

CITY COUNCIL AGENDA STATEMENT



Meeting Date: September 8, 2026

To: Honorable Mayor and City Councilmembers

From: Brian Shea, Planning Director

Through: Steve Williams, Interim City Manager

Agenda Item: **Resolution 2026-76, Public Right-Of-Way Abandonment**, A Request To The City Council Of Marathon By Christopher Waldera. To Abandon A Portion Of The Public Right Of Way Known As Court (5th Avenue Ocean), Located between 11189 5th Ave Ocean, described as lot 27 and S1/2 adj unnumbered parcel Little Venice PB3-7 Key Vacca, Having Real Estate Number 00344370-000000 and 11188 5th Ave Ocean described as Little Venice PB3-7 Key Vacca lot 22 & N1/2 adj unnumbered parcel, Key Vaca, Having Real Estate Number 00344320-000000, Monroe County Florida, Nearest Mile Marker 53.4

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 5th Avenue, Ocean, Little Venice, Marathon. 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.

Applicants: Kerry Myers and Donald Patrick

Agent: Christopher Waldera

Request: To abandon a portion of the right-of-way at 5th Avenue Ocean.

Project Location: Between 11188 and 11189 5th Avenue, Little Venice, Marathon.

Legal Description: Lot 27 and S1/2 adj Parcel Little Venice PB3-7 Key Vacca and Little Venice PB3-7 Key Vacca Lot 22 and N1/2 adj Unnumbered Parcel (See Exhibit A for entire legal description)

Figure 1 Location Map



Background:

This is a request presented by Kerry Myers and Donald Patrick (Agent, Christopher Waldera) for the abandonment of the City's right-of-way located between 11188 and 11189 5th Ave Ocean, Little Venice, Marathon. The applicant states they would like Council to abandon a portion of 5th Avenue Ocean 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.

5th Avenue Ocean, is a 20 foot wide platted road in Little Venice of Marathon (See Figures 2).

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 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 because the owners are granting of utility easements

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

Staff Assessment: The abandonment will not adversely affect public access to and from the water, as the applicant owns the property adjacent to and abutting the right-of-way.

- 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: There will be no adverse affect on surrounding traffic circulation or patterns

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

Staff Assessment: The abandonment will not adversely affect public access to and from the water, as the applicant owns the property adjacent to and abutting the right-of-way

- 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, FCAA, 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. The applicant has completed a Utility Easement for City access.

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 City right-of-way located on 5th Avenue Ocean, Little Venice, Marathon. 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.

Figure 2
Little Venice Subdivision with 5th Avenue Outlined



11189 and 11188 5th Ave Ocean

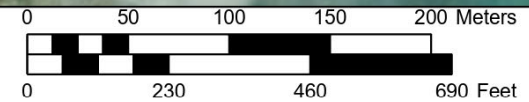
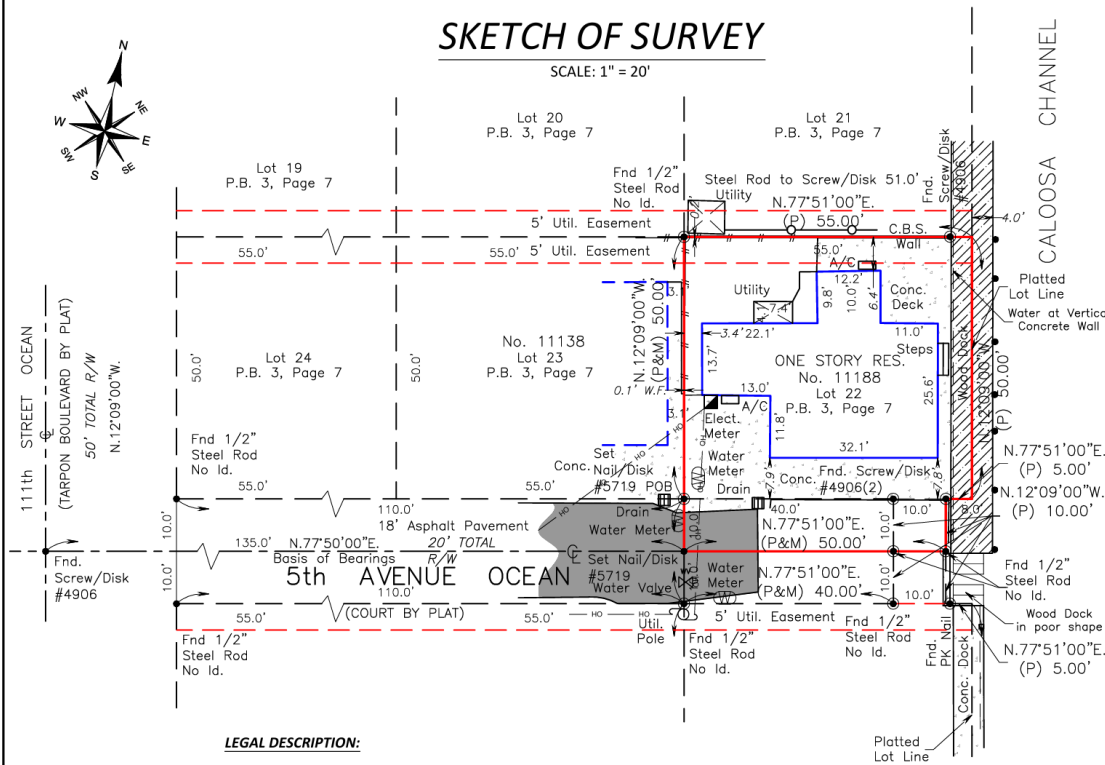


EXHIBIT A (1/2) – Patrick Survey

SKETCH OF SURVEY

SCALE: 1" = 20'



LEGAL DESCRIPTION:

Lot 22, LITTLE VENICE SUBDIVISION, according to the Plat thereof as recorded in Plat Book 3, at Page 7 of the Public Records of Monroe County, Florida. Together with, the northerly one-half of a 10' x 20' parcel lying between Lots 22 and 27, LITTLE VENICE, as recorded in Plat Book 3, Page 7 of the Public Records of Monroe County, Florida.

Together with the Northerly 1/2 of 5th Avenue lying south and adjacent to Lot 22 and being more particularly described as follows:

Beginning at the Southwest corner of Lot 22, LITTLE VENICE, According to the Plat thereof, as recorded in Plat Book 3, at Page 7, of the Public Records of Monroe County, Florida; thence run N. 77° 51' 00" E. along the South boundary of said Lot 22 for 40.00 Feet; thence run S. 12° 09' 00" E. for 10.00 Feet to the center of said 5th Avenue; thence run S. 77° 51' 00" W. for 40.00 Feet; thence run N. 12° 09' 00" W. for 10.00 Feet to the Point of Beginning. Containing approximately 400.00 Square Feet.

ABBREVIATIONS & LEGEND

A.S. = ALUMINUM SHED A.C. = AIR CONDITIONING PAD. BLK = BLOCK BM = BENCH MARK B.D. = BOAT DOCK C.B. = CATCH BASIN C.B.S. = CONCRETE BLOCK STRUCTURE C.G. = CURB & GUTTER C.S. = CONCRETE SLAB	EL = ELEVATION CL = CLEAR CONC. = CONCRETE CH = CHORD DISTANCE E.T.P. = ELECTRIC TRANSFORMER PAD ENG = ENCROACHMENT F.F.E. = FINISHED FLOOR ELEVATION F.H. = FIRE HYDRANT F.I.P. = FOUND IRON PIPE	F.N. = FOUND NAIL F.N.D. = FOUND NAIL & DISK F.R. = FOUND REBAR F.S. = FOUND SPIKE L.P. = LIGHT POLE L = ARC DISTANCE M.D.E. = MAINTENANCE & DRAINAGE EASEMENT M.S. = METAL SHED ON CONCRETE MEAS. = MEASURED	MH = MANHOLE M.W. = MEAN HIGH WATER LINE NO ID. = NO IDENTIFICATION NUMBER N.T.S. = NOT TO SCALE O.E.L. = OVERHEAD ELECTRIC LINE O.R.B. = OFFICIAL RECORDS BOOK P.B. = PLAT BOOK P.C.P. = PERMANENT CONTROL POINT PO = PAGE	PL = PLANTER POB = POINT OF BEGINNING POC = POINT OF COMMENCEMENT P.P. = POWER POLE P.R.M. = PERMANENT REFERENCE MONUMENT R = RANGE R = RADII RW = RIGHT OF WAY SEC. = SECTION	REC = RECORDED RES. = RESIDENCE S.I.P. = SET IRON PIPE No. Lb 5719 S.R. = SET ROD No. Lb 5719 T = TOWNSHIP U.E. = UTILITY EASEMENT U.P. = UTILITY POLE V.G. = VALLEY GUTTER W.A. = WOOD FENCE, (W.F.)	C = CENTER LINE M = MONUMENT LINE (P) = PLAT (P.B.M.) = PLAT AND MEASURE C.B.S. = C.B.S. WALL C.L.F. = CHAIN LINK FENCE (C.L.F.) O.E. = OVERHEAD ELECTRIC E = EXISTING ELEVATION W.F. = WOOD FENCE, (W.F.)
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LOCATION MAP

SCALE: N.T.S.

SEC. 6, T. 66 S, R. 33 E.



NOTES:

- Lands shown hereon were not researched by the surveyor for easement, legal overlaps, or any other instruments of record.
- No utilities located.
- Fence ownership not determined by this survey.
- There may be additional restrictions/Easements that are not shown on this survey that may be found in the public records of this county.
- Surveyor makes no claims to subsurface features other than evidence of same as shown hereon.
- This drawing is the property of LINCOLN ITURREY, P.A. and shall not be used in whole or part without the written permission of LINCOLN ITURREY, P.A.
- Liability limited to survey fee charged.
- Legal description provided by client.
- Elevations when shown Refer to N.G.V.D. 1929.
- Riparian rights not determined by this survey.
- All Measurements and Distances are in U.S. Standard Feet.
- Examination of the abstract of title will have to be made to determine recorded instruments, if any, affecting the property.
- Location and identification of utilities on and/or adjacent to the property were not secured, as such information was not requested.
- Ownership is subject to opinion of title.
- This survey is performed for: DONALD PATRICK REVOCABLE TRUST 08/27/2019, for the singular purpose of obtaining MORTGAGE and TITLE INSURANCE, and does not extend to any unnamed party.

WE HEREBY CERTIFY:

- That the attached Boundary survey of the above described property is true and correct to the best of our knowledge and meets standards of practice set forth by the FLORIDA BOARD OF LAND SURVEYORS. Pursuant to Chapter 5 J-17 Florida Administrative Code.



Digitally signed by
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af94-4c358897279e
Date: 2025.11.03
11:38:06 -05'00'

LINCOLN ITURREY, P.S.M. No. 5719

This survey not valid without the original signature and seal of the appropriate registered Land Surveyor and Mapper.

PREPARED BY:

LINCOLN ITURREY, P.A.

Professional Land Surveyors and Mappers LB. 8190

Mailing Address: P.O. BOX 755, LONG KEY, FLORIDA, 33001.

Office Address: 65821 OVERSEAS HIGHWAY, No. 255, LONG KEY, FLORIDA, 33001.

PHONE: (305) 664-2727 / (305) 975-3141 (CEL.) Email = liturrey@gmail.com

DATE: 10-30-2025

SCALE: 1" = 20'

FB: FILE PG: FILE

PREPARED FOR: DONALD PATRICK REVOCABLE TRUST 08/27/2019.

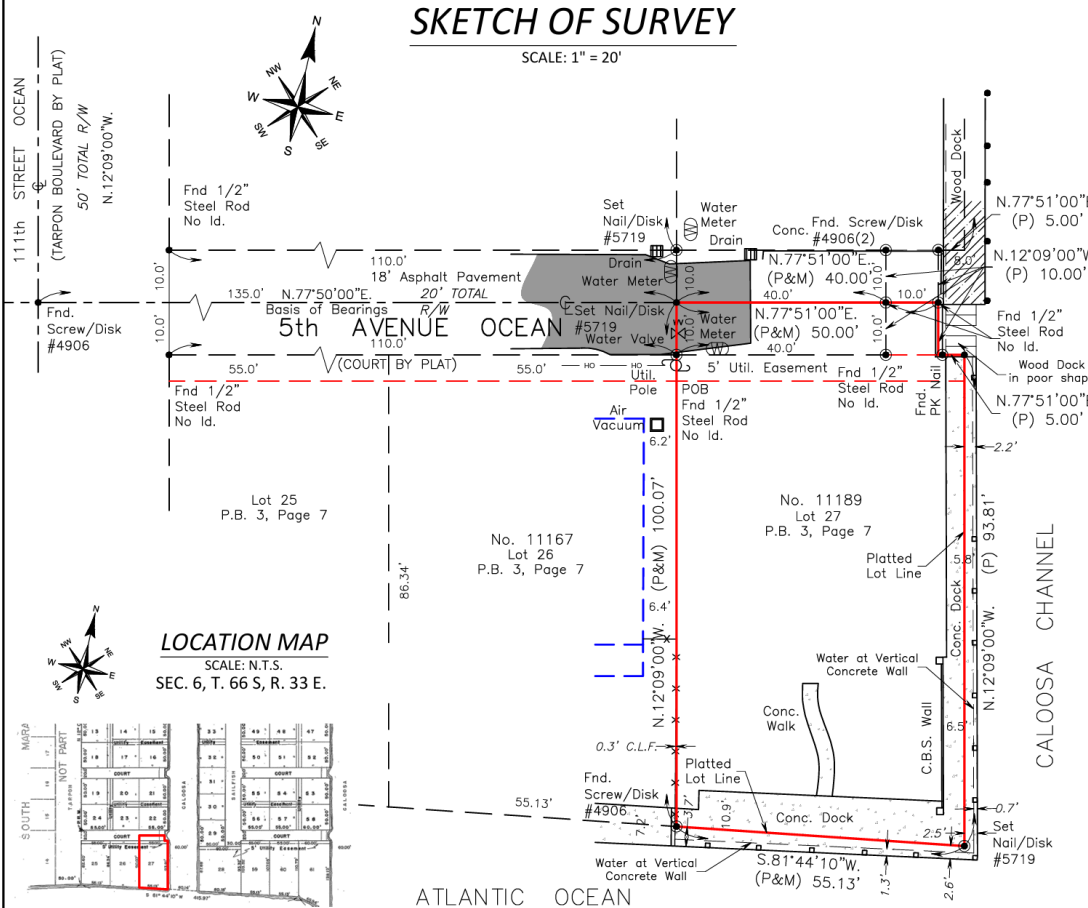
ADDRESS: 11188 5th STREET OCEAN, MARATHON, FLORIDA, 33050.

COMMUNITY No.	PANEL No.	SUFFIX	DATE OF FIRM	ZONE	BASE ELEVATION
120681	1381	K	02-18-2005	AE/VE	9/11-13
CLOSURE AT LEAST 1:7500			DRAWN BY: J.M.		DRAWING No. 24-9959

EXHIBIT A (2/2) – Myers Survey

SKETCH OF SURVEY

SCALE: 1" = 20'



LOCATION MAP

SCALE: N.T.S.
SEC. 6, T. 66 S, R. 33 E.

ABBREVIATIONS & LEGEND

A.S. = ALUMINUM SHED A/C = AIR CONDITIONING PAD B.B. = BLOCK B.M. = BENCH MARK B.D. = BOAT DART C.B. = CATCH BASIN C.B.S. = CONCRETE BLOCK STRUCTURE C.G. = CURB & GUTTER C.S. = CONCRETE SLAB	EL = ELEVATION CL = CLEAR CONC = CONCRETE CH = CHORD DISTANCE E.T.P. = ELECTRIC TRANSFORMER PAD ENC = ENCROACHMENT F.F.E. = FINISHED FLOOR ELEVATION F.H. = FIRE HYDRANT F.I.P. = FOUND IRON PIPE	F.N. = FOUND NAIL F.N.D. = FOUND NAIL & DISK F.R. = FOUND REBAR F.S. = FOUND SPIKE L.P. = LIGHT POLE L = ARC DISTANCE M.D.E. = MAINTENANCE & DRAINAGE EASEMENT M.S. = METAL SHED ON CONCRETE MEAS. = MEASURED	MH = MANHOLE M.H.W. = MEAN HIGH WATER LINE N.O.I.D. = NO IDENTIFICATION NUMBER N.T.S. = NOT TO SCALE O.E.L. = OVERHEAD ELECTRIC LINE O.R.B. = OFFICIAL RECORDS BOOK P.B. = PLAT BOOK P.C.P. = PERMANENT CONTROL POINT PG. = PAGE	PL = PLANTER POB = POINT OF BEGINNING POC = POINT OF COMMENCEMENT P.P. = POWER POLE P.R.M. = PERMANENT REFERENCE MONUMENT R = RANGE R = RADIUS R.W. = RIGHT OF WAY SEC. = SECTION	REC = RECORDED RES. = RESIDENCE S.I.P. = SET IRON PIPE No. Lb 5719 S.R. = SET ROD No. Lb 5719 T = TOWNSHIP U.E. = UTILITY EASEMENT U.P. = UTILITY POLE V.G. = VALLEY GUTTER V = CENTRAL ANGLE	C = CENTER LINE M = MONUMENT LINE P.I. = PLAT (P.B. M) = PLAT and MEASURE. C.B.S. = WALL C.L.F. = CHAIN LINK FENCE (C.L.F.) O.E. = OVERHEAD ELECTRIC E = EXISTING ELEVATION W.F. = WOOD FENCE (W.F.)
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LEGAL DESCRIPTION:

Lot Twenty-Seven (27) in Little Venice Subdivision according to the Plat thereof as recorded in Plat Book 3 at Page 7 of the public records of Monroe County, Florida. Also, the Southerly one-half (1/2) of a 10x20 foot parcel lying between Lots 22 and 27 of said Plat of Little Venice.

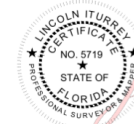
Together with the Northerly 1/2 of 5th Avenue lying south and adjacent to Lot 27 and being more particularly described as follows:
Beginning at the Northwest corner of Lot 27, LITTLE VENICE, According to the Plat thereof, as recorded in Plat Book 3, at Page 7, of the Public Records of Monroe County, Florida; thence run N. 77° 51' 00" E. along the North boundary of said Lot 27 for 40.00 Feet; thence run N. 12° 09' 00" W. for 10.00 Feet to de center of said 5th Avenue; thence run S. 77° 51' 00" W. for 40.00 Feet; thence run S. 12° 09' 00" E. for 10.00 Feet to the Point of Beginning. Containing approximately 400.00 Square Feet.

NOTES:

- Lands shown hereon were not researched by the surveyor for easement, legal overlaps, or any other instruments of record.
- No utilities located.
- Fence ownership not determined by this survey.
- There may be additional restrictions/Easements that are not shown on this survey that may be found in the public records of this county.
- Surveyor makes no claims to subsurface features other than evidence of same as shown hereon.
- This drawing is the property of LINCOLN ITURREY, P.A. and shall not be used in whole or part without the written permission of LINCOLN ITURREY, P.A.
- Liability limited to survey fee charged.
- Legal description provided by client.
- Elevations when shown Refer to N.G.V.D. 1929.
- Riparian rights not determined by this survey.
- All Measurements and Distances are in U.S. Standard Feet.
- Examination of the abstract of title will have to be made to determine recorded instruments, if any, affecting the property.
- Location and identification of utilities on and/or adjacent to the property were not secured, as such information was not requested.
- Ownership is subject to opinion of title.
- This survey is performed for: KERRY MYERS, for the singular purpose of obtaining MORTGAGE and TITLE INSURANCE, and does not extend to any unnamed party.

WE HEREBY CERTIFY:

- That the attached Boundary survey of the above described property is true and correct to the best of our knowledge and meets standards of practice set forth by the FLORIDA BOARD OF LAND SURVEYORS. Pursuant to Chapter 5 J-17 Florida Administrative Code.



Digitally signed by
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af94-4c358897279e
Date: 2025.11.03
11:41:29 -05'00'

LINCOLN ITURREY, P.S.M. No. 5719

This survey not valid without the original signature and seal of the appropriate registered Land Surveyor and Mapper.

PREPARED BY:

LINCOLN ITURREY, P.A.

Professional Land Surveyors and Mappers LB. 8190

Mailing Address: P.O. BOX 755, LONG KEY, FLORIDA, 33001.

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PHONE: (305) 664-2727 / (305) 975-3141 (CEL.) Email = liturrey@gmail.com

DATE: 10-30-2025

SCALE: 1" = 20'

FB: FILE PG: FILE

PREPARED FOR: KERRY MYERS.

ADDRESS: 11189 5th STREET OCEAN, MARATHON, FLORIDA, 33050.

COMMUNITY No.	PANEL No.	SUFFIX	DATE OF FIRM	ZONE	BASE ELEVATION
120681	1381	K	02-18-2005	AE/VE	9/11-13
CLOSURE AT LEAST 1:7500			DRAWN BY: J.M.		DRAWING No. 24-9959

**CITY OF MARATHON, FLORIDA
RESOLUTION 2026-76**

A RESOLUTION OF THE CITY COUNCIL OF MARATHON, FLORIDA, APPROVING SUBJECT TO CONDITIONS, A REQUEST BY KERRY MYERS AND DONALD PATRICK TO ABANDON THE PUBLIC RIGHT OF WAY LOCATED BETWEEN 11189 5TH AVE OCEAN, DESCRIBED AS LOT 27 AND S1/2 ADJ UNNUMBERED PARCEL LITTLE VENICE PB3-7 KEY VACCA HAVING REAL ESTATE NUMBER 00344370-000000 AND 11188 5TH AVE OCEAN DESCRIBED AS LITTLE VENICE PB3-7 KEY VACCA LOT 22 & N1/2 ADJ UNNUMBERED PARCEL, HAVING REAL ESTATE NUMBER 00344320-000000. NEAREST MILE MARKER 53.4; AND PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, there presently exists a certain public right-of-way within the City of Marathon, Florida, between 11189 5th Ave Ocean, described as lot 27 and S1/2 adj unnumbered parcel Little Venice PB3-7 Key Vacca and 11188 5th Ave Ocean described as Little Venice PB3-7 Key Vacca lot 22 & N1/2 adj unnumbered parcel, Key Vaca as particularly described in the attached survey (Exhibit A); and

WHEREAS, Kerry Myers and Donald Patrick (the “Applicants”), have 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, 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 26-7 of the Code of the City of Marathon:

1. The abandonment of this right-of-way will not adversely affect the operations and functions of the City because the owners are granting of utility easements.
2. The abandonment of this right-of-way will not adversely affect the operations and functions of the City because a the owners are granting of access easements.
3. There will no adverse affect on surrounding traffic circulation or patterns.

4. The abandonment will not adversely affect a public view corridor, as the applicant owns the property adjacent to and abutting the right-of-way.
5. 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 Applicants will convey a utility easement to all utilities on, under the Court Right-of Way described in Exhibit “B”, Exhibit “C”, Exhibit “D” and Exhibit “E” or remove said utilities at the owner’s expense.
- (2) 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 8TH DAY OF SEPTEMBER, 2026.

THE CITY OF MARATHON, FLORIDA

Lynny Del Gaizo, 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

