Sponsored by: Puto

CITY OF MARATHON, FLORIDA
RESOLUTION 2005-121

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, ADOPTING THE RECOMMENDATIONS OF THE SPECIAL MASTER IN THE BENEFICIAL USE APPLICATION OF JANINE McCOLE

WHEREAS, on January 4, 1996, the Monroe County Year 2010 Comprehensive Plan became effective; and

WHEREAS, on November 30, 1999 the City of Marathon incorporated and adopted the 2010 Comprehensive Plan; and

WHEREAS, the application of Janine McCole for a beneficial use determination for property located at Lot 4, Block D, Waloriss Subdivision, RE: 00353110-000000 in the City of Marathon was heard on August 13, 2005 by Thomas D. Wright, Special Master;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, THAT:

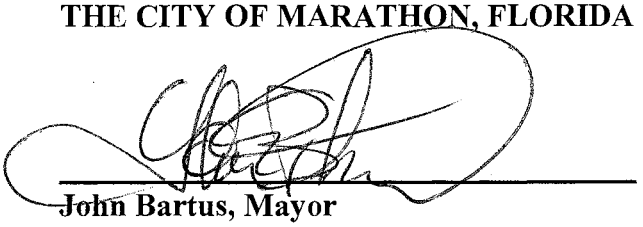
Section 1. The above recitals are true and correct and incorporated herein.

Section 2. The Findings of Fact and Conclusions of Law of the Recommended Beneficial Use Determination of the Special Master are hereby ADOPTED and the beneficial use application of Janine McCole is accordingly DENIED.

Section 3. This resolution shall take effect immediately upon its adoption.

PASSED AND APPROVED by the City Council of the City of Marathon, Florida, this 27th day of September, 2005.

THE CITY OF MARATHON, FLORIDA



John Bartus, Mayor

AYES: Bull, Mearns, Miller, Pinkus, Bartus
NOES: None
ABSENT: None
ABSTAIN: None

ATTEST:

Cindy L. Ecklund
City Clerk

(City Seal)

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

City Attorney

Exhibit "A"

BENEFICIAL USE
CITY OF MARATHON, FLORIDA
SPECIAL MASTER

IN RE:

Jeanine Isabelle McCole
Beneficial Use Application

PROPOSED DENIAL OF BENEFICIAL USE DETERMINATION

This cause came on to be heard by the Beneficial Use Hearing Officer on August 12, 2005. Applicant was represented by Andrew Tobin, Esquire and The City of Marathon was represented by Jimmy Morales. After having reviewed the application and exhibits, heard oral testimony of the Applicant and her attorney and having also considered the testimony of witnesses, the Special Master hereby makes the following findings of fact and conclusions of law.

RE: Lot 4; Block D, WALORISS SUBDIVISION, Plat Book 3, Page 113, Monroe County Public Records.

ISSUE

Whether the Applicant has been denied all reasonable economic use of her property by the requirement of a 100% open space ratio for "red flag wetlands", as contained in Marathon's Land Development Regulations and Comprehensive Plan, specifically by Policies 203.1.1 and 204.2.1 of the year 2010 Comprehensive Plan and sections 9.5-347 of the Land Development Regulations.

FINDINGS OF FACT

1. The Applicant has taken the following actions to obtain approval for the development sought:

a. The Applicant purchased the subject property on March 1, 1978 for $20,000.00.
b. The property is zoned "IS", is undeveloped, and is in a residential neighborhood of single-family homes.
c. The Applicant engaged Cameron Construction Company in the mid-

1980s to construct a single family home on the property. They hired Paul Kenson to prepare plans. In 1985, Cameron Construction Company went out of business. They contacted the McColes and told them they could not proceed with the project and did not think the lot was buildable.

d. Around 1985, Ms. McCole asked Haggerty Construction to build the house on the lot, but they also went out of business. Mrs. McCole then had discussions with "various consultants and lawyers", but in the words of the Applicant, those efforts "petered out".
e. No applications for building permits or development of any type on the property were submitted since the Applicant purchased the property in 1978.

2. At the time the property was purchased, the lot resembled all of the adjacent lots. Since the time of the purchase, all of the other lots in the subdivision, except for this lot and the adjacent lot, have been built upon. At the time Mrs. McCole obtained the property she spoke with someone with the County who told her that the lot was a buildable lot.

3. The property to the East was deemed a red-flagged wetland as a result of a study by a team of biologists that took place in 1997 and 1998 using the KEYWEP. An evaluation system designed specifically for determining the quality of wetlands in the Florida Keys. This parcel was not identified during that study, but upon a site inspection in November, 2004, it was determined that the parcel is below the seasonal high waterline. The property therefore, is classified as a red-flagged wetland that can have no development.

4. At the time Mrs. McCole purchased the property and up until the mid-1990s, the property would have best been described as disturbed with salt marsh and buttonwood.

5. As the decades passed and the adjacent properties were filled, the environmental conditions of the property changed to the point that, disturbed with salt marsh and buttonwood is not the proper description, but rather now the property is mangrove wetlands, in which there is a 100% open space ratio, making development of the property impossible.

CONCLUSIONS OF LAW

7. The application, Exhibits and testimony show that there has been no application whatsoever made for proposed development on the site. Therefore, there has been no denial at any level for development. The Applicant indicated in her testimony, that she desires to build a single family home on the lot. Therefore, there has been no exhaustion of administrative remedies.

8. Exhausting administrative remedies would not be fruitful in that this property now constitutes red-flagged wetlands on which no development is allowed. The 2010 Comprehensive Plan has rendered the property unbuildable. Sections 9.5-343 and 9.5-345 of the City's LDRs prohibit all development.

9. This property was buildable and was disturbed with salt marsh buttonwoods for approximately twenty years after its purchase by the Applicant. The Applicant in taking no action to build, but allowing development adjacent to the property, caused the wetland character of the lot to be increased. The passage of time with inaction by the Applicant and lack of application for any development caused the property to be reclaimed by nature. The property would be allowed to be developed if its original characteristics had been maintained.

10. The reclamation by nature of the property was not due to any act of the City of Marathon, or Monroe County prior to the incorporation of the City of Marathon. Therefore, there was a total absence of any government action causing the harm complained of. No regulation has interfered with the Applicant's reasonable investment based expectation. The Applicant's inaction regarding the property has caused it to be reclassified in a more restrictive environmental classification than it would have been, but for the inaction of the Applicant;

Accordingly, I recommend to the City of Marathon that the Application be **DENIED,** as Applicant has failed to demonstrate that her property has met the criteria for eligibility, as the changed nature of the property rather than imposition of regulations, caused the impossibility of development.

DONE AND ORDERED, at Marathon, Monroe County, Florida, this 22 day of August, 2005.

Thomas D. Wright, Esquire
FBN 257664
Beneficial Use Hearing Officer