

Sponsored By: Joseph and Mary Farrugia

Introduction Date: March 15, 2004

Public Hearing Date: March 15, 2004

March 23, 2004

Enactment Date: March 23, 2004

ORDINANCE 2004-02

AN ORDINANCE OF THE CITY OF MARATHON, FLORIDA AMENDING THE LAND USE DISTRICT (ZONING) MAP OF THE CITY OF MARATHON, CHANGING THE ZONING FROM SUB URBAN RESIDENTIAL (SR) TO URBAN RESIDENTIAL (UR) FOR PROPERTY DESCRIBED AS PART OF KEY VACA, PART GOVERNMENT LOT 1 (F/K/A MARATHON SHORES PB 2-118 AND TRACT 1 EDMONDS ACREAGE TRACTS PB 2-100, OR1325), SECTION 11, TOWNSHIP 66 SOUTH, RANGE 32 EAST, AS MORE PARTICULARLY DESCRIBED IN THE ATTACHED EXHIBIT "A"; WHICH IS LOCATED OCEAN SIDE AT APPROXIMATELY 71ST STREET OCEAN; PROVIDING FOR SEVERABILITY; PROVIDING FOR THE REPEAL OF CONFLICTING PROVISIONS; 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, pursuant to the provisions of Chapters, 163, 166 and 380 *Florida Statutes*, the City of Marathon, Florida (the "City") proposes to amend the City Land Use District (the "Map") to change the land use district designation of property owned by Joseph and Mary Farrugia, legally described as part of Key Vaca, part Government Lot 1 (f/k/a Marathon Shores PB 2-118 and Tract 1 Edmonds Acreage Tracts PB 2-100, or1325), Section 11, Township 66 South, Range 32 East, as more particularly described in the attached exhibit "A"; and

WHEREAS, amending the Map designation of the Property furthers the goals, objectives and policies of the City Comprehensive Plan (the "Plan"), and will allow for the development of the Property to provide needed affordable housing in the City; and

WHEREAS, pursuant to Sections 9.5-24, 9.5-226 and 9.5-511 of the City Code (the "Code"), the City's Development Review Committee has reviewed the proposed Map amendment to determine its compliance and consistency with the goals, objectives, and policies of the Plan and Section 9.5-511 of the Code; and

WHEREAS, pursuant to Chapter 163, *Florida Statutes*, and Sections 9.5-22 and 9.5-511 of the Code, the Planning Commission sitting as the Local Planning Agency has publicly considered the proposed Map amendment at a duly noticed public hearing, and has recommended approval of the proposed Map amendment to the City Council; and

WHEREAS, in accordance with Section 166.041, *Florida Statutes*, notice of the public hearings concerning the proposed Map amendment has been provided to the general public; and

WHEREAS, the City Council finds that approval of the proposed Map amendment is in the best interest of the City and complies with applicable laws and is consistent with the South Florida Regional Plan, the State Plan, Chapter 163, *Florida Statutes*, the principles for guiding development in the Florida Keys Area of Critical State Concern, the goals, objectives, and policies of the Plan, Section 9.5-511 of the Code and promotes and protects the health, safety and welfare of the residents of the City; and

WHEREAS, the City Council desires to approve the proposed Map amendment, in accordance with State law.

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

Section 1. The above recitals are true, correct, and incorporated herein by this reference.

Section 2. In accordance with State law and the Code, the Map designation of the Property is amended from its current designation of Suburban Residential (SR) to Urban Residential (UR).

Section 3. The City shall timely transmit the revised Map reflecting the Map amendment, and all data and analysis supporting the Map amendment, to the State of Florida Department of Community Affairs, in its capacity as the State Land Planning Agency (the “Department”), as required by Chapters 163 and 380, *Florida Statutes*.

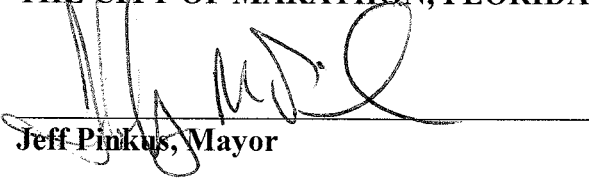
Section 4. That upon its effective date, the revised Map shall replace the Monroe County Land Use District Map, previously applicable to the City pursuant to Sections 163.3167(4), 380.05(10) and 380.0552(9), *Florida Statutes*, and Section 9(6) of the City Charter to the fullest extent allowed by law.

Section 5. The provisions of this Ordinance constitute a “land development regulation” as State law defines that term. Accordingly, the City Clerk is authorized to forward a copy of this Ordinance to the Department of Community Affairs for approval pursuant to Sections 380.05(6) and (11), *Florida Statutes*.

Section 6. That this Ordinance shall be effective immediately upon approval by the State Department of Community Affairs pursuant to Chapter 380, *Florida Statutes*.

ENACTED BY THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, this 23rd day of March 2004.

THE CITY OF MARATHON, FLORIDA



Jeff Pinkus, Mayor

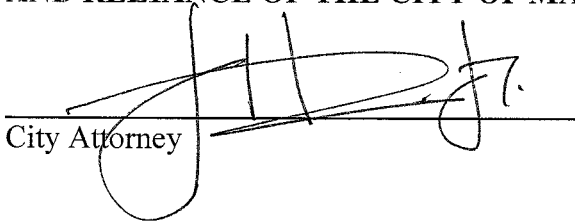
AYES: Mearns, Bartus, Miller, Bull, Pinkus
NOES: None
ABSENT: None
ABSTAIN: None

ATTEST:



Cindy L. Ecklund
City Clerk

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



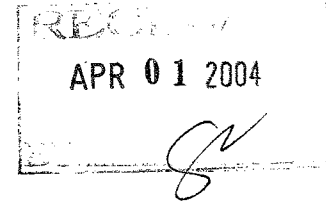
City Attorney

EXHIBIT "A"

A parcel of land in Section 11, Township 66 South, Range 32 East, Key Vaca, Monroe County, Florida, more particularly described as follows: Commencing at the intersection of the East line of said Section 11 and the Southeasterly right of way line of U.S. Highway 1; thence continue South along the said East line of Section 11 for 285 feet to the Point of Beginning; thence continue South for 854.00 feet; thence West for 231.55 feet; thence North for 854.00 feet; thence East for 231.55 feet to the Point of Beginning.

Containing 197,744 square feet or 4.54 acres, more or less.

STATE OF FLORIDA
DEPARTMENT OF COMMUNITY AFFAIRS



In re: CITY OF MARATHON SMALL SCALE
PLAN AMENDMENT AND ZONING MAP
AMENDMENT ADOPTED BY ORDINANCES
NO. 2004-07 and NO. 2004-02

FINAL ORDER

The Department of Community Affairs (the "Department") hereby issues its Final Order, pursuant to §§ 380.05(6), *Fla. Stat.*, and § 380.0552(9), *Fla. Stat.* (2003), approving a small scale comprehensive plan amendment and zoning map amendment 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 March 26, 2004, the Department received for review City of Marathon Ordinance No. 2004-07 that was adopted by the Marathon City Council on March 23, 2004 ("Ord. 2004-07"). Ord. 2004-07 authorizes a small scale comprehensive plan amendment for the purposes of affordable housing as provided under section 163.3187(1)(c)1.e., *Fla. Stat.* Ord. 2004-07 amends the Future Land Use Map for a parcel of land described as part of Key Vaca, Part of Government Tract 1, (F/K/A Marathon Shores PG 2-118 and Tract 1 Edmonds Acreage Tracts PB 2-100, or 1325), Section 11, Township 66 South, Range 32 East, in the City of Marathon, FL from "Residential Low" to "Residential High."

3. On March 29, 2004, the Department received for review City of Marathon Ordinance No. 2004-02 that was adopted by the Marathon City Council on March 23, 2004. Ord. 2004-02 amends the Land Use District (Zoning) Map for the same above-described parcel of land from Suburban Residential to Urban Residential.

4. Ord. 2004-07 and Ord. 2004-02 are consistent with the City's 2010 Comprehensive Plan.

CONCLUSIONS OF LAW

5. The Department is required to review a small scale plan amendment which involves the construction of affordable housing units for consistency with the Principles for Guiding Development applicable to areas of critical state concern. 163.3187(1)(c)1.e., *Fla. Stat.*, (2003).

6. 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), *Fla. Stat.*, and § 380.0552(9), *Fla. Stat.* (2003).

7. The City of Marathon is a local government within the Florida Keys Area of Critical State Concern. § 380.0552, *Fla. Stat.* (2003) and Rule 28-29.002 (superseding Chapter 27F-8), *Fla. Admin. Code*.

8. "Land development regulations" include local zoning, subdivision, building and other regulations controlling the development of land. § 380.031(8), *Fla. Stat.* (2003). The regulations adopted by Ord. 2004-02 are land development regulations.

9. 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") as 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.

10. Ord. 2004-07 and Ord. 2004-02 promote and further 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.

(c) To protect upland resources, tropical biological communities, freshwater wetlands, native tropical vegetation, (for example,

hardwood hammocks and pinelands), dune ridges and beaches, wildlife, and their habitat.

(h) To protect the value, efficiency, cost-effectiveness, and amortized life of existing and proposed major public investments, including:

1. The Florida Keys Aqueduct and water supply facilities;
2. Sewage collection and disposal facilities;
3. Solid waste collection and disposal facilities;
-
5. Transportation facilities;...
-
8. City electric service and the Florida Keys Electric Co-op; and
9. Other utilities, as appropriate.

(j) To make available adequate affordable housing for all sectors of the population of the Florida Keys.


11. Ord. 2004-07 and Ord. 2004-02 are not inconsistent with the remaining Principles.

Ord. 2004-07 and Ord. 2004-02 are consistent with the Principles for Guiding Development as a whole.

WHEREFORE, IT IS ORDERED that Ord. 2004-07 and Ord. 2004-02 are found to be consistent with the Principles for Guiding Development of the Florida Keys Area of Critical State Concern, and are 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.



VALERIE J. HUBBARD, 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 30th day of March, 2004.


Paula Ford, Agency Clerk

By U.S. Mail:

Honorable Jeff Pinkus, 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

Scott Janke
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, State Planning Administrator
Rebecca Jetton, ACSC Administrator
Timothy E. Dennis, Assistant General Counsel