

ORDINANCE NO. 02-09-16

AN ORDINANCE OF CITY OF MARATHON, FLORIDA, AMENDING SECTION 9.5-521 OF THE CODE REGARDING APPEALS FROM ADMINISTRATIVE ACTIONS; PROVIDING FOR SEVERABILITY; PROVIDING FOR THE REPEAL OF ALL CODE PROVISIONS AND ORDINANCES INCONSISTENT WITH THE PROVISIONS OF THIS ORDINANCE; PROVIDING FOR THE TRANSMITTAL OF THIS ORDINANCE TO THE STATE DEPARTMENT OF COMMUNITY AFFAIRS; AND PROVIDING FOR AN EFFECTIVE DATE UPON THE APPROVAL OF THIS ORDINANCE BY THE STATE DEPARTMENT OF COMMUNITY AFFAIRS.

WHEREAS, the City Council desires to streamline the administrative appeal process;
and

WHEREAS, the City Planning Commission, sitting in its capacity as the Local Planning Agency, has reviewed this Ordinance in accordance with the requirements of Chapter 163, Florida Statutes, and Chapter 9.5 of the City Code; and

WHEREAS, the provisions of this Ordinance are consistent with the City Comprehensive Plan and the principles for guiding development in the Florida Keys Area of Critical State Concern.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF CITY OF MARATHON, FLORIDA, AS FOLLOWS:

Section 1. Amendment to the Code. Section 9.5-521 of the City Code¹ is replaced and amended to read as follows:

Section 9.5-521. *Administrative Appeals*

¹ The "Code of the City of Marathon, Florida" is defined as the portions of the Code of Monroe County as made applicable to the City pursuant to Section 9(6)(A) of the City Charter, Chapter 99-427, Laws of Florida (the "City Code").

(a) Any person aggrieved by an administrative decision or interpretation of the Director of Planning and Development Services, the Building Official or other City administrative official regarding the provisions of this Chapter may appeal such decision or interpretation. The appeal shall be initiated within thirty (30) days of the date of the administrative decision or interpretation by filing an appeal with the Director, together with an application fee that is established by the City Council from time to time to defray the actual cost of processing the appeal. Failure to file an appeal within the timeframe specified, and exhaust all administrative remedies provided for in this Chapter, shall constitute a waiver of all rights to appeal any interpretation or determination made by the City.

(b) The public hearing on the appeal shall be scheduled for the first available regularly scheduled Planning Commission meeting upon completion of the Planning and Development Service Department review and evaluation of the application, and by the time public notice requirements can be satisfied. The person appealing the decision shall be responsible for providing notice of the hearing in accordance with the provisions of Section _____ of this Chapter. Once notice of the hearing is provided, the applicant may not request a continuance of the appeal application, but may withdraw it if the request for withdrawal is received by the Director no later than five (5) working days prior to date the public hearing is to take place. Thereafter, only the Planning Commission may grant a continuance or accept the withdrawal with or without prejudice.

(c) An appeal stays all development review proceedings, except enforcement proceedings, in furtherance of the action appealed from, unless the Director certifies to the City Council after the notice of appeal is filed that, for reasons stated in the certificate, a stay would cause imminent peril to life and property.

(d) The Planning Commission shall hold at least one (1) public hearing on a weekday, pursuant to the procedures in Division ____ of this Chapter. At the public hearing, the Planning Commission shall consider the appeal, the relevant support materials, the Director's recommendations, and public testimony given at the hearing. If at any time during the public hearing the Planning Commission determines that the appeal is based upon incomplete, or inaccurate information or misstatements of fact, it may deny the appeal or refer the application back to the Director for further review and revised recommendations. The Planning Commission in reviewing the appeal under this section shall presume the original decision of the Director, Building Official or other administrative official was correct and shall only overturn such decision only where there has been an error of fact or law.

(e) When considering an appeal the Planning Commission shall consider the following factors. In no event, however, shall an appeal be approved which fails to meet any standard below. Failure to comply with any standard shall be deemed adverse to the public interest.

1. The appeal is consistent with the purposes, goals, objectives and policies of the Comprehensive Plan; and
2. The appeal complies with all relevant and appropriate portions of this Chapter; and
3. There was an error of fact or law in the decision of the Director, Building Official or other administrative official.

(f) At the close of the public hearing, the Planning Commission by not less than a majority of a quorum present shall by Resolution, grant, grant with conditions, or deny the appeal. The applicant, and adjacent property owners of the property subject to the appeal who have opposed

it at a public hearing, may appeal any decision of the Planning Commission by filing a Petition for Writ of Certiorari in the Circuit Court in and for Monroe County, Florida, in accordance with the procedures provided by the Florida Rules of Civil Procedure and the Florida Rules of Appellate Procedure. For the purposes of this subsection, an “aggrieved person” shall mean any person that will suffer an adverse effect because of the decision of the Planning Commission. The alleged adverse interest may be shared in common with other members of the community at large, but shall exceed in degree the general interest in community good shared by all persons.

Section 2. Repeal of Conflicting Provisions.

(a) All references to appellate hearing officer and hereby deleted and shall be read to apply to the Planning Commission sitting in its appellate capacity or to the Circuit Court of Monroe County sitting in its appellate capacity as the context requires.

(b) All references to the hearing officer appellate article, shall be read to refer to this section of the City Code.

(b) Any provisions of the Code that conflict with this Ordinance including, but not limited to, Section 9.5-521 of the City Code and Article XIV of Chapter 9.5 are hereby repealed.

Section 3. Approval by the State Department of Community Affairs. The provisions of this Ordinance constitute a “land development regulation” as State law defines that term. Accordingly, the City Clerk or designee is authorized to forward a copy of this Ordinance to the State Department of Community Affairs for approval pursuant to Sections 380.05(6) and (11), Florida Statutes.

Section 4. Severability. The provisions of this Ordinance are declared to be severable and if any section, sentence, clause or phrase of this Ordinance shall for any reason be held to be invalid

or unconstitutional, such decision shall not affect the validity of the remaining sections, sentences, clauses, and phrases of this Ordinance but they shall remain in effect, it being the legislative intent that this Ordinance shall stand notwithstanding the invalidity of any part.

Section 5. Inclusion in the Code. It is the intention of the City Council, and it is hereby ordained that the provisions of this Ordinance shall become and made a part of the City of Marathon, Florida Code of Ordinances; that the sections of this Ordinance may be renumbered or relettered to accomplish such intentions; and that the word "Ordinance" shall be changed to "Section" or other appropriate word.

Section 6. Effective Date. This Ordinance shall be effective upon adoption approval by the State Department of Community Affairs pursuant to Chapter 380, Florida Statutes.

The foregoing Ordinance was offered by Councilman Greenman, who moved for its adoption on first reading. This motion was seconded by Councilman Mearns, and upon being put to a vote, the vote was as follows:

Mayor John Bartus	<u>Yes</u>
Vice Mayor Randy Mearns	<u>Yes</u>
Councilman Frank Greenman	<u>Yes</u>
Councilman John Repetto	<u>Yes</u>
Councilman Pete Worthington	<u>Yes</u>


PASSED on first reading this 3rd day of September, 2002.

The foregoing Ordinance as offered by Councilman Greenman, who moved for its adoption. This motion was seconded by Councilman Mearns, and upon being put to a vote, the vote was as follows:

Mayor John Bartus	<u>Yes</u>
Vice Mayor Randy Mearns	<u>Yes</u>
Councilman Frank Greenman	<u>Yes</u>
Councilman John Repetto	<u>Yes</u>
Councilman Pete Worthington	<u>Yes</u>

PASSED AND ADOPTED on second reading this 24th day of September,

2002.



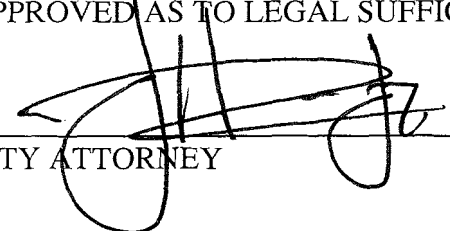
JOHN BARTUS, MAYOR

ATTEST:



KATHERINE V. SELCHAN
CITY CLERK

APPROVED AS TO LEGAL SUFFICIENCY:



CITY ATTORNEY

592001/Ordinances/Administrative Appeals

DCA Final Order No.: DCA02-OR-353

STATE OF FLORIDA
DEPARTMENT OF COMMUNITY AFFAIRS

In re: CITY OF MARATHON LAND DEVELOPMENT
REGULATIONS ADOPTED BY
CITY OF MARATHON ORDINANCE NO. 02-09-16



FINAL ORDER

The Department of Community Affairs (the "Department") hereby issues its Final Order, pursuant to §§ 380.05(6) and (11), *Fla. Stat.*, and § 380.0552(9), *Fla. Stat.* (2001), approving a land development regulation adopted by a local government within the Florida Keys Area of Critical State Concern as set forth below.

FINDINGS OF FACT

1. The Florida Keys Area is a statutorily designated area of critical state concern, and the City of Marathon is a local government within the Florida Keys Area.
2. On September 30, 2002, the Department received for review City of Marathon Ordinance No. 02-09-16 which was adopted by the City of Marathon City Council on September 24, 2002 ("Ord. 02-09-16").
3. Ord. 02-09-16 amends the Section 9.5-521 of the City's Land Development Regulations to streamline the appeal process for persons aggrieved by administrative decisions or interpretations made by the Director of Planning and Development Services, the Building Official, or other City administrative official.
4. Ord. 02-09-16 is consistent with the City's 2010 Comprehensive Plan.

CONCLUSIONS OF LAW

5. The Department is required to approve or reject land development regulations that are enacted, amended or rescinded by any local government in the Florida Keys Area of Critical State Concern. §§ 380.05(6) and (11), *Fla. Stat.*, and § 380.0552(9), *Fla. Stat.* (2001).

6. The City of Marathon is a local government within the Florida Keys Area of Critical State Concern. § 380.0552, *Fla. Stat.* (2001) and Rule 28-29.002 (superseding Chapter 27F-8), *Fla. Admin. Code*.

7. "Land development regulations" include local zoning, subdivision, building and other regulations controlling the development of land. § 380.031(8), *Fla. Stat.* (2001). The regulations adopted by Ord. 02-09-16 are land development regulations.

8. All land development regulations enacted, amended or rescinded within an area of critical state concern must be consistent with the Principles for Guiding Development (the "Principles") set forth in § 380.0552(7), *Fla. Stat.* See *Rathkamp v. Department of Community Affairs*, 21 F.A.L.R. 1902 (Dec. 4, 1998), *aff'd*, 740 So. 2d 1209 (Fla. 3d DCA 1999). The Principles are construed as a whole and no specific provision is construed or applied in isolation from the other provisions.

9. Ord. 02-09-16 promotes and furthers the following Principles:

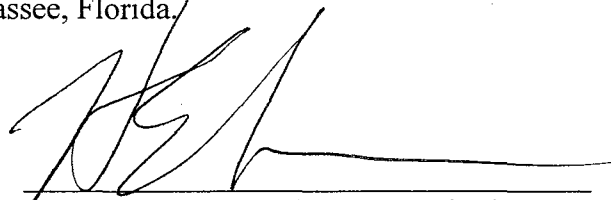
(a) To strengthen local government capabilities for managing land use and development so that local government is able to achieve these objectives without the continuation of the area of critical state concern designation.

10. Ord. 02-09-16 is not inconsistent with the remaining Principles. Ord. 02-09-16 is consistent with the Principles for Guiding Development as a whole.

WHEREFORE, IT IS ORDERED that Ord. 02-09-16 is found to be consistent with the Principles for Guiding Development of the Florida Keys Area of Critical State Concern, and is hereby APPROVED.

This Order becomes effective 21 days after publication in the Florida Administrative Weekly unless a petition is filed as described below.

DONE AND ORDERED in Tallahassee, Florida.



SONNY TIMMERMAN, DIRECTOR
Division of Community Planning
Department of Community Affairs
2555 Shumard Oak Boulevard
Tallahassee, Florida 32399-2100

NOTICE OF ADMINISTRATIVE RIGHTS

ANY PERSON WHOSE SUBSTANTIAL INTERESTS ARE AFFECTED BY THIS ORDER HAS THE OPPORTUNITY FOR AN ADMINISTRATIVE PROCEEDING PURSUANT TO SECTION 120.569, FLORIDA STATUTES, REGARDING THE AGENCY'S ACTION. DEPENDING UPON WHETHER YOU ALLEGE ANY DISPUTED ISSUE OF MATERIAL FACT IN YOUR PETITION REQUESTING AN ADMINISTRATIVE PROCEEDING, YOU ARE ENTITLED TO EITHER AN INFORMAL PROCEEDING OR A FORMAL HEARING.

IF YOUR PETITION FOR HEARING DOES NOT ALLEGE ANY DISPUTED ISSUE OF MATERIAL FACT CONTAINED IN THE DEPARTMENT'S ACTION, THEN THE ADMINISTRATIVE PROCEEDING WILL BE AN INFORMAL ONE, CONDUCTED PURSUANT TO SECTIONS 120.569 AND 120.57(2) FLORIDA STATUTES, AND CHAPTER 28-106, PARTS I AND III, FLORIDA ADMINISTRATIVE CODE. IN AN INFORMAL ADMINISTRATIVE PROCEEDING, YOU MAY BE REPRESENTED BY COUNSEL OR BY A QUALIFIED REPRESENTATIVE, AND YOU MAY PRESENT WRITTEN OR ORAL EVIDENCE IN OPPOSITION TO THE DEPARTMENT'S ACTION OR REFUSAL TO ACT; OR YOU MAY EXERCISE THE OPTION TO PRESENT A WRITTEN STATEMENT CHALLENGING THE GROUNDS UPON WHICH THE DEPARTMENT HAS CHOSEN TO JUSTIFY ITS ACTION OR INACTION.

IF YOU DISPUTE ANY ISSUE OF MATERIAL FACT STATED IN THE AGENCY ACTION, THEN YOU MAY FILE A PETITION REQUESTING A FORMAL ADMINISTRATIVE HEARING BEFORE AN ADMINISTRATIVE LAW JUDGE OF THE DIVISION OF ADMINISTRATIVE HEARINGS, PURSUANT TO SECTIONS 120.569 AND 120.57(1), FLORIDA STATUTES, AND CHAPTER 28-106, PARTS I AND II, FLORIDA ADMINISTRATIVE CODE. AT A FORMAL ADMINISTRATIVE HEARING, YOU MAY BE REPRESENTED BY COUNSEL OR OTHER QUALIFIED REPRESENTATIVE, AND YOU WILL HAVE THE OPPORTUNITY TO PRESENT EVIDENCE AND ARGUMENT ON ALL THE ISSUES INVOLVED, TO CONDUCT CROSS-EXAMINATION AND SUBMIT REBUTTAL EVIDENCE, TO SUBMIT PROPOSED FINDINGS OF FACT AND ORDERS,

AND TO FILE EXCEPTIONS TO ANY RECOMMENDED ORDER.

IF YOU DESIRE EITHER AN INFORMAL PROCEEDING OR A FORMAL HEARING, YOU MUST FILE WITH THE AGENCY CLERK OF THE DEPARTMENT OF COMMUNITY AFFAIRS A WRITTEN PLEADING ENTITLED, "PETITION FOR ADMINISTRATIVE PROCEEDINGS" WITHIN 21 CALENDAR DAYS OF PUBLICATION OF THIS NOTICE. A PETITION IS FILED WHEN IT IS RECEIVED BY THE AGENCY CLERK, IN THE DEPARTMENT'S OFFICE OF GENERAL COUNSEL, 2555 SHUMARD OAK BOULEVARD, TALLAHASSEE, FLORIDA 32399-2100.

THE PETITION MUST MEET THE FILING REQUIREMENTS IN RULE 28-106.104(2), FLORIDA ADMINISTRATIVE CODE. IF AN INFORMAL PROCEEDING IS REQUESTED, THEN THE PETITION SHALL BE SUBMITTED IN ACCORDANCE WITH RULE 28-106.301, FLORIDA ADMINISTRATIVE CODE. IF A FORMAL HEARING IS REQUESTED, THEN THE PETITION SHALL BE SUBMITTED IN ACCORDANCE WITH RULE 28-106.201(2), FLORIDA ADMINISTRATIVE CODE.

A PERSON WHO HAS FILED A PETITION MAY REQUEST MEDIATION. A REQUEST FOR MEDIATION MUST INCLUDE THE INFORMATION REQUIRED BY RULE 28-106.402, FLORIDA ADMINISTRATIVE CODE. CHOOSING MEDIATION DOES NOT AFFECT THE RIGHT TO AN ADMINISTRATIVE HEARING.

YOU WAIVE THE RIGHT TO AN INFORMAL ADMINISTRATIVE PROCEEDING OR A FORMAL HEARING IF YOU DO NOT FILE A PETITION WITH THE AGENCY CLERK WITHIN 21 DAYS OF PUBLICATION OF THIS FINAL ORDER.

CERTIFICATE OF FILING AND SERVICE

I HEREBY CERTIFY that the original of the foregoing Final Order has been filed with the undersigned designated Agency Clerk, and that true and correct copies have been furnished to the persons listed below by the method indicated this 14th day of November, 2002.

for 
Paula Ford, Agency Clerk

By U.S. Mail:

Honorable John Bartus, Mayor
City of Marathon
10054-55 Overseas Highway
Marathon, Florida 33050

Katherine V. Selchan, City Clerk
City of Marathon
210 University Drive
Coral Springs, Florida 33071

Craig Wrathell
City Manager
City of Marathon
10054-55 Overseas Highway
Marathon, Florida 33050

John R. Herin, Jr.
Weiss, Serota, Helfman, Pastoriza and Guedes, P.A.
City Attorneys
City of Marathon
2665 South Bayshore Drive, Suite 420
Miami, Florida 33133

By Hand Delivery or Interagency Mail:

Jim Quinn, DCA Tallahassee
Rebecca Jetton, DCA Florida Keys Field Office
Richard A. Lotspeich, Assistant General Counsel, DCA Tallahassee



John Bartus
Mayor

Randy Mearns
Vice Mayor

Franklin D. Greenman
Councilman

John Repetto
Councilman

Pete Worthington
Councilman

Craig Wrathell,
Moyer, Ward, Wrathell
& Associates
City Manager

Nina L. Boniske
John R. Herin, Jr.,
Weiss Serota Helfman
Pastoriza & Guedes, P.A.
City Attorneys

September 27, 2002

Transmitted via Certified Mail
No. 7001 2510 0001 0603 4651

Department of Community Affairs
2796 Overseas Highway, #212
Marathon, Florida 33050

Attention: Ms. Rebecca Jetton
Planning Manager

Subject: **City of Marathon – Monroe County, Florida**
Ordinance No. 02-09-16

Dear Ms. Jetton:

On behalf of the City of Marathon, I am pleased to provide you with a certified copy of the following Ordinance adopted by the City Council of the City of Marathon at their meeting held on Tuesday, September 24, 2002:

ORDINANCE NO. 02-09-16

AN ORDINANCE OF CITY OF MARATHON, FLORIDA, AMENDING SECTION 9.5-521 OF THE CODE REGARDING APPEALS FROM ADMINISTRATIVE ACTIONS; PROVIDING FOR SEVERABILITY; PROVIDING FOR THE REPEAL OF ALL CODE PROVISIONS AND ORDINANCES INCONSISTENT WITH THE PROVISIONS OF THIS ORDINANCE; PROVIDING FOR THE TRANSMITTAL OF THIS ORDINANCE TO THE STATE DEPARTMENT OF COMMUNITY AFFAIRS; AND PROVIDING FOR AN EFFECTIVE DATE UPON THE APPROVAL OF THIS ORDINANCE BY THE STATE DEPARTMENT OF COMMUNITY AFFAIRS.

If I can be of any further assistance in this matter, please do not hesitate to contact me directly.

Sincerely,

Katherine V. Selchan
City Clerk
City of Marathon

:ks
Enclosures

c: Mr. John R. Herin, Jr., City Attorney
Weiss, Serota, Helfman, Pastoriza & Guedes, P.A.
2665 South Bayshore Drive, Suite 420
Miami, Florida 33133

Ms. Sandra Lee
Calvin, Giordano & Associates, Inc.
1800 Eller Drive, Suite 600
Fort Lauderdale, Florida 33316

PLEASE REPLY TO:

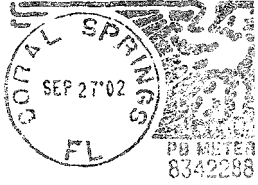
10045-55 Overseas Highway ■ Marathon, Florida 33050 ■ Phone: 305-743-0033 ■ Fax: 305-743-3667
 210 N. University Drive, Suite 702 ■ Coral Springs, Florida 33071 ■ Phone: 954-753-5841 ■ Fax: 954-345-1292

U.S. Postal Service
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Total Postage & Fees	\$ 4.88



Sent To Rebecca Jetton, DCA
 Street, Apt. No., or PO Box No. 2796 Overseas Hwy, #212
 City, State, ZIP+4 Marathon, FL 33050

PS Form 3800, January 2001 See Reverse for Instructions

SENDER: COMPLETE THIS SECTION	COMPLETE THIS SECTION ON DELIVERY
<ul style="list-style-type: none"> Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired. Print your name and address on the reverse so that we can return the card to you. Attach this card to the back of the mailpiece, or on the front if space permits. 	<p>A. Signature <input checked="" type="checkbox"/> <i>[Signature]</i> <input type="checkbox"/> Agent <input type="checkbox"/> Addressee</p> <p>B. Received by (Printed Name) _____ C. Date of Delivery <u>9/30/02</u></p> <p>D. Is delivery address different from item 1? <input type="checkbox"/> Yes <input type="checkbox"/> No If YES, enter delivery address below: _____</p>
<p>1. Article Addressed to:</p> <p>Ms. Rebecca Jetton, Planning Manager Department of Community Affairs 2796 Overseas Highway, #212 Marathon, FL 33050</p>	<p>3. Service Type <input checked="" type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail <input type="checkbox"/> Registered <input checked="" type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> Insured Mail <input type="checkbox"/> C.O.D.</p> <p>4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes</p>

2. Article Number (Transfer from service label) **7001 2510 0001 0603 4651**