

CALL TO ORDER

A Meeting of the City Council of Marathon, Florida was held on April 27, 2010 in the Government Center, 2798 Overseas Hwy., Marathon, Florida, Mayor Ginger Snead called the meeting to order at 5:30 p.m.

PLEDGE OF ALLEGIANCE

The Pledge of Allegiance was recited.

ROLL CALL - There were present:

Vice-Mayor Mike Cinque

Councilmember Richard Keating

Councilmember Dick Ramsay

Councilmember Pete Worthington

Mayor Ginger Snead, comprising a quorum

Also in attendance were:

City Manager, Roger Hernstadt

City Attorney, John Herin

City Clerk, Diane Clavier

Planning Director, George Garrett

Ports Manager, Richard Tanner

Community Services Director, Susie Thomas

Public Works Manager, Carlos Solis

Utilities Manager, Zully Hemeyer

Finance Director, Peter Rosasco

Building Official, Ron Wampler

Fire Chief William Wagner

Approval of Agenda and Consent Agenda

The following amendments were made to the agenda:

The Clerk asked for the minutes to be taken off the consent agenda. Item 6B4 (Dirt Sale Proceeds for Lateral Grant Program) was moved to City Council Item 5G. Donate Life Proclamation was added as item 5E under City Council Items. Item was added as 6B5 May 10th Planning Commission Meeting Cancellation as information.

MOTION: Cinque moved to accept the agenda as amended.

SECOND: Ramsay

With no objection from the members of Council, Snead declared the motion approved by unanimous consent.

Approval of Minutes – The Clerk reported the April 13th City Council meeting minutes were amended to add the text “Hernstadt stated the Council will be briefed before starting any further overlay work on private streets.” under the City Manager Report, Road Overlay Item.

MOTION: Ramsay moved to approve the minutes as amended.

SECOND: Worthington

With no objection from the members of Council, Snead declared the motion approved by unanimous consent.

The Mayor and Council presented members of the Southernmost Chapter of ABATE with a Motorcycle Safety Awareness Month Proclamation.

The Mayor and Council presented Linda Gottwald with Stand Up For Animals a proclamation for Be Kind to Animals Week.

The Mayor and Council presented Shannon Vasko, a volunteer for the American Red Cross a proclamation for April Pools Day for water safety awareness.

The Mayor and Council presented Kim Bassett, from Fisherman’s Hospital a proclamation for Donate Life to raise awareness of organ and tissue donation.

Airport/Customs Meeting of 4/21/10 – Ramsay reported the discussions went well regarding making Marathon a point of entry for customs clearance. He stated representatives from the Chamber of Commerce, Airport and many others were there and specifically thanked Ileana Ros-Lehtinen and Peter Rosasco for their help and he was more than encouraged from the results of the meeting. Ramsay reported the paperwork for clearance at the airport is being filled out and this may take some time to be able to accomplish this, but the cost appears to be under control.

Ramsay addressed noise concerns, stating it will not be a factor; however, the FAA has funded an environmental study to move the runway 40 ft to the North which could affect our residents. The City had already expressed their concerns and if/when we need to react, we will let the residents know.

Worthington stated the costs previously reported were not reasonable and was pleased the costs could be covered by user fees.

Dirt Sale Proceeds for Lateral Grant Program – Worthington explained he would like to put the proceeds from the sale of dirt to good use and help residents, similar to the CDBG program in Little Venice by using the proceeds as a match for the CDBG grant program. Thomas reported the city is in the application process for CDBG and is hopeful the application would be available in the next 60 days. Thomas stated the earliest the grant would be available would be toward the end of the year.

MOTION: Worthington directed staff to move forward to use the proceeds as a match to the CDBG grant.

SECOND: Cinque

With no objection from the members of Council, Snead declared the motion approved by unanimous consent.

"Red Carpet Tours" Chamber Quarterly Report - Daniel Samess spoke on the progress the Chamber has made; the Red Carpet website (www.MarathonRedCarpet.com and www.RelocateToTheFloridaKeys.com) is fully functional. Samess requested that the City have a hyperlink on their home page directing people to the Red Carpet site. Samess reported the Chamber is working to acquire booth material for the trade shows, although this is taking longer than expected. Samess informed Council of the potential new businesses they are in contact with.

Lateral Permit Clarification – Hernstadt confirmed the lateral for wastewater can be installed as an owner builder. Hernstadt reported he is pursuing further information on the limitations under this permit. Cinque asked that Hernstadt inform them as soon as he has the information and put the information on the website as well.

E-Waste Collection Partnership Update – Hernstadt advised there would be a household, and hazardous and electronic waste drop off on Friday, April 30th from noon to 4:00 pm and Saturday, May 1st from 9:00 am until 2:00 pm for Marathon, Layton, and Key Colony Beach. Ramsay stated he is working on a solution to accept fuel in the future.

2010 ISO Evaluation Report – Wampler informed Council the City received a 4 rating and was graded upon year 2009.

Request for Qualifications (RFQ) Legal Services – Hernstadt reported the City received two responses from the RFQ and is ready to proceed based on Council direction. Ramsay stated Stearns Weaver had substantially lowered rates and recommended the City continue with Stearns, Weaver. Ramsay stated he also looked carefully at the IT fees, and would like to continue with ENS.

MOTION: Ramsay moved to maintain the present status with legal and IT services.
SECOND: Snead

With no objection from the members of Council, Snead declared the motion approved by unanimous consent.

Snead stated she would like to lock in the IT services contract rates as soon as possible.

Hernstadt reported the City had initially planned to hold a Planning Commission meeting on May 10th; however we would like to postpone this meeting. Hernstadt stated when the new date was known, the Council and public would be advised. There were no objections from City Council.

Charter Enforcement Report – Herin stated he had generated a report that was distributed two weeks prior. Herin stated there are two categories of enforcement; criminal, which is prosecuted by the State Attorney or non-criminal. The non-criminal violations enforcement mechanism is self enforcement. Other jurisdictions are similar in their charter language. Worthington questioned if the State Attorney would enforce our City Ordinances. Herin replied the City has not made violations a criminal conduct. We would have to designate a City prosecutor. This is a separate issue of Charter violation; the Charter is not an ordinance.

Quasi-Judicial Public Hearings:

Clavier swore in all wishing to speak on all of the quasi-judicial public hearing items.

Worthington, Cinque had exparte' communication with regards to the following item, but stated it would not affect their vote.

Resolution 2010-40, Approving The Request By Florida Keys Animal Encounters, LLC For An Amendment To A Conditional Use Pursuant To Section 102.79 Of The Marathon Code Entitled "Minor And Major Amendments To Existing Conditional Uses," Authorizing The Development Of Commercial Buildings To Operate As A Sea Life Amusement Park And A Marine Educational Facility At Property Located On The Northeastern Corner Of The Intersection Of Overseas Highway And 117th Street, Gulf, And Legally Described As Part Of Government Lot 4, Section 5, Township 66 South, Range 33 East, Key Vaccas, Monroe County, Florida, Having Real Estate Number 00104130-000000; And Providing For An Effective Date

Garrett provided a staff report regarding the request from Florida Keys Animal Encounters for an amendment to a conditional use. Garrett reported the proposed changes will not change the site layout, more the character. Garrett reported the Planning Commission recommended approval with the same conditions as the original approval.

The applicant, Ben Daughtry, with Florida Keys Animal Encounters and Dynasty Marine stated they are ready to move forward with the project, but needed to make some of these changes to do so. Council was happy to see the project move forward.

John Whalton spoke for the approval of the request.

MOTION: Worthington moved to approve Resolution 2010-40, based on the evidence and testimony presented finds the application meets the requirements of the City Code and Comprehensive Plan.

SECOND: Cinque

Worthington asked if there was a need for two fire hydrants as stated in the layout.

Chief Wagner stated staff is still discussing this as well as the palm thatching, which increases the fire load.

Vote on the Motion:

Yes: Worthington, Cinque, Ramsay, Keating, Snead
No: None
Absent: None
Abstain: None

Vote on the Motion: 5 Yes, 0 No, 0 Absent, 0 Abstain

Garrett stated we approved these things ahead of time in regard to the fire hydrants, when the project goes thru permitting; we will look at it again.

Resolution 2010-41, Denying The Appeal Filed By First Florida Keys Properties, Inc Of The Denial Of The Issuance Of A 2APS Alcoholic Beverage Permit For Walgreens Drug Store As Memorialized In Pc Resolution 2010-001; For Property Located At 5171 And 5271 Overseas Highway, Ocean, Nearest Mile Marker 50 And Further Described As Part Of Lot 2 And Amended Plat Of Maramede Subdivision Pb3-185 All Block A And Lots 1 Through 7, Part Of Lot 8, Part Of Lot 48 And All Lots 49 Through 51 Block B And That Vacated Portion Of Palm Place, Section 11, Township 66, Range 32, Key Vaccas, Monroe County, Florida, Having Real Estate Numbers 00103730-000000 And 00324210-000000; And Providing For An Effective Date

Resolution 2010-42, Granting The Appeal Filed By First Florida Keys Properties, Inc Of The Denial Of The Issuance Of A 2APS Alcoholic Beverage Permit For Walgreens Drug Store As Memorialized In Pc Resolution 2010-001; For Property Located At 5171 And 5271 Overseas Highway, Ocean, Nearest Mile Marker 50 And Further Described As Part Of Lot 2 And Amended Plat Of Maramede Subdivision Pb3-185 All Block A And Lots 1 Through 7, Part Of Lot 8, Part Of Lot 48 And All Lots 49 Through 51 Block B And That Vacated Portion Of Palm Place, Section 11, Township 66, Range 32, Key Vaccas, Monroe County, Florida, Having Real Estate Numbers 00103730-000000 And 00324210-000000; And Providing For An Effective Date

Worthington stated he would abstain from voting as his wife is involved in litigation with the appellant.

Cinque, Keating, Ramsay and Snead all stated they had ex parte' communication but that it would not affect their vote.

Garrett provided a report, giving a timeline of events of the original application details and what the applicant agreed to in response to the community concerns. Garrett stated the Planning Commission voted 3-2 to approve the appeal; to deny the license.

Attorney for appellant, Ed Scales, spoke on behalf of First Florida Keys Properties.

Scales called Brian Schmidt for his first witness and for his testimony regarding the conditions of the license and lease that was signed in November of 2009.

Scales called Barbara Mitchell with the Craig Company as his second witness for her testimony. Mitchell testified as an expert witness and explained the difference between a 5APS and 2APS liquor license. Mitchell testified at least 60 locations are authorized to sell beer and wine, and the conditions First Florida Keys Properties have met to minimize the impact to neighbors.

Snead asked for public comment.

Dave Addison spoke against the issuance of an alcoholic beverage permit to Walgreens.

Marilyn Tempest spoke in favor of approving an alcoholic beverage permit for Walgreens.

John Whalton spoke in favor of approving an alcoholic beverage permit for Walgreens.

Lott Pansky spoke in favor of approving an alcoholic beverage permit for Walgreens.

Bill Ehrhorn spoke in favor of approving an alcoholic beverage permit for Walgreens.

Dave Peck spoke in favor of approving an alcoholic beverage permit for Walgreens.

Bob Brock spoke in favor of approving an alcoholic beverage permit for Walgreens.

Michele Brossard spoke in favor of approving an alcoholic beverage permit for Walgreens.

Robin Kluck spoke in favor of approving an alcoholic beverage permit for Walgreens.

Dwayne Lauberstein spoke in favor of approving an alcoholic beverage permit for Walgreens.

Joanie Nelson spoke in favor of approving an alcoholic beverage permit for Walgreens.

Herin informed Council the issue before them is whether the decision by the Planning Commission is inconsistent with the City Code.

Cinque stated he felt that since the Planning Commission ruled against their own minutes, this was a material error.

Ramsay stated he heard accusations that bothered him. Ramsay stated the City staff are honest and above board and supports them 150%.

MOTION: Ramsay, based upon the evidence and testimony provided, moved approval.

SECOND: Keating

Vote on the Motion:

Yes: Ramsay, Keating, Cinque, Snead

No: None

Absent: None

Abstain: Worthington

Vote on the Motion: 4 Yes, 0 No, 0 Absent, 1 Abstain

Keating stated this is a very emotional issue, ultimately you have to look at the facts, to approve the minutes is stating what the language was; you can't draw any other conclusion.

Resolutions for Adoption:

* **Resolution 2010-43**, Denying The Administrative Appeal Filed By Lance B. Kyle, As The Personal Representative Of James W. Kyle D/B/A Knights Key Inn, Pursuant To Section 26-39 Of The City Of Marathon Code Challenging The Issuance Of A Right-Of-Way Use Permit For Traffic Calming Gates Located On Kyle Way; And Providing For An Effective Date.

Resolution 2010-44, Approving Change Order No.1 To Contract Dated May 26, 2009 With Intrastate Construction Corp. To Construct The Service Area 3 Wastewater Treatment Plant (In The Amount Of \$2,061,000) Increasing Contract Payment In An Amount Not To Exceed \$2,989,487, For Construction Of Wastewater Treatment Plant In Service Area 7, Authorizing The City Manager To Execute The Change Order On Behalf Of The City; And Providing For An Effective Date

Hernstadt reported the change order will expedite the construction of the WWTP in Service Area 7 allowing greater benefit for grant funding. Hernstadt reported that the City has been satisfied with Intrastate's performance and recommends approval of this change order.

The Mayor called for speakers, and seeing none, closed the public comment.

MOTION: Ramsay moved to approve Resolution 2010-44

SECOND: Keating

Vote on the Motion:

Yes: Ramsay, Keating, Worthington, Cinque, Snead

No: None

Absent: None

Abstain: None

Vote on the Motion: 5 Yes, 0 No, 0 Absent, 0 Abstain

Resolution 2010-45, Approving Change Order No. 6 To Contract Dated July 22, 2008 (In The Original Amount Of \$1,685,911.42) With Atlantic Civil, Inc., Increasing Contract In An Amount Not To Exceed \$2,400,000 For Construction Of A Portion Of Service Area 3 Collection System; Authorizing The City Manager To Execute The Change Order On Behalf Of The City And To Expend Budgeted Funds; And Providing For An Effective Date.

Hernstadt reported Conquest has not mobilized the necessary resources to complete the project as required by the contract. Hernstadt reported the change order would remove another 1/3 portion of the Area 3 Collection System Project from Conquest's scope of work

No one from the public wished to speak on this item.

MOTION: Cinque moved approve Resolution 2010-45

SECOND: Worthington

With no objection from the members of Council, Snead declared the motion approved by unanimous consent.

Resolution 2010-46, Amending The Selection Process, Terms And Membership Criteria Of The Community Image Advisory Board, Created To Facilitate Landscaping, Signage, And Other Enhancements On Public Spaces, Streets And Right Of Ways To Enhance The Image Of The City Of Marathon And Improve The Natural Beauty And Quality Of The City; And Providing For An Effective Date

Hernstadt reported he researched and suggested changes based on the direction of City Council. Snead stated the name change better fits what the City is trying to accomplish. Worthington stated the Garden Club asked to maintain their appointment. Snead encouraged all previous members to continue to work toward their goals. Council concurred. Ramsay thanked Snead and Hernstadt for the good job on the amendments. Hernstadt thanked Council for their assistance.

No one from the public wished to speak.

MOTION: Cinque moved approval of Resolution 2010-46

SECOND: Ramsay

With no objection from the members of Council, Snead declared the motion approved by unanimous consent.

Council Comments

Worthington commented he was glad the issue with Walgreens is over and believes the Council did the right thing.

Ramsay thanked the Chamber of Commerce and commented that they do a good job moving forward with bringing new business to Marathon.

Keating commented the process may be slow, but we are moving forward, positive things are being set up now and feels Marathon has a bright future.

Cinque thanked the citizens of Marathon, stating he feels fortunate to live in such a good, caring community.

Snead thanked the residents for coming out, and for the calls and emails as they were appreciated. Snead reminded everyone that every Monday evening before the Tuesday Council meeting, she holds a town hall meeting at the Fire Station and she is always there to hear any concerns, or hear your views on the issues.

City of Marathon
City Council Action Minutes
April 27, 2010 5:30 pm City Council Meeting Minutes

ADJOURNMENT

With no further business to come before the council, Mayor Snead adjourned the meeting at 8:06 pm by unanimous consent.

I certify the above represents an accurate summary of the regular council meeting of April 27, 2010.

Diane Clavier
Diane Clavier, City Clerk

5-12-10
Date