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**CITY OF MARATHON, FLORIDA
RESOLUTION 2005-122**

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 GORDON BEYER

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 Gordon Beyer for a beneficial use determination for property located at Lot 1, Bamboo Key, Monroe County, Florida, having Real Estate Number 00105660-000000 in the City of Marathon was heard on June 13, 2005 and August 23, 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 Gordon Beyer 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.

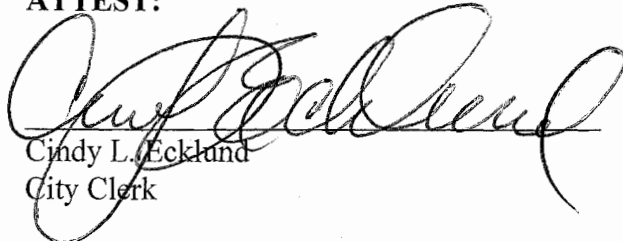
THE CITY OF MARATHON, FLORIDA



John Bartus, Mayor

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

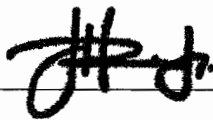
ATTEST:



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

**BENEFICIAL USE
CITY OF MARATHON, FLORIDA
SPECIAL MASTER**

IN RE:

**Gordon Beyer
Bamboo Key
RE# 00105660-000000
Beneficial Use Application**

**BENEFICIAL USE DETERMINATION
AND STATEMENT OF REMEDIAL ACTION**

This cause came on to be heard by the Beneficial Use Hearing Officer on July 13, 2005 and August 23, 2005. Gordon Beyer (hereinafter "Applicant") was represented by Andrew Tobin, Esquire and The City of Marathon was represented by City Attorney, Jimmy Morales, Esquire. After having reviewed the application and exhibits, heard oral testimony of the Applicant and argument of the attorneys and having also considered the testimony of witnesses, the Special Master hereby makes the following findings of fact and conclusions of law.

RE: Lot one, Section 28, Township 65 South, Range 33 East, containing 8.95 acres, more or less, and known as BAMBOO KEY, Monroe County, Florida, together with all riparian rights owned by, vested in or transferable by the grantor which are contiguous to the said property. .

ISSUE

Whether the Applicant has been denied all reasonable economic use of his property by the requirements of Marathon's Land Development Regulations and Comprehensive Plan, specifically under the 2010 Comprehensive Plan that renders the property unbuildable.

FINDINGS OF FACT

1. The Applicant purchased the subject property on April 21, 1970 for \$55,000.00.

2. The property is zoned "OS" (offshore island), is undeveloped, and constitutes an entire island.

3. The Beneficial Use Application was originally filed by the Applicant on January 7, 1997. For various reasons, this matter has been pending for over 8 years.

4. At the time Applicant purchased the property in 1970 it was zoned "GU" (General Use), which authorized development of one single-family home per acre, together with accessory structures, such as docks as-of-right. At the time of purchase Applicant could have built nine homes on the property.

5. In 1986, Monroe County (the governmental predecessor to Marathon) adopted a comprehensive land use plan and land development regulations that changed the zoning to offshore island "OS". Although the OS district allows detached residences as-of-right, (Sec. 9.5-241) there are numerous restrictions on development, to wit density is limited to .1 per acre (requiring ten acres for one unit). Under these regulations, Applicant could have built one single-family home, provided 95% of the island was left as open space and one acre transferable development rights were transferred from an "OS" district.

6. Under the Monroe County Year 2010 Comprehensive Plan, adopted January 5, 1996, the property became completely unbuildable due to no development allowed on off shore islands documented as a bird rookery.

7. Other than the Applicant being allowed to enter onto the property to camp, there is absolutely no allowable use of the property under the City of Marathon Land Development Regulations.

8. The Applicant waited 30 years before applying for any form of development on the property.

9. The property has been assigned 16 ROGO points under the City of Marathon's Comprehensive Land Use Plan. In the event of transfer of these points to another property, they must all be moved to the same receiver site. Most recently 24 points have been enough to indicate a property could be granted a residential permit under the City of Marathon's Residential Rate of Growth Ordinance (ROGO).

10. Recent transactions in the Marathon area indicate that a ROGO lot worth two ROGO points has been selling in the approximate range of \$25,000 to \$30,000. Based on recent sales, the value of 16 ROGO points is approximately \$150,000.

11. On October 18, 2000, 30 years after acquiring the property, the Applicant made application for a single dock permit through Glen Boe and Associates, Inc. of Marathon, Florida. No other evidence of applications or permits was submitted or any other plan of development. The dock permit was denied because of an accessory structure is not permitted where there is no principal residence on the site.

12. The Applicant produced at the Hearing, no evidence whatsoever of a plan for development of the property that existed any time from the purchase of the property through the time of the Hearing, other than the single dock application.

CONCLUSIONS OF LAW

13. In determining Applicant's investment based expectations, it must be noted the Applicant sat on the property taking no steps whatsoever to develop it for approximately 30 years. There was a singular lack of any investment in the property after its acquisition.

14. In the course of three decades, due to environmental sensitivity and the fact that the property constitutes an environmentally valuable bird rookery, restrictions on the development of the property became more and more stringent to the point that the applicable 2010 Comprehensive Plan prohibits any development of the property under any circumstances. The property has, however, been assigned 16 ROGO points which have substantial value. For purposes of this determination, I compute the value of the ROGO points to be \$150,000.

15. The case of Good vs U.S., 189 F3rd 1355 (FED.CIR 1999) is on point to this case when it states that, "In light of the growing consciousness of and sensitivity toward environmental issues, Appellant must also have been aware that standards could change to his detriment and that regulatory approval could become harder to get." These issues bear directly upon a determination of whether the Applicant in this case lacked a reasonable investment backed expectation that he would obtain the regulatory approval needed to develop the property at issue here. It is not possible to determine the exact expectations of Applicant where there was no evidence of any plan of development that existed at any time or for any permits for development (other than a single dock) sought by Applicant at any time.

16. The law does not entitle Applicant to relief solely under the theory that all reasonable beneficial use is lost when uses that were permitted at the time of purchase have been prohibited by various changes to the law over a 30-year period. There must have been governmental action depriving the Applicant's reasonable investment based expectations for use of the property, in order for the Applicant to establish a right to relief.

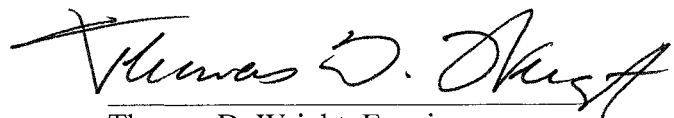
17. Although the lot is under current regulations unusable for development, the issuance of 16 ROGO points under the circumstances of this case constitutes a reasonable economic use of the property. There is a distinction between “economic use” and “actual use” and the award of valuable ROGO points allows a reasonable economic use of the property. As stated by the US Supreme Court in the case of PennCentral Transportation Company vs City of New York, “the [TDR] rights nevertheless mitigate whatever financial burden the law has imposed on appellants and, for that reason, are to be taken into account in considering the impact of regulation”. 438 U.S. 105,137(1978).

18. The Applicant has been adequately compensated by the issuance of 16 ROGO points, which may be used toward the development of other property in Marathon.

19. The right of Applicant to use the property for camping and recreational use also has value, but in the absence of ROGO points, would not constitute reasonable economic value to Applicant in light of their investment in the property. However, because valuable ROGO points exist, the recreational value to Applicant has significance.

19. I specifically recommend denial of this application in that the property owner sat on the investment in the property for 30 years watching the environmental restrictions on the use of the property become more and more strict. The lack of investment by the property owner restricts the expectations of the property owner from reasonably anticipating a greater development value in the property than presently exists. The award of ROGO points and recreational uses allowed Applicant, reasonably met Applicant’s investment- based expectations. Accordingly, I recommend to the City of Marathon, the application be **DENIED** as Applicant failed to demonstrate that his property met the criteria for eligibility, as Applicant did not have a reasonable investment based expectation greater than the current value and uses of the property.

DONE AND ISSUED, at Marathon, Monroe County, Florida, this 7 day of September, 2005.



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