

**CITY OF MARATHON, FLORIDA
RESOLUTION 2011-08**

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, DENYING AN APPEAL FILED BY JACK E. GALARDI AND UPHOLDING THE RESOLUTION AND DECISION OF THE PLANNING COMMISSION OF THE CITY OF MARATHON TO DENY RECOGNITION OF AN ADULT ENTERTAINMENT FACILITY USAGE IN THE MIXED USE ZONING DISTRICT ON THE PROPERTY LOCATED AT 1477 OVERSEAS HIGHWAY, OCEAN, NEAREST MILE MARKER 48 AND FURTHER DESCRIBED AS PARRISH SUBDIVISION PB2-18, NORTH 150 FEET LOT 1 & 2, BLOCK 2, SECTION 19, TOWNSHIP 66, RANGE 32, KEY VACCAS, MONROE COUNTY, FLORIDA, HAVING REAL ESTATE NUMBERS 00326770-000000; AND PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, Jack E. Galardi submitted an application to the City (the “Applicant”) for a building permit for an “adult entertainment facility” on September 22, 2009; and

WHEREAS, the application was denied by the Planning Director in a letter dated December, 29 2009; and

WHEREAS, the Applicant filed an appeal of the Planning Director’s decision on February 9, 2010; and

WHEREAS, the City of Marathon Planning Commission (the “Commission”) held a public hearing on June 21, 2010 at which the Commission received and discussed testimony concerning the proposed use and the Planning Director’s decision; and

WHEREAS, the Commission voted unanimously to uphold the decision of the Planning Director which decision was adopted as Planning Commission Resolution 2010-01, which decision was appealed by the Applicant to the City Council; and

WHEREAS, the City Council heard the Applicant’s appeal of the Planning Commission decision as adopted in Planning Commission Resolution 2010-01 on February 8, 2011 (the “Appeal”); and

WHEREAS, the City Council voted unanimously to uphold the decision of the Planning Commission and deny the Appeal.

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 findings of fact are made based upon the evidence and testimony heard at the public hearing that took place on February 8, 2011:

(1) Public notice of the hearing complied with the Marathon Code and the Appeal was properly before the City Council for consideration.

(2) The property in question is designated and zoned Mixed Use Commercial (MUC) on the City's Land Use District and Zoning Maps.

(3) The decision being appealed is the denial of an application for a development permit to rebuild and re-establish an adult entertainment facility as a grandfathered use (the "Proposed Use").

(4) The Petitioner failed to provide adequate competent and substantial evidence that the Proposed Use was in existence at the time the City adopted its new land development regulations, and therefore, should be approved as a grandfathered non-conforming use.

Section 3. The following Conclusions of Law are hereby made:

(1) City staff processed the Appeal in accordance with the applicable provisions of the Marathon Code.

(2) The Petitioner did not demonstrate through competent substantial evidence that the Appeal should be granted.

(3) The Proposed Use is not a grandfathered non-conforming use.

(4) In rendering its decision as reflected in this Resolution, City Council has:

(a) Accorded procedural due process;

(b) Observed the essential requirements of the law; and

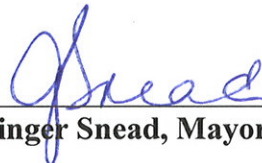
(c) Supported its decision by substantial competent evidence of record.

(5) The Appeal is 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 8th DAY OF FEBRUARY, 2011.

THE CITY OF MARATHON, FLORIDA



Ginger Snead, Mayor

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

ATTEST:



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:**



City Attorney