

CITY COUNCIL AGENDA STATEMENT



Meeting Date: April 12, 2022
To: Honorable Mayor and Council Members
From: George Garrett, City Manager

Agenda Item: **Resolution 2022-36**, Approving A Memorandum Of Understanding Between The City Of Marathon, Florida And The Florida Department Of Economic Opportunity In Consideration Of Statutory Requirements Pursuant To Section 380.07 (2) Florida Statutes And Rule 73C-44.002 Requiring That The City Render Development Orders To The Department; This Resolution Is Hereby Adopted As A Replacement For Resolutions 2004-097 And A Subsequent Amendment Letter From Then Secretary Thaddeus L. Cohen Dated January 11, 2005 Which Are Hereby Repealed; And Providing For An Effective Date.

BACKGROUND

The Department of Economic Opportunity has taken action to do two things:

1. Issue a Notice Of Violation (NOV) to the City concerning Boat Works Investments, LLC, and
2. Terminate the Memorandum of Understanding the exists between the two entities that has established the procedure for rendering Development Orders to the Department over the past seventeen years.

The issue stems, we believe, from a misunderstanding concerning an ongoing Administrative Appeal taken by DEO under the provisions of 125 Florida Statutes.

The NOV relates to a project concerning “Boat Works” and an approved, as amended, City Conditional Use Permit and plat to complete twenty-one residential units. The Conditional Use Permit was previously approved by DEO. The NOV more specifically relates to a recent appeal by DEO of a proposed Amendment to the existing approved Development Agreement for the project. The gist of that proposed Amendment was intended to allow Boat Works to bring “liveaboard units” upland as homes. Notably the Conditional Use Permit acknowledged the existence of fourteen residential building rights. The Amendment to the Development Agreement would have provided the additional seven residential development rights to allow ultimate buildout of the project.

The Conditional Use Permit as amended, truly stands on its own and construction could be completed without the Development Agreement. The necessary additional development rights could have been purchased on the open real estate market and fourteen of the units could have been built utilizing the existing fourteen development rights inuring to the project site. Based on that fact, the City permitted four residential structures which are currently under construction. The City closely tracks its development rights and would not have allowed any more development than the fourteen development rights associated with the property.

Apparently, the fact that there is ongoing construction on the project site has become wrapped up in the appeal of the proposed Amendment to the Development Agreement. We believe this is where the confusion between the City and the Department lies.

On March 8, 2022 the City adopted Resolution 2022-30 to replace the old MOU, as noted. That Resolution and MOU were sent to DEO for their review and approval. Over the course of the past four weeks, DEO has been reviewing permits and making revisions to the MOU as now reflected in a revised MOU. The attached new Memorandum of Understanding creates an updated document and rendering relationship with the Department.

CONSISTENCY CHECKLIST:

	Yes	No
1. Comprehensive Plan	<u> X </u>	<u> </u>
2. Other – 2010 Sewer Mandate	<u> </u>	<u> X </u>

FISCAL NOTE:

NA

APPROVED BY FINANCE DIRECTOR:

NA

RECOMMENDATION:

Approval

**CITY OF MARATHON, FLORIDA
RESOLUTION 2022-36**

RESOLUTION OF THE CITY OF MARATHON, FLORIDA APPROVING A REVISED MEMORANDUM OF UNDERSTANDING (MOU) BETWEEN THE CITY OF MARATHON, FLORIDA AND THE FLORIDA DEPARTMENT OF ECONOMIC OPPORTUNITY IN CONSIDERATION OF STATUTORY REQUIREMENTS PURSUANT TO SECTION 380.07 (2) FLORIDA STATUTES AND RULE 73C-44.002 REQUIRING THAT THE CITY RENDER DEVELOPMENT ORDERS TO THE DEPARTMENT; THIS REVISED RESOLUTION AND MOU IS HEREBY ADOPTED AS A REPLACEMENT FOR RESOLUTIONS 2022-30 AND 2004-097 AND A SUBSEQUENT AMENDMENT LETTER CONCERNING RESOLUTION 2004-097 FROM THEN SECRETARY THADDEUS L. COHEN DATED JANUARY 11, 2005 ALL OF WHICH ARE HEREBY REPEALED; AND PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, Pursuant to Chapter 380.07(2) and Rule 73C-44.002, Development Orders issued by the City of Marathon must be rendered for Review to the Department of Economic Opportunity ; and

WHEREAS, Resolution 2004-097 and a subsequent amendment letter from then Secretary Thaddeus L. Cohen dated January 11, 2005 act as the most recent “template” by which the City Renders Development Orders to the State; and

WHEREAS, On February 8, 2022 the City adopted Resolution 2022-30 to replace the old MOU, as noted. That Resolution and MOU were sent to DEO for their review and approval. Over the course of the past four weeks, DEO has been reviewing permits and making revisions to the MOU as now reflected in a revised MOU; and

WHEREAS, the attached MOU provides current and new procedures for rendering development orders based on the Department’s termination of the previous MOU effective March 3, 2022; and

WHEREAS, it is in the City’s best interest pursuant to said statutory requirements to adopt the following Resolution and Memorandum of Understanding,

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 incorporated herein.

Section 2. The Attached Memorandum Of Understanding between the City of Marathon, Florida and the Florida Department of Economic Opportunity is hereby adopted.

Section 3. This Resolution shall take effect immediately upon the signature of both parties.

Section 4. The City Clerk is directed to transmit this Resolution to the Department of Economic Opportunity.

PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, THIS 12TH DAY OF APRIL, 2022.

THE CITY OF MARATHON, FLORIDA

John Bartus, 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:

Steve Williams, City Attorney