

Sponsored by: Janke
Planning Commission Public Hearing Dates: May 17, 2004
City Council Public Hearing Dates: June 8, 2004
June 22, 2004
Enactment Date: June 22, 2004

**CITY OF MARATHON, FLORIDA
ORDINANCE 2004-13**

An Ordinance Of The City Of Marathon, Florida, Amending Article II "Decision-Making And Administrative Bodies" And Article III "Development Review" Of Chapter 9.5 Of The City Code; Providing For Severability; Providing For The Repeal Of Conflicting Provisions; Providing For Inclusion In The City Code; 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 development review 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 City Council finds that enactment of this Ordinance will protect the public health, safety and welfare of the residents of the City of Marathon, and further the purposes, goals, objectives and policies of the City's Transitional Comprehensive Plan and the Principles for Guiding Development for the Florida Keys Area of Critical State Concern.

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

Section 1. That the foregoing recitals are true and are incorporated herein.

Section 2. That Sections 9.5-24, 9.5-25, and 9.5-26 of the Land Development Regulations are amended to read as follows:¹

Sec. 9.5-24. Department of planning.

The department of planning shall perform the planning functions for the ~~county~~ city and shall provide technical support and guidance for action on applications for development approval and shall perform such other functions as may be requested by the ~~board of county commissioners~~ city council or the planning commission. ~~The department of planning shall be composed of a building division, development review division, division~~

^{1/} Provisions added to existing text are shown by underline; provisions deleted from existing text are shown by ~~strikethrough~~.

of capital improvements planning, division of environmental resources, a division of land use planning and a division of code enforcement.

(a) *Director of Planning:*

- (1) *Creation and appointment:* The director of planning shall be the department head of the department of planning and shall be selected by the ~~county administrator~~ city manager, and ~~confirmed by the board of county commissioners.~~
- (2) *Jurisdiction, authority and duties:* In addition to the jurisdiction, authority and duties which may be conferred upon the director of planning by other provisions of the ~~Monroe County~~ City of Marathon City Code, the director of planning shall have the following jurisdiction, authority and duties:
 - a. To serve as staff to the planning commission and to inform such body of all facts and information at his/her disposal with respect to applications for development approval or any other matters brought before it;
 - b. To assist the planning commission in the review of the plan, including the capital improvements program, these regulations and proposed amendments thereto;
 - c. To maintain the official land use district map, and ~~to make an annual presentation of the map to the board of county commissioners for certification;~~
 - d. To maintain development review files and other public records related to the department's affairs;
 - e. To review, or cause to be reviewed, all applications for major conditional use and plat approval;
 - ~~f. To review and approve or disapprove applications for minor conditional use permits;~~
 - f.g. To recommend amendments to the plan and this chapter;
 - g.h. To render interpretations of the plan, this chapter or the boundaries of the official land use district map;
 - h.i. To evaluate and act upon claims of nonconforming uses and structures;
 - i.j. To work to coordinate all local, regional, state and federal

environmental and other land development permitting processes affecting development in the ~~county~~ city;

- ~~j~~ k. To plan for and evaluate all transportation improvements for the ~~county~~ city, and coordinate such activities with the Department of Transportation of the State of Florida;
- ~~k~~ l. To issue certificates of compliance and sign pre-application conference letters of understanding in accordance with the procedures set forth in the plan;
- ~~l~~ m. To enforce any provision of this chapter or any other provision of the ~~Monroe County~~ City Code;
- ~~m~~ n. To establish such rules of procedure necessary for the administration of his responsibilities under the plan; and
- ~~n~~ o. Whenever requested to do so by the ~~county administrator~~ city manager or the ~~board of county commissioners~~ city council, with the assistance of other ~~county~~ city departments, to conduct or cause to be conducted surveys, investigations and studies, and to prepare or cause to be prepared such reports, maps, photographs, charts and exhibits as may be requested.

~~(3) — *Minimum qualifications:* The director of planning shall have the following minimum academic and professional qualifications:~~

- ~~a. — Master of urban or regional planning or public administration or comparable degree from an accredited university;~~
- ~~b. — Ten (10) years' experience in public administration or land planning; and~~
- ~~c. — Five (5) years of supervisory experience.~~

~~(b) — *Development Review Coordinator:*~~

~~(1) — *Creation and appointment:* The development review coordinator shall be a member of the department of planning and shall be selected by the director of planning and report to the county administrator through the director.~~

~~(2) — *Minimum qualifications:* The development review coordinator shall have the following minimum academic and professional qualifications:~~

- ~~a. — Master of urban and regional planning or public administration or comparable degree from an accredited university;~~

b. ~~Three (3) years' experience in planning or zoning, including site plan review; and~~

e. ~~Minimum one (1) year of supervisory experience.~~

(3) ~~*Duties:* The development review coordinator shall have the following duties:~~

a. ~~To act as an ombudsman to applicants for development approval by facilitating and, to the extent possible, expediting, compliance with the requirements of these regulations;~~

b. ~~To serve as chairman of the development review committee and to prepare for the director of planning's signature all preapplication conference letters of understanding;~~

e. ~~To work with regional, state and federal permitting agencies;~~

d. ~~To determine the completeness of applications for conditional use and plat approval;~~

e. ~~To cause publication of notice of hearings on conditional use or plat approval applications;~~

f. ~~To issue conditional use permits after approval by decision-making bodies; and~~

g. ~~To deliver final plats to the county clerk for recording after approval.~~

(c) *Development Technical Review Committee:*

(1) *Creation and composition:* The development technical review committee shall be composed of the director of planning, ~~the development review coordinator,~~ the directors or division heads of the county's city's public works department, ~~health department,~~ the county engineer, the county city biologist, and any other county city employee or official designated by the county ~~administrator~~ city manager or the planning director. The development technical review committee also ~~should~~ may include representatives of each local, regional, state or federal agency which has ~~entered into an intergovernmental agreement with~~ jurisdiction within the county city for coordinated development review. A representative of the department of community affairs ~~shall~~ may also serve as a ~~an~~ ex-officio member of the development technical review committee as long as the county city is located within an area of critical state concern.

(2) *Duties:* The ~~development~~ technical review committee shall have the following duties:

- a. To meet ~~at least twice a month~~ as needed to consider such business as is prescribed by this article including:
 - (i) Meeting with any developer at a pre-application conference when requested or required pursuant to the provisions of this chapter;
 - (ii) Reviewing all applications for development approval and reporting its recommendations to the planning director; ~~planning commission, the county commission and the planning director~~; and
 - (iii) Reviewing all applications for amendments to the plan.
- b. To maintain such minutes and records as are required by state law.
- c. ~~Any action reviewing a permit application shall not preclude the applicant's right to be present when his project is discussed before this body.~~

~~(d) — *Building Official:*~~

- ~~(1) — *Creation and appointment:* The building official shall be selected by the director of planning and report to the county administrator through the director.~~
- ~~(2) — *Jurisdiction, authority and duties:* In addition to the jurisdiction, authority and duties which may be conferred on the building official by other provisions of the Monroe County Code, the building official shall have the following jurisdiction, authority and duties:
 - a. ~~To issue and revoke building permits in accordance with the procedures of this chapter;~~
 - b. ~~To issue and revoke certificates of occupancy in accordance with the procedures of this chapter;~~
 - c. ~~To serve on the development review committee;~~
 - d. ~~To enforce the provisions of this chapter;~~
 - e. ~~To determine the extent of damage or destruction of~~~~

~~noneonforming uses and structures, in cooperation with the director of planning;~~

- ~~f. To review building permit applications for repair within areas of special flood hazard to determine that the proposed repair satisfies the requirements of the floodplain management provisions of this chapter;~~
- ~~g. To review building permit applications for new construction or substantial improvement within areas of special flood hazard to assure that the proposed construction (including prefabricated and mobile homes) satisfies the floodplain management requirements of this chapter;~~
- ~~h. To advise permittees that additional federal or state permits may be required, and if specific federal or state permits are known to have been issued, to require that copies of such permits be obtained and provided and maintained on file with the building permit application;~~
- ~~i. To notify adjacent communities and the Florida Department of Community Affairs prior to any alteration or relocation of a watercourse, and to submit evidence of such notification to the Federal Emergency Management Agency;~~
- ~~j. To assure that maintenance is provided within the altered or relocated portion of said watercourse so that the flood-carrying capacity is not diminished;~~
- ~~k. To verify and record the actual elevation (in relation to mean sea level) of the lowest floor (including basement) of all new or substantially improved structures;~~
- ~~l. To verify and record the actual elevation (in relation to mean sea level) to which the new or substantially improved structures have been flood proofed;~~
- ~~m. In coastal high hazard areas, to review certifications obtained from registered professional engineers or architects that the structure is securely anchored to adequately anchored pilings or columns in order to withstand velocity waters and hurricane wave wash;~~
- ~~n. To make interpretations, as needed, as to the exact location of boundaries of the areas of special flood hazard;~~
- ~~o. When base flood elevation data has not been provided in~~

~~accordance with article VII, division 6, to obtain, review and reasonably utilize any base flood elevation data available from a federal, state or other source in order to administer the floodplain management provisions of this chapter; and~~

~~p. To provide the board of county commissioners and the planning commission with reports and recommendations with respect to matter before such bodies, as directed by the board of county commissioners, planning director, or the county administrator.~~

~~(e) *Division of Capital Improvements Planning:* The capital improvements planning coordinator shall be responsible for current and long range transportation and other capital improvements planning and shall be Monroe County's designated liaison with the Florida Department of Transportation. The coordinator shall monitor the county's transportation system, prepare an annual report and capital improvements plan for the county and work with the department of public works and other county departments to implement the county's capital improvements plan.~~

~~(f) *Land Use Planning Division:* There shall be a land use planning coordinator who shall be responsible for the land use planning function of the department of planning, including preparation of updates of data and land use maps, annual reporting on land use trends and patterns and long range planning. The coordinator shall prepare an annual report on the county's comprehensive plan for the director of planning.~~

~~(g) *Environmental Resources Division:* There shall be an environmental resources coordinator who shall be responsible for the environmental resources planning of the county and serve as the county biologist. In addition to the division's planning functions and the duties performed by the county biologist, the director of planning may delegate to the division responsibility for review of environmental aspects of development permitting and coordinating interagency (state and federal) permitting.~~

~~(h) *Qualified Personnel:* [Reserved.]~~

Sec. 9.5-25. County attorney.

~~In addition to the jurisdiction, authority and duties which may be conferred upon the county attorney by other provisions of the Monroe County Code, the county attorney shall have the following authority and duties:~~

~~(1) To review and approve as to form all written findings of fact and resolutions drafted by the planning commission or the board of county commissioners in connection with any requirement of this chapter;~~

- (2) — ~~To review and approve as to form all easements, declarations of covenants, letters of credit, performance guarantees or other such documentation; and~~
- (3) — ~~To advise the department of planning, development review committee, planning commission, and board of county commissioners in regard to the legal issues which may arise during implementation of the plan and this chapter.~~

~~Sec. 9.5-26. County engineer.~~

~~In addition to the jurisdiction, authority and duties which may be conferred upon the county engineer by other provisions of the Monroe County, the county shall have the following authority and duties:~~

- (1) — ~~To serve as a member of the development review committee;~~
- (2) — ~~To review and approve the design specifications for required subdivision improvements;~~
- (3) — ~~To calculate the amounts of required subdivision improvement guarantees;~~
- (4) — ~~To determine the sufficiency of improvement guarantee fund balances; and~~
- (5) — ~~To inspect, approve and recommend acceptance of public improvements.~~

Section 3. That Section 9.5-24 of the Land Development Regulations is amended to read as follows:

Sec. 9.5-28. Qualified City biologist.

(a) *County City Biologists:* The ~~county~~ city shall employ qualified biologists to be available to conduct the field surveys required under this chapter. The costs incurred by the ~~county~~ city for conducting such surveys shall be reimbursed by the applicant for development approval for whom the survey is conducted.

(b) *Alternative Biologists:* An applicant for development approval may utilize a biologist not employed by the ~~county~~ city for a required field survey provided that the biologist is a professional familiar with the natural environment of the Florida Keys. Biological assessments by alternative biologists are subject to review and approval by the ~~Monroe County City of Marathon Biologist, Division of Environmental Resources and the Planning Director or the City Manager.~~

Section 4. That Division 1 of Article III of Chapter 9.5 of the Land Development Regulations is amended to read as follows:

ARTICLE III. DEVELOPMENT REVIEW

DIVISION 1. GENERALLY

Sec. 9.5-41. Applicability.

The provisions of this article shall apply to all applications for development approval.

Sec. 9.5-42. Application and fees.

Every application for development approval shall be in a form specified by the director of planning and shall be accompanied by a nonrefundable fee as established from time to time by ~~resolution of the board of county commissioners~~ city council to defray the actual cost of processing the application, and the provision of notice if required.

Sec. 9.5-43. Pre-application conference.

An applicant for development approval may request in writing a pre-application conference with the ~~development review coordinator~~ director of planning. Prior to the conference, the applicant shall provide to the ~~development review coordinator~~ director of planning a description of the character, location and magnitude of the proposed development. The purpose of this meeting is to acquaint the participants with the requirements of these regulations and the views and concerns of the ~~county~~ city. The substance of the pre-application conference shall be recorded in a letter of understanding prepared by the ~~development review coordinator~~ planning staff and signed by the director of planning. The letter shall be mailed to the applicant within ~~five (5)~~ fifteen (15) working days after the conference. The letter of understanding shall set forth the subjects discussed at the conference and the ~~county's~~ city's position in regard to the subject matters discussed. ~~The applicant shall be entitled to rely upon representation made at the conference only to the extent such representations are set forth in the letter of understanding.~~

Sec. 9.5-44. Determination of completeness and compliance, except for single-family dwellings.

Within fifteen (15) working days after an application for development approval has been received, the ~~development review coordinator~~ planning staff shall determine whether the application is complete. If the ~~development review coordinator~~ planning staff determines that the application is not complete, director of planning ~~he/she~~ shall serve a written notice on the applicant specifying the application's deficiencies. The ~~development review coordinator~~ planning staff shall take no further action on the application unless the deficiencies are remedied. If the ~~development review coordinator~~ planning staff fails to make a determination of completeness within fifteen (15) working days, the application is deemed complete. Once the application is deemed complete, the ~~development review coordinator~~ shall cause the application to ~~be~~ shall be evaluated within ~~ten (10)~~ fifteen (15) working days for compliance with the ~~county's~~ city's land use regulations. If the ~~development review coordinator~~ determines that the application is not in compliance, ~~he~~ the director of planning shall serve a written notice explaining why this is so; and the

application shall be denied. If the application is determined to be in compliance with these land use regulations, the ~~development review coordinator~~ director of planning shall notify the applicant and the secretary of the planning commission so that a public hearing may be scheduled no earlier than thirty (30) days following a determination of compliance and a notice given, if required, and shall convene the ~~development~~ technical review committee. A determination of completeness shall not constitute a determination of compliance with the substantive requirements of this chapter.

Sec. 9.5-45. Notice.

(a) Whenever a public hearing is required, an applicant shall provide notice of the hearing as follows:

- (1) *Content of Notice:* Every required notice shall include the date, time and place of the hearing, the address where known, a description of the site of the proposed development to identify it for others to locate, the legal description of the subject property with reference to the closest mile marker, a summary of the proposal to be considered, and identification of the body conducting the hearing.
- (2) *Publication:* Notice of public hearings shall be given at least fifteen (15) days in advance of the hearing date by publication in the non-legal section of the local newspapers of greatest general circulation.
- (3) *Posting of Notice:* At least fifteen (15) days prior to any public hearing, all applicants, excluding governmental agencies, shall post the property that is the subject of the hearing with a waterproof sign at least four (4) square feet in front surface area, which is so lettered that the date, time and location of the hearing shall be easily visible from all public streets and public ways abutting the property. Failure to provide proper notice as per the City Code or other reason resulting in a delayed hearing shall result in the re-noticing and rehearing of the original proposal and which shall be at the expense of the applicant and which shall be an amount equal to double the appropriate application fee. The applicant shall remove the posted notice within ten (10) days after completion of the hearing.
- (4) *Mailing of Notice:* Notice of a public hearing to consider a major conditional use shall be mailed by the applicant to all owners of real property located within three hundred (300) feet of the property proposed to be developed as a major conditional use, including any residents of the parcel proposed for development based upon the most recent Monroe County ad valorem tax record, at least fifteen (15) days prior to a public hearing. The real property owners required to be provided notice by this subsection shall be determined with a certified survey from a land survey registered in the State. The survey shall indicate all properties within a three hundred (300) feet radius of the property proposed to be developed as a major conditional use, as measured by following a straight line from the nearest property line of the proposed major conditional use to the nearest property

line of adjacent properties.

- (5) *Affidavit and Photograph of Notice:* An affidavit and photographic evidence shall be provided by the applicant at the public hearing that the applicant has complied with the notice required by this section.
 - (6) *Cost:* The cost of written notice, publications, and mailing are to be borne by the applicant.
- (b) Whenever an applicant is required to provide written notice of any development approval, development order, or development permit where a public hearing is not required, the applicant shall:
- (1) Notify by mail all owners of real property located within three hundred (300) feet of the applicant's property, based upon the most recent Monroe County ad valorem tax record, of any development approval, development order or development permit. The real property owners required to be provided notice by this subsection shall be determined with a certified survey from a land surveyor registered in the State. The survey shall indicate all properties within a three hundred (300) feet radius of the property proposed to be developed, as measured by following a straight line from the nearest property line of the property proposed to be developed to the nearest property line of adjacent properties.
 - (2) The notice shall be on a form issued by the city manager or his designee.
 - (3) The applicant shall publish notice of the development approval, development order or development permit in a newspaper of local circulation in the City by advertisement in the legal section.
 - (4) The costs of publication and written notice are to be borne by the applicant.
- (c) Notice for amendments to the text of these regulations shall be given in accordance with the requirements of Section 166.041, Florida Statutes.

Sec. 9.5-46. Hearing procedures for applications for development approval.

- (a) *Setting the Hearing:* When the ~~development review coordinator~~ director of planning determines that an application for development approval is complete and that a public hearing is required by this chapter, he shall consult with the secretary of the body or bodies required to conduct the hearing and shall select a place and time certain for the required hearing, and shall give the applicant notice of the applicant's responsibility to provide notice of the hearing in accordance with the provision of Section 9.5-45(a) of the Code.
- (b) *Examination and Copying of Application and Other Documents:* At any time upon reasonable request, any person may examine the application and materials submitted in support of or in opposition to an application for development approval.

Copies of such materials shall be made available at cost.

(c) *Conduct of Hearing:*

(1) *Oath or affirmation:* Testimony and evidence shall be given under oath or by affirmation to the body conducting the hearing.

(2) *Rights of all persons:* Any person or persons may appear at a public hearing and submit evidence, either individually or as a representative of an organization. Anyone representing an organization must present written evidence of their authority to speak on behalf of the organization in regard to the matter under consideration. Each person who appears at a public hearing shall identify himself and his address and if appearing on behalf of an organization state the name and mailing address of the organization.

(3) *Due order of proceedings:* The body conducting the hearing may exclude testimony or evidence that it finds to be irrelevant, immaterial or unduly repetitious. Any person may ask relevant questions of other persons appearing as witnesses, but shall do so only through the chairman at the chairman's discretion. The order of proceedings shall be as follows:

- a. The department of planning staff shall present a narrative and graphic description of the proposed development.
- b. The department of planning staff shall present a written and oral recommendation, including the report of the development technical review committee. This recommendation shall address each factor required to be considered by the plan prior to development approval and shall be made available to the applicant at least three (3) working days prior to the hearing.
- c. The applicant shall present any information it deems appropriate.
- d. Public testimony shall be heard, first in favor of the proposal, then in opposition to it.
- e. The department of planning staff may respond to any statement made by the developer or any public comment.
- f. The applicant may respond to any testimony or evidence presented by the staff or public.

(4) *Testimony:* In the event any testimony or evidence is excluded as irrelevant, immaterial or unduly repetitious, the person offering such testimony or evidence shall have an opportunity to make a proffer in regard to such testimony or evidence for the record. Such proffer may be made at the public hearing or in

writing within fifteen (15) days after the close of the hearing.

- (5) *Continuance of hearing:* The body conducting the hearing may, on its own motion or at the request of any person, continue the hearing to a fixed date, time and place. No notice shall be required if a hearing is continued. An applicant shall have the right to request and be granted one (1) continuance; however, all subsequent continuances shall be granted at the discretion of the body conducting the hearing only upon good cause shown. All adjourned public hearings shall commence only upon the giving of all notices which would have been required were it the initial call of the public hearing.
- (6) In the event of written protests against a proposed major conditional use development order signed by the real property owners of twenty (20) percent or more of the people required to be noticed in section 9.5-45(d), such application shall not be approved except by the concurring vote of at least four (4) commissioners before the full board of either commission.
- (7) *Other rules to govern:* Other matters pertaining to the public hearing shall be governed by other provisions of the ~~Monroe County~~ City of Marathon City Code applicable to the body conducting the hearing and its adopted rules of procedure, so long as the same are not in conflict with this article. The county's decision-making bodies may adopt a rule of procedure to limit the number of applications for development approval which may be considered per meeting.
- (8) *Record:*
 - a. The body conducting the hearing shall record the proceedings by any appropriate means which shall be transcribed at the request of any person upon application to the county administrator and payment of a fee to cover the cost of transcription or duplication of the audio record or tape. Except, however, if a person desires to appeal a decision of the decision making body planning commission pursuant to the hearing officer appellate article [~~§ 9.5-535 et seq.~~], such person shall, at his own expense, provide a transcript of the hearing ~~before the planning commission~~ transcribed by a certified court reporter.
 - b. The transcript, all applications, memoranda, or data submitted to the decision-making body, evidence received or considered by the decision-making body, questions and proffers of proof, objections, and rulings thereon, presented to the decision-making body, and the decision, recommendation or order of the decision-making body shall constitute the record.
 - c. All records of decision-making bodies shall be public records, open for inspection at reasonable times and upon reasonable notice.

Sec. 9.5-47. Actions by decision-making persons and bodies.

(a) *General:* All decision-making persons and bodies shall act in accord with time limits established in this chapter except as provided in section 9.5-3(b), ~~Monroe County City of Marathon City~~ Code. Action shall be taken as promptly as possible in consideration of the interests of the citizens of ~~Monroe County~~ the City of Marathon.

(b) *Findings:* All decisions shall be in writing ~~and adopted by resolution~~ and shall include at least the following elements:

- (1) A summary of the information presented before the decision-making body;
- (2) A summary of all documentary evidence provided to the decision-making body or which the decision-making body considered in making its decision; and
- (3) A clear statement of specific findings of fact and a statement of the basis upon which such facts were determined, with specific reference to the relevant standards set forth in this chapter, ~~including but not limited to the standards in section 9.5-65.~~

(c) *Notification:* Notification of a decision-making body's decision, ~~by copy of the resolution,~~ shall be mailed by the development review coordinator to the applicant by certified mail.

Sec. 9.5-48. Successive applications.


Whenever any application for development approval is denied for failure to meet the substantive requirements of these regulations, an application for development approval for all or a part of the same property shall not be considered for a period of two (2) years after the date of denial unless the subsequent application involves a development proposal that is materially different from the prior proposal or unless four (4) members of the ~~planning commission~~ decision making body determine that the prior denial was based on the material mistake of fact. For the purposes of this provision, a development proposal shall be considered materially different if it involves a change in intensity of use of more than twenty-five (25) percent of the application expressly satisfies the deficiencies that were identified in the prior denial. The body charged with conducting the initial public hearing under such successive applications shall resolve any question concerning the similarity of a second application or other questions which may develop under this subsection.

Sec. 9.5-49. Suspension of development review proceedings.

The director of planning may in his/her discretion suspend consideration of any application for development approval during the pendency of a code enforcement proceeding involving all or a portion of the parcel proposed for development.

ENACTED BY THE CITY COUNCIL OF THE CITY OF MARATHON,
FLORIDA, this 22nd day of June, 2004.

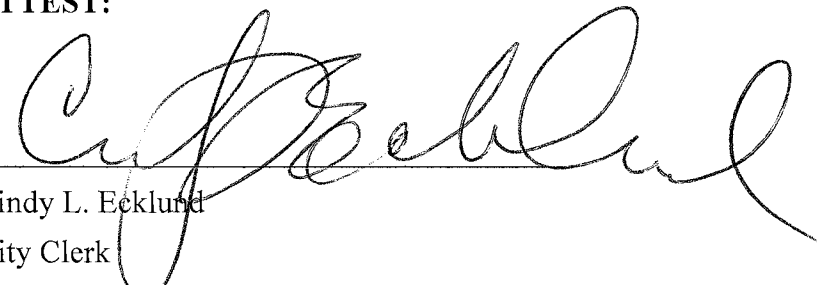
THE CITY OF MARATHON, FLORIDA



Jeffrey M. Pinkus, Mayor

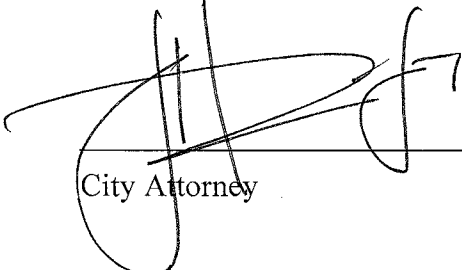
AYES: Bartus, Bull, Mearns, Miller, Pinkus
NOES: None
ABSENT: None
ABSTAIN: None

ATTEST:



Cindy L. Ecklund
City Clerk

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



City Attorney

STATE OF FLORIDA
DEPARTMENT OF COMMUNITY AFFAIRS

In re: CITY OF MARATHON LAND
DEVELOPMENT REGULATIONS
ADOPTED BY ORDINANCE NO. 2004-13

Received

SEP 14 2004

City Clerk

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 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 June 25, 2004, the Department received for review City of Marathon Ordinance No. 2004-13 that was adopted by the City of Marathon Board of City Commissioners on June 22, 2004 ("Ord. 2004-13"). Ord. 2004-13 amends Article II, "Decision-Making and Administrative Bodies," of the City Code, clarifying and deleting certain duties of various staff members and the Technical Review Committee. The ordinance also amends Article III, "Development Review," 9.5-41-49, providing for name substitutions and other minor required text changes resulting from the adoption of the Monroe County Code at the time of incorporation of the City.
3. Ord. 2004-13 is consistent with the City's 2010 Comprehensive Plan.

CONCLUSIONS OF LAW

4. 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).
5. 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*.

6. "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. 2004-13 are land development regulations.

7. 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.

8. Ord. 2004-13 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.

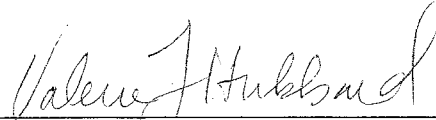
(l) To protect the public health, safety, and welfare of the citizens of the Florida Keys and maintain the Florida Keys as a unique Florida resource.

9. Ord. 2004-13 is not inconsistent with the remaining Principles. Ord. 2004-13 is consistent with the Principles for Guiding Development as a whole.

WHEREFORE, IT IS ORDERED that Ord. 2004-13 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.



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.

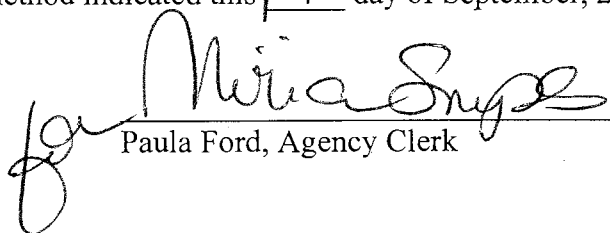
THE PETITION MUST MEET THE FILING REQUIREMENTS IN RULE 28-106.104(2), FLORIDA ADMINISTRATIVE CODE. IF AN INFORMAL PROCEEDING IS REQUESTED, THEN THE PETITION SHALL BE SUBMITTED IN ACCORDANCE WITH RULE 28-106.301, FLORIDA ADMINISTRATIVE CODE. IF A FORMAL HEARING IS REQUESTED, THEN THE PETITION SHALL BE 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 15th day of September, 2004.


Paula Ford, Agency Clerk

By U.S. Mail:

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

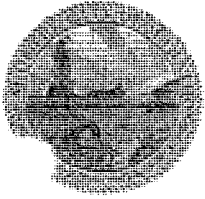
Cindy Ecklund, City Clerk
City of Marathon
10045-55 Overseas Highway
Marathon, Florida 33050

Mike Puto
Acting City Manager
City of Marathon
10054-55 Overseas Highway
Marathon, Florida 33050

John Herin, Esq.
Stearns Weaver Miller Weissler
Alhadeff & Sitterson, P.A.
Suite 2200 Museum Tower
150 West Flagler Street
Miami, Florida 33130

By Hand Delivery or Interagency Mail:

Rebecca Jetton, ACSC Administrator
Timothy E. Dennis, Assistant General Counsel



CITY OF MARATHON, FLORIDA

10045-55 Overseas Highway, Marathon, Florida 33050
Phone: (305) 743-0033 Fax: (305) 743-3667

June 24, 2004

Mr. Ray Eubanks, Community Program Administrator
Division of Community Planning
Department of Community Planning
2555 Shumard Oak Boulevard
Tallahassee, FL 32399-2100

RE: Ordinances 2004-06, 11, 12 & 13

Dear Mr. Eubanks;

Attached are the Ordinances and back up materials recently enacted by the City Council of the City of Marathon. Thank you in advance for your quick attention to these Ordinances.

Please contact me if you have any questions regarding this letter or Ordinances 2004-06, 11, 12 & 13.

Best Regards,

A handwritten signature in cursive script, appearing to read "Cindy L. Ecklund". The signature is written in black ink and is positioned above the typed name and title.

Cindy L. Ecklund, PHR
City Clerk/HR Officer
City of Marathon
10045-55 Overseas Hwy.
Marathon, FL 33050
305-289-4101
305-289-4131 fax
ecklundc@ci.marathon.fl.us

cc: Rebecca Jetton
Scott Janke
Gail Kenson

SENDER: COMPLETE THIS SECTION

- 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.

1. Article Addressed to:

Mr. Ray Eubanks, Community Program
Administrator
Division of Community Planning
Department of Community Planning
2555 Shumard Oak Boulevard
Tallahassee, FL 32399-2100

2.

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

Agent

Addressee

B. Received by (Printed Name)

C. Date of Delivery

Received

Delivery address different from item 1? Yes
If YES, enter delivery address below: No

JUL 1 2004

City Clerk

3. Service Type

Certified Mail

Express Mail

Registered

Return Receipt for Merchandise

Insured Mail

C.O.D.

4. Restricted Delivery? (Extra Fee)

Yes

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