parties acknowledge that Grantor is the fee simple owner of the following-described property which is adjacent to that real property which is being conveyed by this Warranty Deed:

Lot 70, Block 10, KEY COLONY BEACH, FIRST ADDITION, as recorded in Plat Book 4, page 11, of the Public Records of Monroe County, Florida.

It is the intention of the parties to this conveyance that the easement herein reserved shall inure to the benefit of all subsequent grantees of any part of Lot 70, Block 10, KEY COLONY BEACH, FIRST ADDITION, as recorded in Plat Book 4, Page 11, of the Public Records of Monroe County, Florida.

It is expressly agreed and understood that the easement, rights and privileges herein reserved to Grantor are limited to those stated above and shall not include the right to use for storage of any kind, swim, to clean fish, or to lounge on the dock within the area of the easement.

The cost of placement of the electrical transmission lines and the water pipes within the easement shall be borne solely by the Grantor, or Grantor's successors. Grantor shall indemnify and hold the Grantee harmless from any cost, expense or liability by reason of the original cost and construction of said electrical transmission lines and water pipes or by reason of the subsequent use or maintenance of either the electrical transmission lines or water pipes.

If it shall become necessary to repair or rebuild the dock located within the easement, the cost of such repairing or rebuilding shall be at the expense of both the Grantor and Grantee, in equal shares, if the damage is due to normal wear and tear or a natural disaster. If, however, damage to the

819827 REC 1288 MAR 09 1984

dock is caused by the Grantor, then such damage shall be repaired solely at the Grantor's expense. Further, if damage to the dock is caused by the Grantee, then such damage shall be repaired solely at the Grantee's expense.

Grantee shall continue to enjoy the property which is the subject of this easement for any and all purposes which do not interfere with and prevent the use by Grantor of this easement.

This easement shall be binding on, and shall inure to the benefit of, the heirs, executors, administrators, successors and assigns of the respective parties to this Warranty Deed. The term 'Grantor', whenever used herein, shall include Edward A. Borysiewicz, Gail V. Borysiewicz, and any successor or assignee thereof.

SUBJECT TO conditions, limitations and restrictions of record, if any; and, to taxes for 1994 and subsequent years.

And said Grantor does hereby fully warrant the title to said land, and will defend the same against the lawful claims of all persons whomsoever.

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

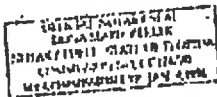
*James R. Keller*.....  
James R. Keller, Witness  
*Dona Marie Keller*.....  
Dona Marie Keller, Witness

*Edward A. Borysiewicz*.....  
Edward A. Borysiewicz  
*Gail V. Borysiewicz*.....  
Gail V. Borysiewicz

STATE OF FLORIDA        )  
                                  ) SS:  
COUNTY OF MONROE    )

The foregoing instrument was acknowledged before me this 4 day of January, 1994, by EDWARD A. BORYSIEWICZ and GAIL V. BORYSIEWICZ, who are personally known to me, and who did/did not take an oath.

*Dona Marie Keller*.....  
Dona Marie Keller, Notary Public



Notary Public Seal for Dona Marie Keller, State of Florida, Commission Expires 12/31/94

94100000000000000000



DOCK EASEMENT SKE  
DOCK EASEMENTS "A" & "B"  
LOT 71, BLOCK 10  
AMENDED PLAT OF KEY COLONY BEACH FIRST ADDITION  
PLAT BOOK 4, PAGE 11

827736

REC 1296 PAGE 0655

LOT 2

LOT 69

CANAL

WOOD DOLPHIN (TYP.)  
WOOD PIER

BOAT RAMP

NORTHERLY LINE LOT 71

N77-51-00E 100' REC. 100.48 PR

EASEMENT "B"

31.97

28.75

21.07

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21.07

21.07

21.07

21.07

DUPLEX

HOUSE

LOT 71  
BLOCK 10

N62-10-00E 103.07 REC.  
104.07 PR

LOT 1

LOT 70

NORTH

SCALE 1" = 30'

Recorded in Official Record Map  
in Manatee County, Florida  
Record Verified  
DANNY L. KOLHAGEN  
Clerk Circuit Court

OCEAN DRIVE

DELINEATION  
DOCK EASEMENT "A" & "B"

From: Patrick Bourde  
To: Steve\_George2@hca.com  
Subject: [Redacted] Commercial Building  
Date: Wednesday, April 30, 2025 10:11 AM



Sent from my iPhone

# City of Key Colony Beach

PO Box 510141 Key Colony Beach, Florida • Phone # 305-289-1212 • Fax# 305-289-1767



March 20<sup>th</sup>, 2024

To: The City of Key Colony Beach Board of Commissioners

From: The Key Colony Beach Planning & Zoning Board

Re: Discussion/Approval to install a 16,000 lb. cradle-style boatlift at the property located at 948 West Ocean Drive

The Planning & Zoning Board heard the applicant's request to install a 16,000 lb. cradle-style boatlift at the property located at 948 West Ocean Drive

**MOTION:** Motion made by Bob Glassman to disapprove. Chair Lancaster asked for a second. Doug Colonell seconded the motion.

**DISCUSSION:** Chair Lancaster restated the motion. City Attorney Smits clarified the motion of agreement to disagree.

**ON THE MOTION:** Rollcall vote. Unanimous approval.

**Final Recommendation:** The Planning & Zoning Board recommends to the City of Key Colony Beach Board of Commissioners to disapprove the requested cradle-style boat lift.

A handwritten signature in black ink that reads "George Lancaster". The signature is written in a cursive style and is positioned above a horizontal line.

George Lancaster, Chair