

**CALL TO ORDER** - A Meeting of the City Council of Marathon, Florida was held on December 8, 2020 in the Marathon Council Chambers, 9805 Overseas Hwy., Marathon, Florida, Mayor Gonzalez called the meeting to order at 5:30 pm.

**PLEDGE OF ALLEGIANCE**

The Pledge of Allegiance was recited. Gonzalez asked for a moment of silence for the Cates family and all of our residents affected by COVID

**ROLL CALL - There were present:**

Councilmember Steve Cook

Councilmember John Bartus

Vice Mayor Mark Senmartin

Councilmember Dr. Daniel Zieg

Mayor Luis Gonzalez, comprising a quorum

Also, in attendance were:

City Manager, George Garrett

City Clerk, Diane Clavier

City Attorney, Steve Williams

Finance Director, Jennifer Johnson

Public Works Director, Carlos Solis

Building Official, Noe Martinez

Planning Director Brian Shea

Parks & Rec Director, Paul Davis

Marina Director, Sean Cannon

Growth Management Director, Doug Lewis

**Approval of Agenda & Consent Agenda**

Zieg added Code Board Discussion under City Council items. Garrett added MCSO Gator donation, removed Resolution 2020-94 from the agenda and added Resolution 2020-98.

**MOTION:** Bartus moved to approve the agenda as amended.

**SECOND:** Zieg

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

City Council Items:

\* Approval of Minutes

Garbage Can Discussion (Councilmember Zieg) Zieg explained in October the Council gave a head nod to bring forward an ordinance and he wanted to remind everyone. Garrett explained Lewis was working on the ordinance, and staff would bring it forward in January. Lewis explained he was redrafting the ordinance, and staff was writing citations in the meantime, the number of complaints were minor, one citation was given for not reacting within the hour.

Code Board Discussion (Councilmember Zieg) – Zieg asked if the Council would be in favor of a Code Board, as he has had a number of residents ask for one and asked the Council to consider taking action next month. Bartus commented that having a code board was a key point of incorporation, and his feelings have not changed, he was still totally in favor of a code board. Senmartin explained he was brought in front of the board, and if there were a bunch of impartial people on the board, he would be okay, but we don't have that, instead it was who was buddies with who. Cook commented that we had to have seven specific people, with specific backgrounds and he was not sure he was in favor of changing. Gonzalez asked for further information, such as cases resolved, pending and what staff does to follow up. Bartus suggested to also keep the magistrate if we need to have one. Williams explained a hybrid of the magistrate and board could be utilized possibly, the magistrate and board would be treated equally.

Gonzalez recognized Sherriff Ramsay and thanked him for the blinking light by the park.

**City Manager Report**

Garrett informed everyone there would be additional department reports in the future, Brian Shea was appointed Planning Director and Doug Lewis would be leaving the City and wished him the best. Garrett stated there would be a Santa ride on the fire truck, but the truck would not be stopping as we are trying to avoid gatherings. Garrett informed everyone those previously not charged for stormwater would begin to see bills and the new permit system would go into effect on Monday.

Marina Report – Cannon reported revenues were up, but occupancy was down slightly. Cannon informed everyone the marina is leasing the parking lot to the FKEC contractor, and the marina rate increase would start January 1<sup>st</sup>. Cannon also commented that the Sheriff's Office, FWC, and Coastguard are jointly working together to improving safety sanitation as well as enforcement of the laws relative to public safety

Marathon Fire Rescue Report – Garrett commented that the Chief was on vacation, but the report is in the packet.

Park Report – Davis reported that the holiday lights at the park are up and the back of Community park is decorated and asked everyone to drive through the park to see the lights. Davis commented that funds have been allocated for another inspection of the amphitheater. Holiday camp was cancelled due to COVID as well as basketball season. Davis asked for a month notice for special events and mentioned the event this Saturday was approved months ago, but we have now ceased events until the COVID numbers go down, it was a group decision.

Establishment of Legislative Priorities for the 2020-2021 Legislative Session – Garrett explained that this year would be complicated, Florida Keys Days will not happen, and Garrett briefly went over the list of priorities. Garrett informed everyone the County had directed staff to have a referendum for the one cent sales tax and there was an attempt to secure funds for land acquisition. Garrett asked the Council to consider if we want to support their efforts regarding sea level rise and private property rights. Garrett informed everyone the federal lobbyist, Rick Marks would continue to seek FQWIP funding.

MCSO Donation of Gator – Garrett asked for a head nod for the acceptance of the Gator for the public works and parks departments use from the Sherriff’s office. The Council approved.

**Quasi-Judicial Public Hearings:**

**Resolution 2020-92**, Consideration Of A Request By Boat Works Investments, LLC For A Revision To The Approved Development Agreement (Resolution 2006-185), Pursuant To Chapter 102, Article 8 Of The City Of Marathon Land Development Regulations (“The Code”) Entitled “Development Agreement”, In Consideration Of A Recently Approved Conditional Use Permit (Resolution 2018-88) Involving Boat Works Investments, LLC And Tri-Star Affordable Development, LLC On Properties Located At And Adjacent To 39<sup>th</sup> Street Gulf And 747 Through 999 41<sup>st</sup> Street Gulf And 3905 Louisa Street, Which Are Legally Described As Part Of Block 2 & All Of Block 5, Lots 5, 6, 7, 8, 9, 10, 14,15, 16, 17, 18 & 19 And Filled Bay Bottom North Of And Adjacent To Marathon Beach Subdivision, Block 1, Lot 1 Of Lincoln Manor Subdivision, Key Vacca, Monroe County, Florida, Having Real Estate Numbers As Stated In The Resolution. Nearest Mile Marker 49.10

Clavier swore in speakers. Bartus, Senmartin and Gonzalez stated they had exparte communications, and it would not affect their vote. Zieg and Cook did not have exparte communications.

Garrett explained the revised clarifying language.

Mayor Gonzalez called for public comment, hearing none, closed public comments.

**MOTION:** Bartus moved approval with the conditions and revisions outlined by staff

**SECOND:** Cook

**Vote of the Motion:**

Yes: Bartus, Cook, Senmartin, Zieg, Gonzalez

No: None

Absent: None

Abstain: None

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

An Appeal By Roger Bolon And Alexandria Wolff Of The Decision Of The City Of Marathon Public Works Director To Issue A Permit To The Florida Keys Electric Cooperative, Inc. To Move Electric Transmission Poles From The South Side Of Aviation Boulevard To The North Side Of Aviation Boulevard From 8146 Aviation Boulevard To 109<sup>th</sup> Street, Gulf Then Toward US 1 Ending 117 Feet North Of US 1 And 109<sup>th</sup> Street. Said Appeal Is Premised On A Belief By The Parties That The City Violated City Code Section 26 (1)(A) And 337.401 F.S. Because The City Failed To Recognize The Potential Impact On Adjacent Property Owners, Including Grandfathered Driveway Access Or Other Permitted Feature(s) In The City Right-Of-Way As Recognized In City Code.

Clavier swore in all speakers. Council stated they did not have ex parte communications. Senmartin abstained as he was an affected property owner.

Garrett explained the appeal before the Planning Commission was voted 4-0 to deny and explained the item and sections 2627 and 2630 in the code and explained the staff recommendation to deny.

Ron Strauss, attorney for appellant explained many seniors declined to appear this evening and Judge Jones declined to force a Zoom meeting. The City agreed to waive hearsay claims and the testimony given at the planning commission was included in the packet.

Ron Strauss called Roger Bolan to give testimony. Roger Bolan testified that he and his spouse, Alexandria Wolfe lived at the residence since 1991, a home with a canal, he had a boat, sometimes on a trailer, same with his neighbors, there was not a utility easement on the property, he was aware of the right of way and was not consulted at all, he was misled a year ago and a tree on his property he planted in 1992 was marked for removal. FKEC rushed to put in poles during a rainstorm. He and his neighbors had concerns regarding safety, parking, home values, high voltage lines in case of an accident and the poles were too close to the roadway.

Ron Strauss argued that the FKEC must come to the board for the permit, which was the normal process. He argued the FAA has an application pending to do what they already have done. Strauss argued the green book is used throughout the State of Florida, but not in this instance. Strauss argued the permit should be withdrawn or cancelled and explained pages 35 to 37 of the transcript.

Paul Blake, Counsel for FKEC provided a PowerPoint presentation and argued the provisions of the City code allow for FKEC to do work in the ROW without a permit. There is not a violation of the green book, it does not apply, the City never adopted it. Blake called Michael Roberge, FKEC Director of Engineering to testify. Roberge testified regarding the goals of the project (storm hardening), the old poles are older than 35 years and are being depreciated, and provided a snapshot of the project, there were no poles on private property and the trees were being marked for trimming, it was too expensive to go underground, FKEC did apply with FAA, one structure requires mitigation (a set of lights). Blake provided exhibit A (attached). Roberge testified six poles were not yet installed, but a Zoom meeting was held prior to setting any poles. Blake provided exhibit B (attached) a chart statistics document.

Strauss cross examined Roberge who stated he was not an engineer, underground connections decision was not based on a study, but it was an experienced based conclusion. FKEC subcontracted the project to Pike LLC. Permit was in their name.

Mr. Blake called Carlos Solis to provide testimony, who provided his name and position at the City. Solis testified that he was involved in issuing the permit and a six foot setback was required, and he considered the safety of drivers and homeowners in the issuance of the permit, and the reason for the six foot versus ten foot setback was at 35 mph, you can have 6 foot separation and gave examples in town where that was done by FDOT.

Mr. Strauss cross examined Solis. Strauss questioned if Solis was aware of the public records request of all communications between Solis and FKEC and put together the response. Solis responded yes. Strauss questioned if Solis considered the need for FAA approval. Solis responded that he did not consider a need for FAA approval. Strauss questioned if he was familiar with the green book, Solis responded he was. Strauss questioned if he was a professional engineer, Solis responded he was.

Mr. Paul called Reggie Mesimer to the stand. Mr. Mesimer provided his background and provided a PowerPoint presentation. Mr. Mesimer testified that a six-foot setback was safe and provided exhibit C (his experience).

Mr. Strauss cross examined Mesimer who testified that the collector roadway does not apply, if it is a collector road or not, it is not our decision.

Mr. Strauss asked that all of the planning commission transcripts become part of the record as well.

Williams suggested a motion be in the form of upholding or denying the appeal.

**MOTION:** Zieg moved to deny the appeal

**SECOND:** Bartus

**Vote of the Motion:**

Yes: Zieg, Bartus, Cook, Gonzalez

No: None

Absent: None

Abstain: Senmartin

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

**Citizen Comments**

Diane Scott - commented that she was hurt by a dog and had to go to the hospital and the insurance company said she overreacted, and she wanted the City to pay the bill.

**\*Resolution 2020-93, Approving Change Order's #1 For "Marathon Area 3 & 4 Force Main Project" To Key Honey Contracting, LLC In The Amount Not To Exceed \$73,586.00; Authorizing The City**

Manager To Execute The Change Order Appropriate and Expend Budgeted Funds On Behalf Of The City; And Providing For An Effective Date.

\* **Resolution 2020-95**, Accepting The Responsible Bid And Approving A Contract Between The City And Discount Rock & Sand, Inc.; In An Amount Not To Exceed \$82,450.00 For Sombrero Area Stormwater Improvement & Repair Project; Authorizing The City Manager To Execute The Contract And Expend Budgeted Funds On Behalf Of The City; And Providing For An Effective Date

\* **Resolution 2020-96**, Authorizing A “Sole-Source” Purchase Pursuant To The City’s Purchasing Policies And Procedures And Approving The Purchase of Odor Control System Upgrades from Syneco Systems, Inc. for upgrades in Service Area 3 and Service Area 4, In An Amount Not To Exceed \$111,005.00; Authorizing The City Manager To Enter Into Agreements In Connection Therewith, Appropriating And Expending Budgeted Funds; And Providing For An Effective Date

\* **Resolution 2020-97**, Amending A Previously Approved Long-Term Lease Agreement Between The City Of Marathon, Florida And Habitat For Humanity Of The Middle Keys (H4h) For Two Properties In The Ownership Of The City; Located At 818 51<sup>st</sup> Street, Ocean (Re No. 00325410-000000) And 7931 Overseas Highway (Re No. 00347290-000000; Providing For The Terms Of Said Lease: Providing For An Effective Date.

**Resolution 2020-98**, Approving An Amendment to the Interlocal Agreement Between The City Of Marathon, Florida (Hereinafter, The “City”) And Monroe County, Florida (Hereinafter, The “County”) (Resolution 2020-061) Providing The Mechanism For The City To Seek And Be Reimbursed For Expenditures Related To The City’s Expenditures Associated With The COVID-19 Pandemic; Amending the Amount of the ILA to \$800,000, Acknowledging That Such Funding Is Made Available To The County Through The Coronavirus Aid, Relief, and Economic Security Act (CARES Act; PL 116-136); Providing For Signature; and Providing For An Effective Date

Garrett explained the amendment of the of the funding amount to \$800,000.

Mayor Gonzalez called for public comment, hearing none, closed public comments.

**MOTION:** Zieg moved to approve

**SECOND:** Bartus

**Vote of the Motion:**

Yes: Zieg, Bartus, Senmartin, Cook, Gonzalez

No: None

Absent: None

Abstain: None

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

**Citizen Comments**

Diane Scott - commented on the bus stop and against a code board.

**Council Comments**

Cook thanked staff, and Doug Lewis who he worked side by side with after Irma. Cook welcomed Garrett as City Manager, congratulated Brian Shea for his promotion to Planning Director. Cook also thanked Marathon Fire Rescue, MSCO, USCG. Cook commended that Pearl Harbor Day was yesterday and to be safe and have a merry Christmas.

Zieg gave an overview of historical events that happened on this date and on December 7<sup>th</sup>, 1941 the attack on Pearl Harbor by the Japanese and asked for a moment of silence for the more than 3,000 service members who lost their lives. Zieg thanked staff and the City Attorney for their expert guidance and wished everyone a merry Christmas and happy new year and a good riddance to 2020. Zieg also gave best wishes Doug Lewis.

Bartus thanked staff and wished everyone the best. Bartus recalled that forty years ago, John Lennon was assassinated and commented on the contributions the Beatles made. Bartus wished everyone a Merry Christmas.

Senmartin thanked staff for all of their hard work and congratulated Garrett and Shea for their new positions. Senmartin wished everyone a merry Christmas and informed everyone he was having a sale at the pawn shop.

Gonzalez thanked staff, Mike Card, MSCO, and the citizens. Gonzalez commented on the Coldwell Banker great event for the children. Gonzalez also thanked Doug Lewis and wished everyone a merry Christmas and happy new year and reminded everyone to wear their mask and social distance.

**ADJOURNMENT**

With no further business to come before the Council, Mayor Gonzalez adjourned the meeting at 8:11 pm by unanimous consent.

I certify the above represents an accurate summary of the regular Council meeting of December 8, 2020.

\_\_\_\_\_  
Diane Clavier, City Clerk

\_\_\_\_\_  
Date

Attachments:

Form 8B

Exhibits relating to appeal on file in Clerk's office and are available upon request.





**APPOINTED OFFICERS (continued)**

- A copy of the form must be provided immediately to the other members of the agency.
- The form must be read publicly at the next meeting after the form is filed.

IF YOU MAKE NO ATTEMPT TO INFLUENCE THE DECISION EXCEPT BY DISCUSSION AT THE MEETING:

- You must disclose orally the nature of your conflict in the measure before participating.
- You must complete the form and file it within 15 days after the vote occurs with the person responsible for recording the minutes of the meeting, who must incorporate the form in the minutes. A copy of the form must be provided immediately to the other members of the agency, and the form must be read publicly at the next meeting after the form is filed.

**DISCLOSURE OF LOCAL OFFICER'S INTEREST**

I, Mark Senmartin, hereby disclose that on December 8, 20 20 :

(a) A measure came or will come before my agency which (check one or more)

- inured to my special private gain or loss;
- inured to the special gain or loss of my business associate, \_\_\_\_\_ ;
- inured to the special gain or loss of my relative, \_\_\_\_\_ ;
- inured to the special gain or loss of \_\_\_\_\_, by whom I am retained; or
- inured to the special gain or loss of \_\_\_\_\_, which is the parent subsidiary, or sibling organization or subsidiary of a principal which has retained me.

(b) The measure before my agency and the nature of my conflicting interest in the measure is as follows:

An Appeal By Roger Bolon And Alexandria Wolff Of The Decision Of The City Of Marathon Public Works Director To Issue A Permit To The Florida Keys Electric Cooperative, Inc. To Move Electric Transmission Poles From The South Side Of Aviation Boulevard To The North Side Of Aviation Boulevard From 8146 Aviation Boulevard To 109th Street, Gulf Then Toward US 1 Ending 117 Feet North Of US 1 And 109th Street. Said Appeal Is Premised On A Belief By The Parties That The City Violated City Code Section 26 (1)(A) And 337.401 F.S. Because The City Failed To Recognize The Potential Impact On Adjacent Property Owners, Including Grandfathered Driveway Access Or Other Permitted Feature(s) In The City Right-Of-Way As Recognized In City Code.

I am an affected property owner, and received notice as a property owner.

If disclosure of specific information would violate confidentiality or privilege pursuant to law or rules governing attorneys, a public officer, who is also an attorney, may comply with the disclosure requirements of this section by disclosing the nature of the interest in such a way as to provide the public with notice of the conflict.

12/15/2020  
Date Filed

[Signature]  
Signature

NOTICE: UNDER PROVISIONS OF FLORIDA STATUTES §112.317, A FAILURE TO MAKE ANY REQUIRED DISCLOSURE CONSTITUTES GROUNDS FOR AND MAY BE PUNISHED BY ONE OR MORE OF THE FOLLOWING: IMPEACHMENT, REMOVAL OR SUSPENSION FROM OFFICE OR EMPLOYMENT, DEMOTION, REDUCTION IN SALARY, REPRIMAND, OR A CIVIL PENALTY NOT TO EXCEED \$10,000.