

**CITY OF MARATHON, FLORIDA
RESOLUTION 2012-129**

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA MODIFYING THE RECOMMENDED ORDER OF HEARING OFFICER TOM WRIGHT CONCERNING THE REQUEST FOR A VESTED RIGHTS DETERMINATION MADE BY ARNOLD AND MARIA F. A. STEINMETZ FOR PROPERTY LOCATED AT 10828 5TH AVE., GULF, HAVING REAL ESTATE NUMBER 00335320-000000, AND NEAREST MILE MARKER 52; DIRECTING THAT THIS RESOLUTION BE RENDERED TO THE STATE DEPARTMENT OF ECONOMIC OPPORTUNITY FOR REVIEW; AND PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, on or about March 22, 2012 Arnold and Maria Steinmetz (“Applicant”) filed a Request for Determination of Vested Rights pursuant to Chapter 102, Article 19 of the City of Marathon, Land Development Regulations (“LDRs”) for property located at 10828 5th Ave., Gulf, having real estate number 00335320-000000 (“Property”); and

WHEREAS, on or about July 17, 2012 an Administrative Hearing was held before Thomas D. Wright, acting as Hearing Officer for the City (“Hearing Officer”), during which evidence and testimony was presented by the City and the Applicant; and

WHEREAS, on or about August 24, 2012 the Hearing Officer issued a Recommended “Vested Right Determination and Statement of Remedial Actions” (“Determination”); and

WHEREAS, in accordance with Section 102.110 of the LDRs, the City Council reviewed the Determination at a hearing held on October 9, 2012, at which time the Council accepted with modifications the Determination of the Hearing Officer and directed to staff formalize the Council’s decision in this Resolution.

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. Based upon the evidence and testimony in the record and presented to the City Council at the hearing the following Findings of Fact are made:

- a. The City Council finds that the Applicant did incur substantial financial obligations and expenditures in reliance on representations made by the City concerning the Applicant’s request for two (2) additional affordable Building Permit

Allocation System (BPAS) residential units for the property in question.

b. The unique circumstances presented by the Applicant warrant a modification to the Hearing Officer's Determination, and the Applicant's request for a determination of vested rights for two (2) additional affordable Building Permit Allocation System (BPAS) residential units should be granted.

Section 3. Approval of the Modification of the Hearing Officer's Determination is subject to the following condition(s):

a. the two (2) affordable BPAS allocations approved herein must be constructed within two (2) yeas of the effective date of this Resolution or they shall automatically revert back to the City.

b. The Applicant must otherwise comply with all other requirements of the LDRs, including the obligation to deed restrict the units as affordable units.

Section 4. Based upon the above Findings of Fact, the Council does hereby make the following Conclusions of Law:

a. The Applicant's Request for Determination of Vested Rights has been processed in accordance with the applicable provisions of the LDRs, and will not be detrimental to the community as a whole.

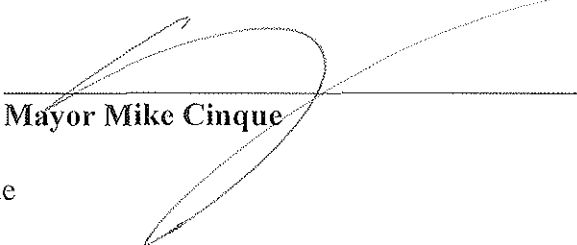
b. In rendering its decision, as reflected in this Resolution, the Council has:
(i) Accorded procedural due process; and
(ii) Observed the essential requirements of the law; and
(iii) Supported its decision by substantial competent evidence of record.

c. The Hearing Officer's Determination is hereby MODIFIED and the Applicant's request for a determination of vested rights for two (2) additional affordable Building Permit Allocation System (BPAS) residential units subject to the conditions specified herein is hereby GRANTED.

Section 5. This resolution shall take effect upon review and approval by the Florida Department of Economic Opportunity.

PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, THIS 13th DAY OF NOVEMBER, 2012.

THE CITY OF MARATHON, FLORIDA



Mayor Mike Cinque

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

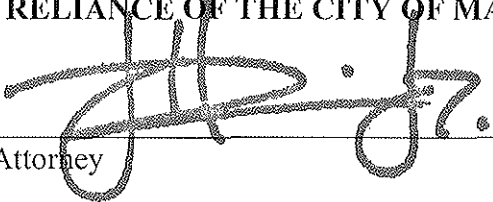
ATTEST:



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

EXHIBIT 1
VESTED RIGHTS DETERMINATION
AND STATEMENT OF REMEDIAL ACTIONS

ARNOLD & MARIA STEINMETZ
10828 5TH AVE., GULF
RE NO. 00335320-000000

VESTED RIGHTS
CITY OF MARATHON, FLORIDA
SPECIAL MASTER

IN RE:

ARNOLD G. STEINMETZ,
Applicant

10824 thru 10830 5th Avenue, Gulf,
Marathon, Florida
RE#00335320-000000
VESTED RIGHTS Application
_____ /

**VESTED RIGHTS DETERMINATION
AND STATEMENT OF REMEDIAL ACTIONS**

This cause came on to be heard by the Vested Rights Hearing Officer on July 17, 2012. Arnold G. Steinmetz (hereinafter "Applicant") was represented by Franklin D. Greenman, Esquire, and the City of Marathon was represented by City Attorney, John Herrin, Esquire. After having reviewed the application and exhibits, heard oral testimony of the Applicant and argument of the attorneys and also having considered the testimony of witnesses and reviewing the exhibits, the Special Master hereby makes the following findings of fact and conclusions of law and recommendations regarding the following described real property:

Lots 1, 2 and 3, Block 5, Key Colony Subdivision No. 4, according to the Plat thereof recorded in Plat Book 4, Page 23, of the Public Records of Monroe County, Florida.

ALSO

Shirlee Avenue, which is lying between the following: Lots 1, 2 and 3, Block 5, and Lots 1, 2 and 3, Block 6, Key Colony Subdivision No. 4, according to the Plat thereof as recorded in Plat Book 4, Page 23, of the Public Records of Monroe County, Florida.

ISSUE

Whether the Applicant has vested rights for four affordable dwelling units on the above referenced parcel.

FINDINGS OF FACT

1. It is noted that the Applicant is not the sole owner of the property. The title is vested in the name of the Applicant and Maria F. A. Steinmetz, as husband and wife, and thus the property is owned in tenancy by the entirety. Applicant's wife was present at the time of the hearing.
2. On or about July 5, 2005 Applicant made an application for a duplex residence located on the property pursuant to the Land Development Regulations of the City of Marathon. The property is entitled to additional density if deed restricted to affordable housing.
3. Two affordable ROGO allocations (now two additional BPAS) were allocated on December 7, 2005. Revised plans for the project changed the building from a one story building to a two story building on grade.
4. The two permitted units were issued a certificate of occupancy on June 16, 2008.
5. Although two affordable units on the property exceeds the maximum permitted density in the City of Marathon, this is not an issue, and thus this recommendation presumes the legality of the two existing units.
6. At or about 2007, Bob Welsh, the Planning Director of the City of Marathon, told the Applicant's son that he should consider building a quadriplex on the lot. City Planner Ellen Farley also participated in these discussions. In reliance on these representations, the Applicant re-engineered the building to a four unit structure and did substantial work to create additional downstairs units. Work continued to progress and it was noted on the inspections that the Applicant needed two additional allocations to be able to complete and get a certificate of occupancy for the additional two units.
7. Applicant completed and submitted an application for the two additional affordable housing units but was never issued them by the City of Marathon as the applications were not ranked high enough to be issued the two additional affordable rights.
8. At some point after George Garrett assumed the position of Planning Director in April of 2008, the City of Marathon came to the realization that four units on the subject property was double

the maximum density allowable for affordable housing under its Land Development Regulations.

9. It thus appears that there was poor communication between the Building Department and Planning Department of the City of Marathon resulting in Mr. Steinmetz continuing for a substantial period of incurring costs (approximately \$121,000.00) in reliance upon incorrect representations made that he would be allowed four units rather than the maximum two units allowed under the City Land Development Regulations.

CONCLUSIONS OF LAW

10. The Hearing Officer was convinced that the City staffers made at least two errors: a. Representing to Mr. Steinmetz that he could build a four unit building on the property; and, b. Allowing him to continue to construct it and passing various inspections up to the point that the City found its error and told Mr. Steinmetz that he would only be allowed two units.
11. These errors and communications between City staff and Mr. Steinmetz resulted in Mr. Steinmetz having expectations of development rights greater than he possessed.
12. Under Florida law errors and misrepresentations by City officials do not amend the City Land Development Regulations or create vested rights. The Applicant has vested rights on the property for only two affordable units, and thus I recommend that the application for vested rights as a four-unit structure be denied.
13. In light of Mr. Steinmetz's reliance on erroneous information from the City, the City in the interest of equity may want to consider revoking the affordable housing deed restriction and allow the two existing units to be treated as market rate units, or, in the alternative, consider awarding the Applicant sufficient transient allocations to allow him to sell them on the open market to recoup his losses incurred in reliance on the City's erroneous misrepresentations.

DONE and ISSUED at Marathon, Monroe County, Florida this 24 day
of August, 2012.

A handwritten signature in cursive script, reading "Thomas D. Wright".

Thomas D. Wright
Fla. Bar No. 257664