

Sponsored by: Snead

**CITY OF MARATHON, FLORIDA  
RESOLUTION 2010-43**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, DENYING THE ADMINISTRATIVE APPEAL FILED BY LANCE B. KYLE, AS THE PERSONAL REPRESENTATIVE OF JAMES W. KYLE D/B/A KNIGHTS KEY INN, PURSUANT TO SECTION 26-39 OF THE CITY OF MARATHON CODE CHALLENGING THE ISSUANCE OF A RIGHT-OF-WAY USE PERMIT FOR TRAFFIC CALMING GATES LOCATED ON KYLE WAY; AND PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, on or about May 23, 2006 the City of Marathon approved Resolution 2006-073 and issued Conditional Use Development Order, DO # 2006-05, to Chappy's Restaurant, Inc. ("Chappy's") allowing the development of a restaurant on property located on Kyle Way, Knight's Key; and

**WHEREAS**, one of four conditions imposed by the City Council in the Development Order included the placement of traffic calming gates on Kyle Way; and

**WHEREAS**, on or about September 22, 2009, Chappy's applied for a right-of-way use permit for the placement of traffic control gates on Kyle Way; and

**WHEREAS**, both the City's Building and Public Works Departments reviewed the application, and the Acting City Manager issued a right-of-way use permit ("Permit") for two traffic control gates on Kyle Way; and

**WHEREAS**, on or about December 11, 2009, Mr. Nick Stieglitz on behalf of Lance B. Kyle, as the personal representative of James W. Kyle d/b/a Knights Key Inn, ("Appellant") filed an administrative appeal pursuant to Section 26-39 of the Marathon Code challenging the issuance of the Permit ("Appeal"); and

**WHEREAS**, on February 23, 2010 a duly noticed public hearing was held on the Appeal and evidence and testimony was presented and taken; and

**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, having considered the evidence and testimony presented by

all parties, including the Appellant, hereby makes the following finding of facts:

1. The City Council heard the Appeal on February 23, 2010.
2. The Appeal was properly noticed and all interested parties were given an opportunity to introduce evidence, give testimony, and be heard.
3. City staff presented to the City Council its written and verbal recommendation to uphold the issuance of the Permit.
4. The Appellant failed to demonstrate through competent substantial evidence that the Acting City Manager acted arbitrarily or capriciously in issuing the Permit.
5. The granting of the Appeal is not supported by the evidence or testimony presented at the hearing.

**Section 3.** Based upon the above findings of fact the City Council hereby makes the following conclusions of law:

1. The Appeal has been processed in accordance with Section 26-39 of the Marathon Code.
2. In rendering its decision, as reflected in this Resolution, the City Council has:
  - (a) Accorded procedural due process; and
  - (b) Observed the essential requirements of the law; and
  - (c) Supported its decision by competent substantial evidence of record.
3. Pursuant to Section 26-39 of the Marathon Code, the Appeal is DENIED.

**Section 4** This Resolution shall take effect thirty (30) days after it has been filed with the City Clerk. If during that time frame the decision of the City Council is appealed as provided for in the Florida Appellate Rules of Procedure, the appeal shall stay the effectiveness of this Resolution until such appeal is resolved by a court of competent jurisdiction.

**PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, THIS 27<sup>TH</sup> DAY OF APRIL, 2010.**

**THE CITY OF MARATHON, FLORIDA**

  
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**Ginger Snead, Mayor**

AYES: Keating, Ramsay, Worthington, Cinque, Snead  
NOES: None  
ABSENT: None  
ABSTAIN: None

**ATTEST:**

*Diane Clavier*

Diane Clavier, City Clerk

(City Seal)

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

*[Handwritten Signature]*

City Attorney

This Resolution was filed in the Office of the City Clerk on April 14<sup>th</sup>, 2010.

*Diane Clavier*

Diane Clavier, City Clerk