

**CITY OF MARATHON, FLORIDA
RESOLUTION 2006-108**

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, GRANTING THE APPEAL BY DAVID ADDISON AND CAROLYN GAUTREAU, AND OVERTURNING THE DECISION OF THE CITY OF MARATHON PLANNING DEPARTMENT GRANTING A 3APS ALCOHOLIC BEVERAGE USE PERMIT FOR PUBLIX SUPERMARKET, PROPERTY OWNED BY BIOSPHERE PROPERTIES, LOCATED AT 5407 OVERSEAS HIGHWAY, VACCAS KEY, AND FURTHER DESCRIBED AS PART OF GOVERNMENT LOT 2 SECTION 11, TOWNSHIP 66 SOUTH, RANGE 32, RE# 00103750-000000 AND LEGALLY DESCRIBED AS OF PART OF GOVERNMENT LOT 2 SECTION 11, TOWNSHIP 66 SOUTH, RANGE 32 EAST.

WHEREAS, on the April 17, 2006, the City of Marathon (the "City") Planning Commission (the "Commission") and on the June 27, 2006, the City Council (the "Council") conducted properly advertised public hearings (the "Public Hearings") regarding the appeal request submitted by David Addison and Carolyn Gautreaux (the "Applicant"), on a decision of the City of Marathon granting a 3APS Alcoholic Beverage Permit for Publix Supermarket, property owned by Biosphere Properties pursuant to Section 19-218 of the City Code (the "Code"); and

WHEREAS, the purpose of the appeal was to seek the Council's review of the City Planning Department's decision to approve the Applicant's 3APS alcoholic beverage use permit at the property described as 5407 Overseas Highway, Marathon; and

WHEREAS, the Council having considered the recommendation of the Planning Commission and the testimony and evidence presented by all parties, including the Appellant and Applicant, does hereby find and determine as provided below.

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 following Finding of Facts are made:

(1) The Planning Department presented to the Commission and Council its written recommendation regarding the Applicant's request for a 3APS Alcoholic Beverage Use Permit, and the Appellants' objections to the granting of it.

(2) The Appellants presented competent substantial evidence that City staff erred as a

matter of law or fact that the Applicant met all of the criteria in Section 19-218, thus entitling it to the granting of a 3APS Alcoholic Beverage Use Permit.


Section 3. The following Conclusions of Law are made:

- (1) City staff processed the Appeal in accordance with the City Code.
- (2) The Appellant demonstrated through competent substantial evidence that the Appeal should be granted.
- (3) That 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; and
 - (c) Supported its decision by substantial competent evidence of record.
- (4) The Appeal is GRANTED and the Council reverses the decision of the Planning Department, to grant a 3APS Alcoholic Beverage Use Permit to the Applicant.

Section 4. This Resolution shall not take effect for thirty (30) days following the date it is filed with the City Clerk, and during that time, the administrative appeal granted herein shall be subject to appeal as provided in the City Code. An appeal shall stay the effectiveness of this Resolution until said appeal is resolved.

PASSED AND APPROVED by the City Council of the city of Marathon, Florida, this 11th day of July, 2006.


THE CITY OF MARATHON, FLORIDA



Marjie Mearns, Vice Mayor

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

ATTEST:



Diane Clavier
City Clerk

(City Seal)

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

A handwritten signature in black ink, appearing to be "J. H. Jones", written over a horizontal line.

City Attorney