

**CITY OF MARATHON, FLORIDA
RESOLUTION 2011-117**

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, DENYING THE APPEAL FILED BY FRANKLIN D. GREENMAN ON BEHALF OF RICHARD E. WARNER, AS PERSONAL REPRESENTATIVE OF THE ESTATE OF JOSEPH ARDOLINO, II OF THE DECISION OF THE PLANNING COMMISSION DATED SEPTEMBER 19, 2011, AND THE DECISION OF THE PLANNING DIRECTOR FOR THE CITY OF MARATHON DATED JULY 27, 2011 FINDING THAT THE PACKAGE LIQUOR STORE USE AT THE PROPERTY OWNED BY THE ESTATE OF ARDOLINO, KNOWN AS THE OVERSEAS LOUNGE AND LIQUOR STORE CORP., WAS ABANDONED, ON THE PROPERTY LOCATED AT 3574 OVERSEAS HIGHWAY; HAVING REAL ESTATE NUMBERS; NEAREST MILE MARKER 49 AND FURTHER DESCRIBED AS SQUARE 4, PART LOT 4 AND ADJOINING PORTION OF OLD STATE ROAD 4, A MARATHON BEACH SUBDIVISION, SECTION 10, TOWNSHIP 66 S, RANGE 32E, KEY VACA, MONROE COUNTY, FLORIDA; HAVING REAL ESTATE NUMBERS 00336920-000000, 00336930-000000, AND 00336940-000000; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, on or about July 11, 2011, Franklin Greenman, representing the Estate of Ardolino (the "Estate"), requested a determination from the City of Marathon concerning the re-opening of the Overseas Lounge and Liquor Store (the "Overseas Lounge") previously operating at 3574 Overseas Highway, Marathon, Florida (the Property"); and

WHEREAS, on or about July 27, 2011 the Planning Director for the City of Marathon responded to Mr. Greenman's request deeming the use of the Overseas Lounge as a package liquor store to have been abandoned due to discontinuance of the use for a period over eighteen (18) months; and

WHEREAS, the City of Marathon Planning Commission held a public hearing on August 22, 2011 at which the Commission received and discussed testimony concerning the Estate's appeal of the Planning Director's decision, and voted to deny the appeal by a 4-1 decision; and

WHEREAS, the City of Marathon City Council held a public hearing on November 22, 2011, at which the Council received and discussed testimony concerning the Estate's appeal of the Planning Commission's decision (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 PLANNING COMMISSION 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 evidence and testimony at the public hearing that took place on November 22, 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 is within 1,500 feet of a school.
3. The decision being appealed is a determination of the Planning Director and the Planning Commission that the legal nonconforming use of a package liquor store at the Property was abandoned due to discontinuance of operation for a period greater than eighteen months.
4. The Appellant failed to provide adequate competent substantial evidence that the legal nonconforming use was not abandoned.

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 Appellant did not demonstrate through competent substantial evidence that the Appeal should be granted.
3. The legal nonconforming use of the package liquor store on the Property was intentionally abandoned through discontinuance.
4. In rendering its decisions as reflected in this Resolution, the City Council has:
 - a. Accorded procedural due process;
 - b. Observed the essential requirements of law;
 - c. Supported its decision by substantial competent evidence of record.
 - d. The Appeal is DENIED.

Section 4. This resolution shall take effect immediately upon its adoption.

[INTENTIONALLY LEFT BLANK]

PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, THIS 13th DAY OF DECEMBER, 2011.

CITY OF MARATHON, FLORIDA


Pete Worthington, Mayor

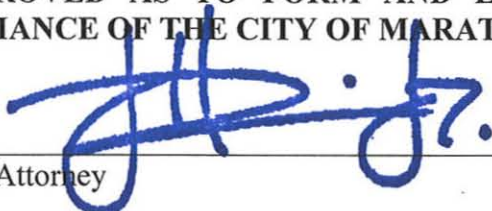
AYES: Cinque, Keating, Ramsay, Snead, Worthington
NOES: None
ABSENT: None
ABSTAIN: None

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

This Resolution was filed in the Office of the City Clerk on the 16 day of December, 2011.


Diane Clavier, City Clerk