

## CITY COUNCIL AGENDA STATEMENT



**Meeting Date:** July 23, 2024  
**To:** Honorable Mayor and Council Members  
**From:** Brian Shea, Planning Director  
**Through:** George Garrett, City Manager

**Agenda Item:** Consideration Of A Resolution Of The City Council Of The City Of Marathon, Florida, Amending An Existing Development Agreement Documented And Recorded In City Of Marathon Resolution 2013-02 And Previously Extended Under Resolution 2015-128 Wharf Marina Inc., Previously Bonefish Properties LLC., Pursuant To Chapter 102, Article 8 Of The City Of Marathon Land Development Regulations (LDRS) Entitled "Development Agreement" In Order To Amend And Rectify The Scriveners Errors Between The Agreement And Conditional Use Resolution 2013-01; For Property Which Is Legally Described As Lot 2 And Easterly 5 Ft Of Part Of Lots 1-2 Fat Deer Key, Having Real Estate Numbers 00100350-000000. Nearest Mile Marker 54.

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### RECOMMENDATION:

Staff recommends APPROVAL

**APPLICANT/OWNER:** Wharf Marina, Inc.  
**AGENT:** Oropeza Stones & Cardenas  
**LOCATION:** 12565 Overseas Hwy  
Nearest Mile Marker 54.

(See Figure 1 – Location Map)

**REQUEST:** Amendment to the Bonefish Properties, LLC Development Agreement to allow for the correction of clerical error within the City of Marathon, Florida Development Agreement which incorrectly states that the property is only licensed for 21 units. The Requested Development Agreement would correct the clerical error so the City of Marathon's records properly list the total number of units at the Property as 25 in conformance with Resolution 2013-01, 2013-02 and 2013-09 as well as with the Determination of Building Rights dated June 7, 2022, which also lists the total number of units as 25.

### FUTURE LAND USE MAP DESIGNATION:

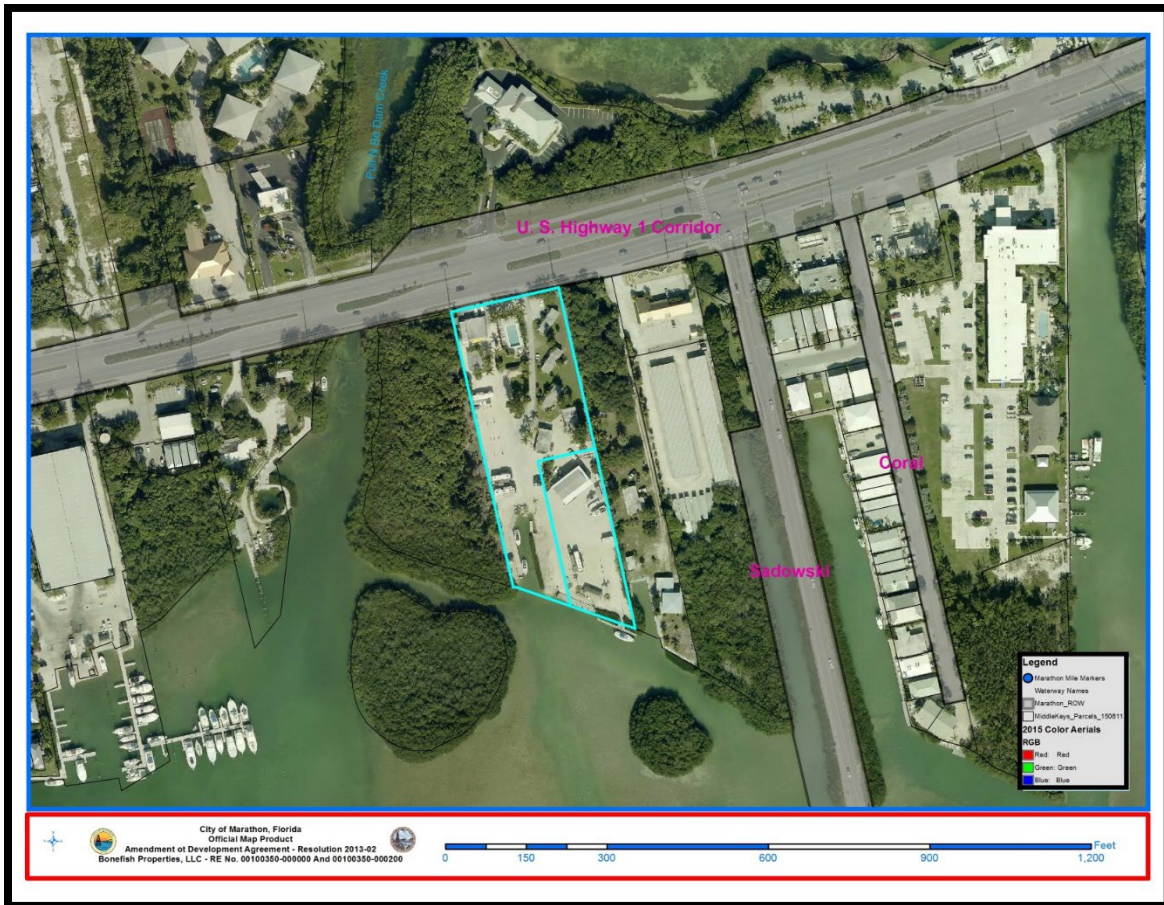
*Current –Mixed Use (MU)*

### ZONING MAP DESIGNATION:

*Current –Mixed Use (MU)*

**PROJECT SIZE:** Approximately 1.85 acres or 80,430 square feet.

**Figure 1  
Location Map**



**EXISTING CONDITIONS:**

The proposed Development Agreement recognizes and summarizes established units, commercial square footage and associated structures as follows:

- i. Transient Units: 25 Transient Transferable Building Rights (12 Single Room Motel Units and 13 RV Sites);
- ii. Commercial Floor Area: 600 Square Foot Bathhouse Facility; and
- iii. Existing Development to Remain: 2 Single Market Rate Transferrable Building Rights (Single Family Residences)  
1,748 Square Foot Commercial Building (Dive Shop & Storage)  
2,370 Square Foot Pool and Pool Deck  
1,748 Linear Feet Marginal Dock Space.

**CONCLUSION:**

The proposed amendment to the project Development Agreement complies with all review criteria as established in the LDRs.

**RECOMMENDATION:**

Staff recommends APPROVAL of an amendment to the Bonefish Properties LLC Development Agreement to allow for the correction of clerical error within the City of Marathon, Florida Development Agreement which incorrectly states that the property is only licensed for 21 units. The Requested Development Agreement would correct the clerical error so the City of Marathon's records properly list the total number of units at the Property as 25 in conformance with Resolution 2013-01, 2013-02 and 2013-09 as well as with the Determination of Building Rights dated June 7, 2022, which also lists the total number of units as 25.

**This Instrument Prepared By:**  
**Gregory S. Oropeza, Esq.**  
**Oropeza, Stones & Cardenas, PLLC**  
**211 Simonton Street**  
**Key West, FL 33040**

**Return To:**  
**City of Marathon**  
**9805 Overseas Highway**  
**Marathon, Florida 33050**

**Re Parcel Nos.: 00100350-000000**  
**00100350-000100, 00100350-000200,**  
**And 100260-000501**

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**AMENDMENT TO DEVELOPMENT AGREEMENT FOR  
WHARF MARINA, INC., AS SUCCESSORY IN TITLE  
TO BONEFISH PROPERTIES, LLC  
MARATHON, FLORIDA**

THIS AMENDMENT ("First Amendment") to the DEVELOPMENT AGREEMENT FOR BONEFISH PROPERTIES, LLC (the "Development Agreement") is made this \_\_\_\_ day of \_\_\_\_\_, 2024 by and between the City of Marathon, a Florida Municipal Corporation (herein referred to as "City"), and Wharf Marina, Inc., a Florida corporation, successor in title to Bonefish Properties, LLC, a Florida limited liability company (herein referred to as "Owner"), pursuant to *Chapter 102, Article 8* of the Land Development Regulations of the City of Marathon ( the "LDRs"), and the Florida Local Government Development Agreement Act, Sections 163.3220-163.3243, *Florida Statutes*, and is binding on the parties as of the effective date as set forth herein:

**WITNESSETH:**

**WHEREAS**, the City and Bonefish Properties, LLC entered in to that certain Development Agreement dated January 16, 2013 and recorded in Official Records Book 2622, Page 378, Public Records of Monroe County, Florida; and

**WHEREAS**, the Development Agreement pertains to the real property located at 12565 Overseas Highway, Marathon, Florida (the "Property") and contains a scrivener's error with regard to the total number of units located at the Property; and

**WHEREAS**, the Owner has since acquired the Property and is thus the successor-in-title to Bonefish Properties, LLC; and

**WHEREAS**, a Conditional Use approval set forth in City of Marathon Resolution 2013-01 sets forth a City approved Development Order 2012-06, granting a CUP including a proposed site plan for the Property setting forth a Transient Lodging Facility with twelve (12) hotel units and thirteen (13) transient RV units at the Property. A copy of Resolution 2013-01 is attached hereto as Exhibit A; and

**WHEREAS**, Sections C(1) and G of the Development Agreement incorrectly state that the Property is entitled to 600 square foot of Commercial Floor Area (Bathhouse Facility), 1,748 square feet of Commercial Floor Area (Dive Shop & Storage), 2 Market Rate Transferable Building Rights, and 21 Transient Transferable Building Rights (eight (8) single room transient motel units and thirteen (13) RV sites); and

**WHEREAS**, the City has confirmed, by and through that certain Determination of Building Rights Letter dated June 7, 2022 and identified with Sender Site Identifier Number TBR DP-22-15 (“DBR Letter”), that the Property is entitled to 600 square foot of Commercial Floor Area (Bathhouse Facility), 1,748 square feet of Commercial Floor Area (Dive Shop & Storage), 2 Market Rate Transferable Building Rights, and 25 Transient Transferable Building Rights. A Copy of the DBR Letter is attached hereto as Exhibit B; and

**WHEREAS**, the City and the Owner desire to amend the Development Agreement to reflect the correct the scrivener’s error to correct the total number of units pursuant to the DBR Letter.

**NOW, THEREFORE**, in consideration of the premises and other good and valuable considerations, the receipt and sufficiency of which is hereby acknowledged, Sections C(1) and G of the Development Agreement are hereby amended as hereinafter set forth.

1. Unless otherwise defined in this Amendment, all capitalized terms used in this Amendment shall have ascribed to them as set forth in the Development Agreement.

2. Section C (1) of the Development Agreement is hereby amended as follows:

C. Permitted Uses.

1. The Development permitted on the Property shall consist of those uses set forth herein, as identified on the conceptual site plan attached hereto as Exhibit “3”, and incorporated herein by reference. The permitted uses are as follows:

- i. Transient Units: 25 Transient Transferable Building Rights (12 Single Room Motel Units and 13 RV Sites);
- ii. Commercial Floor Area: 600 Square Foot Bathhouse Facility; and
- iii. Existing Development to Remain: 2 Single Market Rate Transferrable Building Rights (Single Family Residences)  
1,748 Square Foot Commercial Building (Dive Shop & Storage)  
2,370 Square Foot Pool and Pool Deck  
1,748 Linear Feet Marginal Dock Space.

3. Section G of the Development Agreement is hereby amended as follows:

G. Redevelopment and Replacement of BPAS Exempt Units and Square Footage

The Parties acknowledge that there existed on the Property a total of twenty-five (25) transient units, two (2) single family residences, 2,327 square feet of commercial space, all of which are lawfully established through BPAS Resolution 2013-09 and 1,748 linear feet of marginal dock space. The City acknowledges that, by the covenants and terms of this Agreement, the Owner may: redevelop 16 transient motel units into 1 two story building housing twelve (12) single room transient motel units and thirteen (13) RV transient unit spaces, and the requested 600 square feet of commercial space. All other residential or commercial space will remain in place as it currently exists.

4. It is the intent of this Amendment that the amendment contained herein shall be effective as of and relate back to the date the Development Agreement was filed in the Public Records of Monroe County, Florida.

IN WITNESS WHEREOF, the City of Marathon and the Owner have caused this Amended Development Agreement to be executed on this \_\_\_\_ day of \_\_\_\_\_, 2024.

Witnesses: Wharf Marina, Inc., a Florida corporation,

\_\_\_\_\_  
Witness

By: \_\_\_\_\_  
**James Figuerado, President**

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

\_\_\_\_\_  
Witness Address

\_\_\_\_\_  
Witness

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

\_\_\_\_\_  
Witness Address

STATE OF FLORIDA            )  
                                          ) SS:  
COUNTY OF MONROE        )

On this \_\_\_\_ day of \_\_\_\_\_, 2024, before me personally came by means of physical presence James Figuerado, as President of the Wharf Marina, Inc., a Florida corporation, who is personally known to me (yes) (no) or who has produced \_\_\_\_\_ as identification to me, and who acknowledged execution of the foregoing instrument.

\_\_\_\_\_  
Notary Public, State of Florida  
Name: \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_

Witnesses:

CITY OF MARATHON

\_\_\_\_\_  
Witness

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

\_\_\_\_\_  
Witness Address

By: \_\_\_\_\_

**Robyn Still, Mayor**

\_\_\_\_\_  
Witness

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

\_\_\_\_\_  
Witness Address

By: \_\_\_\_\_

**Diane Clavier, City Clerk**

APPROVED AS TO FORM AND LEGALITY FOR THE USE AND RELIANCE OF THE CITY OF MARATHON, FLORIDA ONLY.

\_\_\_\_\_  
City Attorney

STATE OF FLORIDA            )  
                                          ) SS:  
COUNTY OF MONROE        )

On this \_\_\_\_ day of \_\_\_\_\_, 2024, before me personally came by means of physical presence Luis Gonzalez, as Mayor of the City of Marathon, who is personally known to me (yes) (no) or who has produced \_\_\_\_\_ as identification to me, and who acknowledged execution of the foregoing instrument.

\_\_\_\_\_  
Notary Public, State of Florida  
Name: \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_