

CITY COUNCIL AGENDA STATEMENT



Meeting Date: September 14, 2021
To: Honorable Mayor and City Councilmembers
From: Brian Shea, Planning Director
Through: George Garrett, City Manager

Agenda Item: **Resolution 2021-37**, Consideration Of A Request For An Annulment Of A Plat, For Floridian Holdings, LLC, Pursuant To Chapter 102, Article 10 Of The City Of Marathon Land Development Regulations (“The Code”) Entitled “Subdivision Of Land/Plats And Replats” For The Abandonment Of A Portion Of Ecstasy Subdivision West Of Banana Boulevard Excluding Block 3 Lot 4 And Adjacent Waterway And Part Of Vacated Ocean Drive, And The Abandonment Of The Amended Valhalla Island Plat; Located At And Around 56243 Ocean Drive; Which Is Legally Described As Block 1 Lots 1-22, Block 2 Lots 1-20, Lot A, And Waterway Number 1, Block 3 Lots 1-3 And Lots 5-19, Lot A, And Part Of Waterway Number 2, Block 4 Lots 1-4, Block 5 Lots 1-7, Lot A, And Lot B Of Ecstasy Subdivision, As Well As The Entirety Of Valhalla Island Amended Plat Of Ecstasy Subdivision Block A, Bay Bottom Adjacent To Tract A, And Previously Abandoned Right Of Way Of Ocean Drive, Section 35, Township 65, Range 33, Crawl Key, Marathon, Monroe County, Florida; Having Real Estate Numbers As Stated In the Resolution, Nearest Mile Marker 57.

Recommendation:

Based on review of the application, Staff is recommending **Approval** of the request to abandon a portion of Ecstasy and Amended Valhalla Island subdivisions and ROW. The application is consistent with state and local law, and the applicants have submitted letters of no objection from the utility companies.

Planning Commission voted 4-1 to recommend **DENIAL** of the request to abandon a portion of Ecstasy and Amended Valhalla Island subdivisions and ROW. Planning Staff is still recommending Approval of the request with the below conditions.

Conditions:

1. The applicants will convey an updated access easement (in a form acceptable to the City Attorney) to the owner of the outparcel.
2. The applicants will assume all infrastructure and utilities within the abandoned area (in a form acceptable to the City Attorney).
3. The applicants will convey an access and maintenance easement (in a form acceptable to the City Attorney) to the City of Marathon.

Applicant: Floridian Holdings LLC

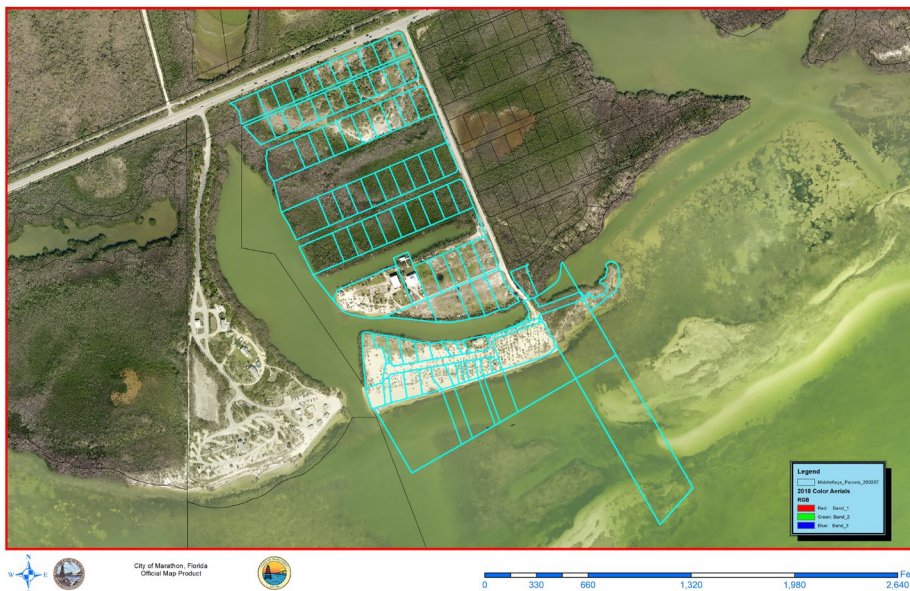
Agent: Bart Smith, Smith Hawks

Request: To abandon a portion of the plat of Ecstasy Subdivision and Amended Valhalla Island

Project Location: The subject property is located on and adjacent to US1 and Banana Boulevard.

Legal Description: (See Exhibit A for entire legal description)

**Figure 1
Location Map**



Background:

This is a request presented by Floridian Holdings LLC for the partial abandonment of the platted subdivisions which include City’s right-of-way known as Banana Boulevard. The applicant states they would like Council to abandon a portion of Crain Street as shown in the location graphic above and in the survey of the area to be abandoned. The applicant states they will grant access and maintenance easement to the City of Marathon, Monroe County Land Authority, and the owner of the out parcel for current and future use.

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, not codified as of this date), 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 be no objections from abutting property owners. If 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 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 portion of the plat, paper streets, paper canals, and ROW will not adversely affect the functions of the City. Ecstasy subdivision was platted in 1948 and Valhalla Island was platted in 1959. The Valhalla subdivision had some development in 1959, and the Ecstasy subdivision was developed with transient uses in 1982 and with the out parcel as a single-family residence in 1993. The City previously abandoned Ocean Drive, and an easement was created for the parcels to access Banana Boulevard. All the other paper streets, alleys, and canals had never been improved.

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

Staff Assessment: Public access to water is not available from the paper streets and alleys. The existing Banana Boulevard ends at the plat for Valhalla Island, and therefore does not provide 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: With the removal of the road, the only vehicular access is by the applicant to their property and the existing access and easement to the out parcel. An access easement should be put in place to cover the additional area abandoned that is Banana Boulevard.

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

Staff Assessment: The Valhalla Island has been improved with a residential compound and does not currently affect a public view corridor.

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

Staff Assessment: The adjacent parcels are owned by the Monroe County Land Authority and are mangrove wetlands. An access and maintenance easement will allow the County to remove any invasive exotics from the property, should the need arise.

- 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.

Section 102.54 Vacation and Annulment of Plats Subdividing Land

Review and Approval. Review and a recommendation for the approval of a request for plat vacations shall be carried out in accordance with Fla. Stat. 177.01. The Council action shall be based upon findings that vacation and reversion to acreage will:

1. Conform to and be consistent with the Comprehensive Plan; and
2. Promote the public health, safety, and welfare.

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 and Utilities Departments will convey utilities to the applicant who must then maintain them. The applicant has indicated they agree to provide to maintain the easement for and improve the existing utilities.

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. This application specifically 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 Ecstasy and Amended Valhalla Island subdivisions and ROW. The application is consistent with state and local law, and the applicants have submitted letters of no objection from the utility companies.

Planning Commission voted 4-1 to recommend **DENIAL** of the request to abandon a portion of Ecstasy and Amended Valhalla Island subdivisions and ROW. Planning Staff is still recommending Approval of the request with the below conditions.

Conditions:

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2. The applicants will assume all infrastructure and utilities within the abandoned area (in a form acceptable to the City Attorney).
3. The applicants will convey an access and maintenance easement (in a form acceptable to the City Attorney) to the City of Marathon.

**CITY OF MARATHON, FLORIDA
RESOLUTION 2021-37**

A RESOLUTION OF THE CITY COUNCIL OF MARATHON, FLORIDA, APPROVING SUBJECT TO CONDITIONS, A REQUEST FOR AN ANNULMENT OF A PLAT, FOR FLORIDIAN HOLDINGS, LLC, PURSUANT TO CHAPTER 102, ARTICLE 10 OF THE CITY OF MARATHON LAND DEVELOPMENT REGULATIONS (“THE CODE”) ENTITLED “SUBDIVISION OF LAND/PLATS AND REPLATS” FOR THE ABANDONMENT OF A PORTION OF ECSTASY SUBDIVISION WEST OF BANANA BOULEVARD EXCLUDING BLOCK 3 LOT 4 AND ADJACENT WATERWAY AND PART OF VACATED OCEAN DRIVE, AND THE ABANDONMENT OF THE AMENDED VALHALLA ISLAND PLAT; LOCATED AT AND AROUND 56243 OCEAN DRIVE; WHICH IS LEGALLY DESCRIBED AS BLOCK 1 LOTS 1-22, BLOCK 2 LOTS 1-20, LOT A, AND WATERWAY NUMBER 1, BLOCK 3 LOTS 1-3 AND LOTS 5-19, LOT A, AND PART OF WATERWAY NUMBER 2, BLOCK 4 LOTS 1-4, BLOCK 5 LOTS 1-7, LOT A, AND LOT B OF ECSTASY SUBDIVISION, AS WELL AS THE ENTIRETY OF VALHALLA ISLAND AMENDED PLAT OF ECSTASY SUBDIVISION BLOCK A, BAY BOTTOM ADJACENT TO TRACT A, AND PREVIOUSLY ABANDONED RIGHT OF WAY OF OCEAN DRIVE, SECTION 35, TOWNSHIP 65, RANGE 33, CRAWL KEY, MARATHON, MONROE COUNTY, FLORIDA; HAVING REAL ESTATE NUMBERS 00099750-000000, 00099760-000000, 00099760-000100, 00099760-000200, 00099760-000300, 00099760-000400, 00099760-000500, 00358250-000000, 00358260-000000, 00358270-000000, 00358280-000000, 00358290-000000, 00358300-000000, 00358310-000000, 00358320-000000, 00358330-000000, 00358340-000000, 00358350-000000, 00358360-000000, 00358370-000000, 00358380-000000, 00358390-000000, 00358400-000000, 00358410-000000, 00358420-000000, 00358430-000000, 00358440-000000, 00358450-000000, 00358460-000000, 00358470-000000, 00358480-000000, 00358490-000000, 00358500-000000, 00358510-000000, 00358520-000000, 00358530-000000, 00358540-000000, 00358550-000000, 00358560-000000, 00358570-000000, 00358580-000000, 00358590-000000, 00358600-000000, 00358610-000000, 00358620-000000, 00358630-000000, 00358640-000000, 00358650-000000, 00358660-000000, 00358661-000000, 00358710-000000, 00358720-000000, 00358730-000000, 00358740-000000, 00358750-000000, 00358760-000000, 00358770-000000, 00358780-000000, 00358790-000000, 00358800-000000, 00358810-000000, 00358820-000000, 00358830-000000, 00358840-000000, 00358850-000000, 00358851-000000, 00358860-000000, 00358870-000000, 00358880-000000, 00358890-000000, 00358910-000100, 00358990-000000, 00358990-000200, 00359000-000000, 00359601-000000, 00359602-000000, 00359602-000100, 00360220-000200,

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00360220-005300, 00360220-005400, 00360220-005500, 00360220-005600,
00360220-005700, 00360220-005800, 00360220-005900, AND 00358670-
000000, NEAREST MILE MARKER 57.**

WHEREAS, Floridian Holdings LLC has requested that the City of Marathon, Florida (the “City”), in accordance with Chapter 102, Article 10 of the Land Development Regulations (LDRs), to abandon the plats including ROWs; and

WHEREAS, the City Council finds that the plats are not needed and may be abandoned without adversely affecting the public interest; and

WHEREAS, the plats lie wholly within the corporate boundaries of the City and the applicant owns all of the parcels listed by RE for abandonment; and

WHEREAS, on the 18th day of April, 2021 the City of Marathon Planning Commission (the “Commission”) reviewed and recommended denial of the plat annulment with several conditions; and

WHEREAS, on the 8th day of June 2021, the City Council (the “Council”) reviewed the Applicant’s proposal finding that the plat annulments were compliant with the terms of Chapter 177, Florida Statutes and the Chapter 102, Article 10 of the City LDR’s; and

WHEREAS, due process was afforded to the parties, the essential requirements of law were adhered to and competent and substantial evidence was presented, the Council voted to annul the plats; and

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 annul the plats, the City releases, vacates, abandons, discontinues, renounces and disclaims all rights of the City and the public in and to the Right-of-Ways, as legally described on Exhibit “A”, subject to the following conditions:

- (1) The applicants will convey an updated access easement (in a form acceptable to the City Attorney) to the owner of the outparcel. (Exhibit B)
- (2) The applicants will assume all infrastructure and utilities within the abandoned area (in a form acceptable to the City Attorney).

(3) The applicants will convey an access and maintenance easement (in a form acceptable to the City Attorney) to the City of Marathon. (Exhibit C)

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 thirty (30) days of the effective date of this Resolution.

Section 4. 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 14TH DAY OF SEPTEMBER, 2021.

THE CITY OF MARATHON, FLORIDA

Luis Gonzalez, Mayor

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:

Steven T. Williams, 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

Access Easement

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

Access & Maintenance Easement