

**CITY OF MARATHON, FLORIDA
RESOLUTION 2006-073**

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, APPROVING THE REQUEST BY JAMES CHAPLIN, LLC, FOR A MAJOR CONDITIONAL USE PERMIT, PURSUANT TO SECTION 9.5-69 OF THE CITY OF MARATHON, AUTHORIZING THE DEVELOPMENT OF A RESTAURANT, SWIMMING POOL, DECK AND PATIO AREA ON A VACANT PARCEL, AT PROPERTY LEGALLY DESCRIBED AS PART OF LOT S 1, 2, AND 3, BLOCK 1, KNIGHT'S KEY VILLAGE, KNIGHT'S KEY, MONROE COUNTY, FLORIDA, HAVING REAL ESTATE NUMBERS 00319520-000000, 00319530-000000, AND 00319540-000000

WHEREAS, on the 17th day of April, 2006, the City of Marathon (the "City") Planning Commission (the "Commission") and on the 9th day of May, 2006, the City Council (the "Council") conducted properly advertised public hearings (the "Public Hearings") regarding the request submitted by James Chaplin, LLC (the "Applicant"), for a major conditional use permit pursuant to Sections 9.5-69 of the City Code (the "Code"); and

WHEREAS, the purpose of the major conditional use permit is to allow the Applicant to develop a 238 seat restaurant, one swimming pool, deck and patio area and parking lot on a vacant parcel (the "Proposed Use") at the property described in the application (the "Property").

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

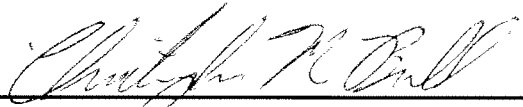
Section 1. The above recitals are true and correct and incorporated herein.

Section 2. The City Council hereby approves Development Order 2006-05, a copy of which is attached hereto as Exhibit "A", granting a major conditional use to James Chaplin, LLC for the Proposed Use. The Director of Planning is authorized to sign the development order on behalf of the City.

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 23rd day of May, 2006.

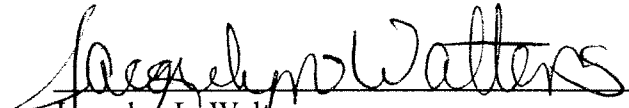
THE CITY OF MARATHON, FLORIDA



Christopher M. Bull, Mayor

AYES: Pinkus, Tempest, Bull
NOES: None
ABSENT: Mearns, Worthington
ABSTAIN: None

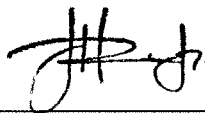
ATTEST:



Jacquelyn L. Walters
Acting City Clerk

(City Seal)

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



City Attorney



**CITY OF MARATHON, FLORIDA
MAJOR CONDITIONAL USE
DEVELOPMENT ORDER # 2006-05**

Doc# 1604146
Bk# 2239 Pgs 838

A DEVELOPMENT ORDER APPROVING THE MAJOR CONDITIONAL USE APPLICATION SUBMITTED BY JAMES CHAPLIN, LLC, FOR A MAJOR CONDITIONAL USE PERMIT, PURSUANT TO SECTION 9.5-69 OF THE CITY OF MARATHON, AUTHORIZING THE DEVELOPMENT OF A RESTAURANT, SWIMMING POOL, DECK AND PATIO AREA ON A VACANT PARCEL, AT PROPERTY LEGALLY DESCRIBED AS PART OF LOTS 1, 2, AND 3, BLOCK 1, KNIGHT'S KEY VILLAGE, KNIGHT'S KEY, MONROE COUNTY, FLORIDA, HAVING REAL ESTATE NUMBERS 00319520-000000, 00319530-000000, AND 00319540-000000 (THE "PROPERTY") PROVIDING FOR CONDITIONS OF APPROVAL; PROVIDING FOR PENALTIES FOR VIOLATIONS OF THE CONDITIONS OF APPROVAL; PROVIDING FOR A TERM OF THE APPROVAL; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, James Chaplin, LLC is the owner of the Property and applied for a Major Conditional Use approval to develop a 238 seat restaurant, one swimming pool, deck and patio area and parking lot on property located in the Mixed Use (MU) land use district (the "Application"); and

WHEREAS, the Planning Commission (Commission), in accordance with the provisions of Sections 9.5-22 and 9.5-69 of the City of Marathon Land Development Regulations, met to review the Application to determine its compliance with the applicable regulations on April 17, 2006; and

WHEREAS, the Commission recommended approval of the Application to the City Council (the "Council"), subject to conditions; and

WHEREAS, the Council of the City of Marathon, Florida, in accordance with the provisions of Sections 9.5-21 and 9.5-69 of the City of Marathon Land Development Regulations, met to review the Application to determine its compliance with the applicable regulations on May 9, 2006; and

WHEREAS, the Council has duly considered the recommendation of the Commission, and the information and documentary evidence submitted by James Chaplin, LLC and does hereby find and determine as provided below.

FINDINGS OF FACT:

1. Based on the submitted site plan, the site is a 1.5 acre parcel. The applicant is proposing to construct a 5,876 square foot restaurant with a swimming pool, deck, patio and parking area.



**CITY OF MARATHON, FLORIDA
MAJOR CONDITIONAL USE
DEVELOPMENT ORDER # 2006-05**

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FINDINGS OF FACT:

1. Based on the submitted site plan, the site is a 1.5 acre parcel. The applicant is proposing to construct a 5,876 square foot restaurant with a swimming pool, deck, patio and parking area.

2. In accordance with Section 9.5-65 of the Code, the Commission and Council considered and determined the Applicant met the following criteria:
 - a. The Proposed Use is consistent with goals, objectives and policies of the City Comprehensive Plan (the “Plan”) and Chapter 9.5 of the Code; and
 - b. The Proposed Use is consistent with the character of the immediate vicinity of the parcel proposed for development; and
 - c. The design of the Proposed Use minimizes adverse effects, including visual impacts, of the proposed use on adjacent properties; and
 - d. The Proposed Use will not have an adverse effect on the value of surrounding properties; and
 - e. The public facilities and services, including but not limited to roadways, park facilities, police and fire protection, hospital and medical services, hurricane shelter, drainage systems, refuse disposal, water and sewers, and schools are adequate; and
 - f. The Proposed Use complies with all additional standards imposed on it by the particular provisions of Chapter 9.5 of the Code, authorizing such use and by all other applicable requirements of the Code.

CONDITIONS IMPOSED:

Granting approval of the Application is subject to the following condition:

1. The landscape plan shall be revised to include a three (3) foot opaque fence along Kyle Way West and the southern property line. The fence shall be set back from the property line a sufficient distance to plant the required landscaping between the fence and the property line.
2. The landscape plan shall be revised in the following manner:
 - a. The US 1 major street buffer shall meet the minimum requirements of the Code.
 - b. The district boundary buffer along the eastern property line shall be modified to increase the number of shrubs to 130, which shall be planted on center to provide a thick hedge. The number of canopy trees shall be increased to 32.
 - c. The district boundary buffer along the southern property line shall be modified to increase the number of shrubs to 130, which shall be planted on center to provide a thick hedge. The number of canopy trees shall be increased to 32.
3. There shall be no amplified music and all music shall stop at 9:00 p.m.
4. The Applicant shall pursue the installation of the traffic device on Kyle Way West in accordance with applicable provisions of Florida State law.

VIOLATION OF CONDITIONS:

The applicant understands and acknowledges that it must comply with all of the terms and conditions herein, and all other applicable requirements of the City or other governmental agencies applicable to the use of the Property. In accordance with the Code, the Council may revoke this approval upon a determination that the Applicant or its successor or designee is in non-compliance with this

Resolution or Code. Failure to adhere to the terms and conditions of approval contained herein is a violation of the Code and persons found violating the conditions shall be subject to the penalties prescribed therein.

CONCLUSIONS OF LAW:

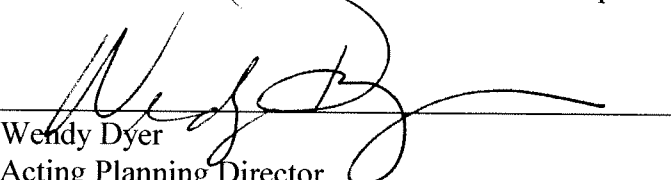
Based upon the above Findings of Fact, the Council does hereby make the following Conclusions of Law:

1. The Application has been processed in accordance with the applicable provisions of the City Code, and will not be detrimental to the community as a whole; and
2. In rendering its decision, as reflected in this Resolution, the Council has:
 - (a) Accorded procedural due process;
 - (b) Observed the essential requirements of the law;
 - (c) Supported its decision by substantial competent evidence of record; and
3. The Application for a major conditional use is hereby GRANTED subject to the conditions specified herein.

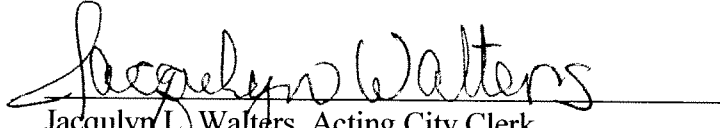
EFFECTIVE DATE:

This development order shall not take effect for thirty (30) days following the date it is filed with the City Clerk, and during that time, the major conditional use approval granted herein shall be subject to appeal as provided in the City Code. An appeal shall stay the effectiveness of this development order until said appeal is resolved.

June 12, 2006
Date


Wendy Dyer
Acting Planning Director

This Development Order was filed in the Office of the City Clerk of this 12 day of June 2006.


Jacquelyn L. Walters, Acting City Clerk

NOTICE

Section 9.5-72 (a) of Marathon City Code states that a conditional use permit shall not be transferred to a successive owner without notification to the Development Review Coordinator within five (5) days of the transfer.

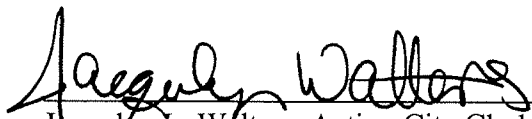
Under the authority of Section 9.5-72(a) of the City of Marathon Land Development Regulations, this development order shall become null and void with no further notice required by the City, unless a complete building permit application for site preparation and building construction with revised plans as required herein is submitted to the City of Marathon Building Official within six (6) months of the expiration of the Department of Community Affairs appeal period or the date when the Department of Community Affairs waives its appeal and all required certificates of occupancy are procured with three (3) years of the date of this development order is approved by the City Council.

In addition, please be advised that pursuant to Chapter 9J-1, Florida Administrative Code, this instrument shall not take effect for forty-five (45) days following the rendition to the Florida Department of Community Affairs. During that forty-five days, the Florida Department of Community Affairs may appeal this instrument to the Florida Land and Water Adjudicatory Commission, and that such an appeal stays the effectiveness of this instrument until the appeal is resolved by agreement or order.

CERTIFICATE OF SERVICE

A true and correct copy of the above and foregoing Resolution was furnished, via U.S. certified mail, return receipt requested, addressed to James Chaplin, LLC,
this 21 day of June, 2006.

5190 Overseas Highway
Marathon FL 33050



Jacquelyn L. Walters, Acting City Clerk