

CITY COUNCIL AGENDA STATEMENT



Meeting Date: November 12, 2019
To: Honorable Mayor and City Councilmembers
From: George Garrett, Planning Director
Through: Chuck Lindsey, City Manager

Agenda Item: **Resolution 2019-109, Public Right-Of-Way Abandonment**, Request To The City Council Of The City Of Marathon By Jack Carlson To Abandon The Public Right Of Way Located At 11491 1st Avenue Ocean, Known As Smokes Court Aka 1st Avenue Ocean, Described As Being Adjacent To And Between Lots 161-162 And Lot 3, Little Venice Number 2 Subdivision, Key Vaca, Having Real Estate Numbers 00346890-000000 & 00345350-000000. Nearest Mile Marker 53.

Recommendation:

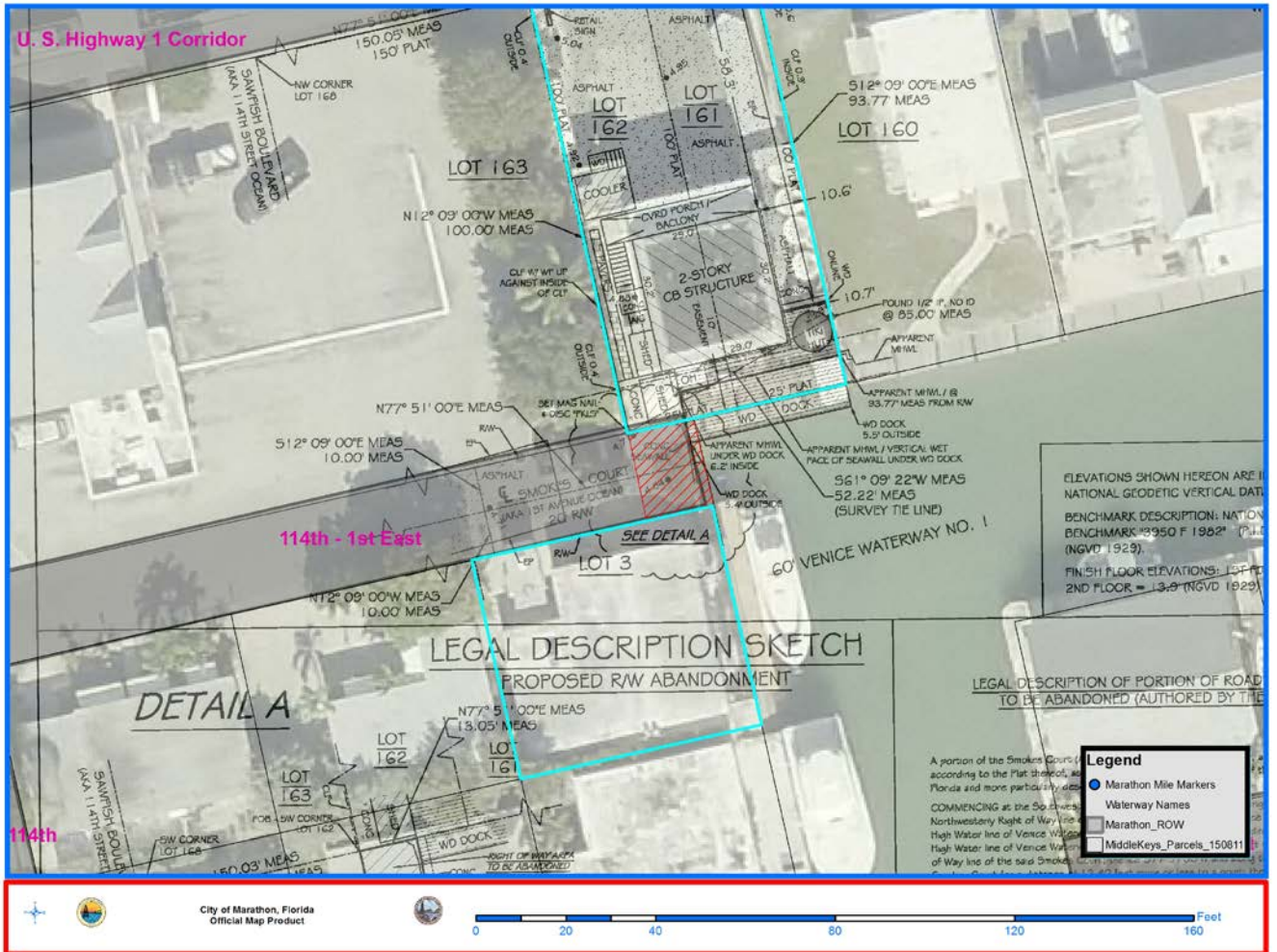
Based on review of the application, Staff is recommending **Approval** of the request to abandon a portion of City right-of-way located on Smokes Court Aka 1st Avenue Ocean. The application is consistent with state and local law, and the applicants have submitted letters of no objection from the utility companies.

Conditions:

1. The applicants will convey a utility easement (in a form acceptable to the City Attorney) to the City and all utilities on and under all of the abandoned right-of-way.
2. The applicants will convey a public access easement (in a form acceptable to the City Attorney) to the City.

Applicant: Jack Carlson
Request: To abandon a portion of the right-of-way at 11491 1st Avenue Ocean.
Project Location: 11491 1st Avenue Ocean, Little Venice Number 2 Subdivision, Key Vaca.
Legal Description: Adjacent To And Between Lots 161-162 And Lot 3, Little Venice Number 2 Subdivision, Key Vaca, Having Real Estate Numbers 00346890-000000 & 00345350-000000. (See Exhibit A for entire legal description)

**Figure 1
Location Map**



Background:

This is a request presented by Jack Carlson for the abandonment of the City’s right-of-way located at 11491 1st Avenue Ocean, Described As Smokes Court aka 1st Avenue Ocean, described as being adjacent to and between lots 161-162 and lot 3, Little Venice Number 2 subdivision, Key Vaca, nearest mile marker 53, Monroe County, Florida. The applicant states they would like Council to abandon a portion of Smokes Court as shown in the location graphic above and in the survey of the area to be abandoned. The applicant states they will grant a utility easement to the City of Marathon and all utilities for current and future use. The applicant has agreed to grant a public access easement for the abndend ROW.

Municipalities derive their power to vacate municipally owned rights-of-way from Section 166.042, Florida Statutes that provides that former Section 167.09, Florida Statutes (1972) remains effective. Former Section 167.09, Florida Statutes provides that municipalities may "...discontinue any public park, public square, street, avenue, highway or any other way..."

Section 26-3 (1) & (2) of the City Code (Ordinance 2015-08), restricts the City's authority to abandon rights-of-way, as provided by state law, by imposing the following conditions:

Section 26-3 General Provisions

(1) Approval of Abutting Property Owners

As part of the submittal process, documentation is required that there are no objections from abutting property owners. In the event that such an objection occurs, then the Petitioner may further petition to be heard by the City Council in a review which would require a super majority vote if approved.

(2) Access to Water.

No right of way, road, street, or public access way giving access to any publicly accessible waters in the City of Marathon, Florida, shall be closed, vacated or abandoned unless:

- a. the City Council determines at a public hearing that the petitioner meets all of the review criteria of this Article; and
- b. only in those instances wherein the Petitioner(s) offers to trade or give to the City comparable land or lands for a right of way, road, street or public access way to give access to the same body of water, such access to be of such condition as not to work a hardship to the users thereof, the reasonableness of the distance and comparable land being left to the discretion of the City.

Analysis

Section 26-7 of the Code establishes criteria the City must consider when reviewing applications for right-of-way abandonment as follows:

Section 26-7 Review of Petition.

- (1) Review by Technical Review Committee - each petition shall be reviewed by the City and any governmental agency or City department deemed affected by the petitioner's request. Upon receipt of receipt of a complete and sufficient petition, the City shall distribute the petition to appropriate reviewing departments and agencies. Within thirty (30) days, the City will hold a meeting of the Technical Review Committee (TRC) meeting pursuant to Chapter 101, Article 4 of the City's Land Development Regulations (LDRs). Within fifteen (15) days of the date of the TRC meeting, a report of objections, recommendations, or conditions shall be forwarded to the Petitioner for their review and action as may then be necessary. Within ninety (90) days of receipt of notification from the TRC the Petitioner shall comply with, agree and commit in writing to the conditions, or disagree in writing to the conditions. Failure to respond to Notification from the TRC shall result in a recommendation to deny the petition to the City Council.

(2) Review Criteria - Upon review of the application, and prior to a public hearing before City Council the chairperson of the TRC shall submit to City Council a written report recommending approval, approval with conditions or denial of the proposed right-of-way abandonment. This report shall take into consideration the following criteria:

- a. Whether the proposed abandonment will adversely affect the operations and functions of the City;

Staff Assessment: The abandonment of this right-of-way will not adversely affect the functions of the City.

- b. Whether the proposed abandonment will adversely affect public access to and from the water;

Staff Assessment: Public access to water is not available for the launching of vessels. However pedestrian public access exists on site. The applicant proposes a public access easement to meet the criteria of this section in lieu of donating comparable land with access to water.

- c. Whether the proposed abandonment will adversely affect pedestrian or vehicular traffic, or the commercial viability of business within 300 feet of the right-of-way to be abandoned;

Staff Assessment: Vehicular and pedestrian traffic will not be hindered. The granting of the public access easement would allow pedestrians to still walk to the canal edge.

- d. Whether the proposed abandonment will adversely affect a public view corridor;

Staff Assessment: No impact to a public view corridor is proposed.

- e. Whether the proposed abandonment will deprive other property owners of access to and from their property; and

Staff Assessment: The applicants own all of the properties adjacent to and abutting the right-of-way; therefore, this criterion does not apply.

- f. Whether the proposed abandonment will interfere with utility services being provided, or unreasonably affect any utility easement.

Staff Assessment: The applicant submitted non-objection letter from AT&T, Comcast, FKAA, and FKEC without objection.

Provided that the owners comply with the conditions stated above the abandonment would not interfere with the utility services being provided currently or in the future.

The City Council shall consider and may impose modifications or conditions concerning, but not limited to the following:

1. Approve the application for the abandonment of public right-of-way;
2. Approve the application for the abandonment of public right-of-way with conditions;
or
3. Deny the application for the abandonment of public right-of-way.

Based on the above criteria, City Staff is therefore forwarding a recommendation of **approval** of this application.

Stakeholders

The Planning Department held a Technical Review Committee meeting to receive input from all affected City departments. The Public Works Department requested that the applicant grant the City a utility easement for all existing and future utilities. Currently, there are no utilities within the requested area of abandonment. The applicant has indicated they agree to provide to the City an easement for existing and future utilities. The applicant has indicated they agree to also provide to the City a public access easement.

Consistency With Adopted Plans And Policies

In addition to the above discussion in the Analysis section, this application complies with the requirements of Chapter 26 of the City of Marathon City Code and with the requirements of the City of Marathon Comprehensive Plan. With the above considerations and conditions the application complies with comprehensive plan policies discouraging the abandonment of rights-of-way that provide public access to water bodies.

Recommendation:

Based on review of the application, Staff is recommending **Approval** of the request to abandon a portion of City right-of-way located on Smokes Court. The application is consistent with state and local law, and the applicants have submitted letters of no objection from the utility companies.

Conditions:

1. The applicant will convey a utility easement (in a form acceptable to the City Attorney) to the City and all utilities on and under all of the abandoned right-of-way.
2. The applicants will convey a public access easement (in a form acceptable to the City Attorney) to the City.

**CITY OF MARATHON, FLORIDA
RESOLUTION 2019-109**

A RESOLUTION OF THE CITY COUNCIL OF MARATHON, FLORIDA, APPROVING SUBJECT TO CONDITIONS, A REQUEST TO THE CITY COUNCIL OF THE CITY OF MARATHON BY JACK CARLSON TO ABANDON THE PUBLIC RIGHT OF WAY LOCATED AT 11491 1ST AVENUE OCEAN, KNOWN AS SMOKES COURT AKA 1ST AVENUE OCEAN, DESCRIBED AS BEING ADJACENT TO AND BETWEEN LOTS 161-162 AND LOT 3, LITTLE VENICE NUMBER 2 SUBDIVISION, KEY VACA, HAVING REAL ESTATE NUMBERS 00346890-000000 & 00345350-000000. NEAREST MILE MARKER 53; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, there presently exists a certain public right-of-way within the City of Marathon, Florida, Located At 11491 1st Avenue Ocean, Described As Smokes Court aka 1st Avenue Ocean, described as being adjacent to and between lots 161-162 and lot 3, Little Venice Number 2 subdivision, Key Vaca, nearest mile marker 53, Monroe County, Florida and as particularly described in the attached survey (Exhibit “A”); and

WHEREAS, Jack Carlson has requested that the City of Marathon, Florida (the “City”), in accordance with Section 26-1 of the City Code, abandon the Right-of-Way; and

WHEREAS, the City Council finds that the Right-of-Way is not needed and may be abandoned without adversely affecting the public interest; and

WHEREAS, the Right-of-Way lies wholly within the corporate boundaries of the City and within the City’s ownership and authority to abandon; and

WHEREAS, a public hearing to vacate the Right-of-Way was held on November 12, 2019 the City has determined that no federal, state or county rights-of-way are involved or affected, and that granting the request for abandonment of the Right-of-Way subject to conditions will not be detrimental to the public health, safety and welfare; and

WHEREAS, the City has determined the Applicant’s request meets all of the requirements of Section 26-1 of the City Code for the abandonment of the Right-of-Way.

WHEREAS, THE City Council has made the following findings of fact pursuant to Section 26-9 of the Code of the City of Marathon:

- a) The abandonment of this right-of-way will not adversely affect the operations and functions of the City because with a grant of utility easement to continue maintenance of its sewer facilities.
- b) Public access to water is possible through this Right-Of-Way and therefore there an access agreement must be recorded to ensure public access to the water.
- c) There will no adverse affect on surrounding traffic circulation or patterns.
- d) The abandonment will not adversely affect a public view corridor.
- e) The applicants own all of the properties adjacent to and abutting the right-of-way; therefore, this criterion does not apply.
- f) The proposed abandonment will not interfere with utility services being provided, or unreasonably affect any utility easement.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, THAT:

Section 1. The above recitals are true and correct and they and all conditions required of Applicants are hereby incorporated as if fully stated herein.

Section 2. Pursuant to the request by the Applicant to vacate the Right-of-Way, the City releases, vacates, abandons, discontinues, renounces and disclaims all rights of the City and the public in and to the Right-of-Way, as legally described on Exhibit "A", subject to the following conditions:

- (1) The Applicant will convey a utility easement to all utilities on, under Smokes Court Right-of Way described in Exhibit "B."
- (2) The Applicant will convey a public access easement to Smokes Court Right-of Way described in Exhibit "C."
- (3) Said conditions as promulgated above shall be met by the applicant within sixty (60) days of the effective date of this Resolution.

Section 3. The City Clerk shall forward a certified copy this Resolution to the Applicant, who shall be responsible for all costs incurred in recording this instrument in the public records of Monroe County, Florida. The Applicant shall provide the City evidence of the recording of this Resolution and the Easement within sixty (60) days of the effective date of this Resolution.

Section 4. The City reserves all rights to itself for the placement, operation and maintenance of all necessary City roads, structures and utilities including, but not limited to, stormwater and wastewater improvements and appurtenant facilities above and below that portion of the Right-of-Way not vacated by this Resolution.

Section 5. Effective Date. This Resolution shall become effective immediately upon its adoption.

PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, THIS 12TH DAY OF NOVEMBER, 2019.

THE CITY OF MARATHON, FLORIDA

Mayor Steven Cook

AYES:
NOES:
ABSENT:
ABSTAIN:

ATTEST:

Diane Clavier, City Clerk

(City Seal)

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

David Migut, City Attorney

Exhibit A
 Copy – Original to be Provided by Applicant to
 Clerk of Court for Recordation

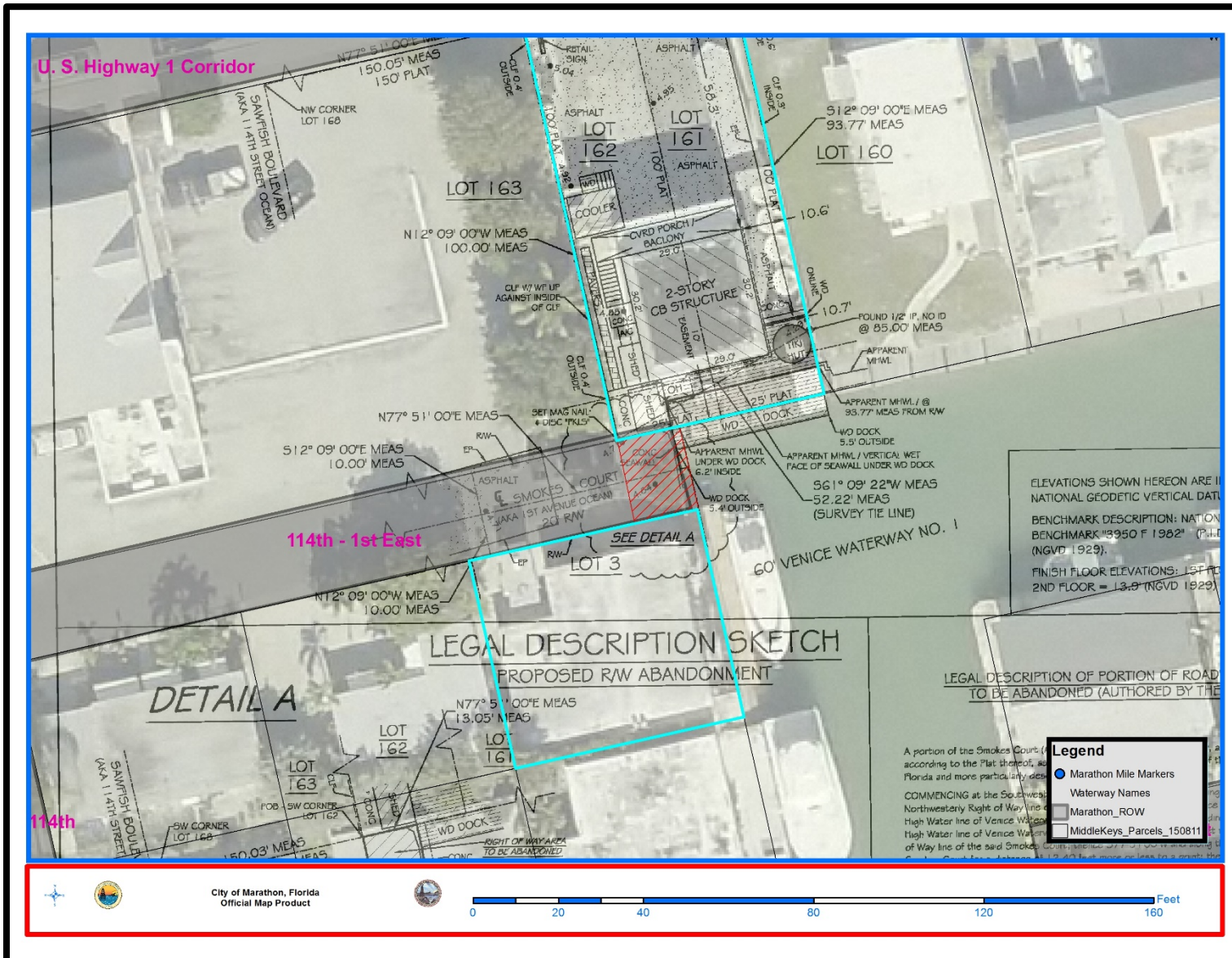


Exhibit B
Copy – Original to be Provided by Applicant to
Clerk of Court for Recordation

Exhibit C
Copy – Original to be Provided by Applicant to
Clerk of Court for Recordation