

Sponsored by: Puto
Introduction Date: October 07, 2014
Public Hearing Dates: October 14, 2014
October 28, 2014
Enactment date: October 28, 2014

CITY OF MARATHON, FLORIDA
ORDINANCE 2014-018

AN ORDINANCE OF THE CITY OF MARATHON, FLORIDA, AMENDING SECTION 6-52 OF THE CODE OF ORDINANCES TO INCLUDE A NEW SUBSECTION (A) PROHIBITING THE APPROVAL OF A SITE PREPARATION PERMIT ON PROPERTY WHERE NO PRINCIPLE USE OR STRUCTURE EXISTS; AMENDING THE EXISTING SUBSECTION (a), RENUMBERING IT AS (b), AND INSERTING AN EXCEPTION ALLOWING FOR THE APPROVAL OF MINIMAL ACCESS DRIVEWAYS WITHOUT A PRINCIPLE USE OR STRUCTURE; PROVIDING SPECIFIED REVIEW CRITERIA FOR THE APPROVAL OF ACCESS DRIVEWAYS; AND AMENDING CHAPTER 110 OF THE CITY OF MARATHON LAND DEVELOPMENT REGULATIONS TO INCLUDE A DEFINITION OF THE TERMS “PRINCIPLE STRUCTURE” AND “PRINCIPLE USE;” PROVIDING FOR SEVERABILITY; PROVIDING FOR THE TRANSMITTAL OF THIS ORDINANCE TO THE STATE DEPARTMENT OF ECONOMIC OPPORTUNITY (THE “DEPARTMENT”); AND PROVIDING FOR AN EFFECTIVE DATE UPON THE APPROVAL OF THIS ORDINANCE BY THE DEPARTMENT IN ACCORDANCE WITH STATE LAW.

WHEREAS, the Local Government Comprehensive Planning and Land Development Regulation Act, Chapter 163, Florida Statutes, provides for comprehensive plan implementation through the enactment of certain ordinances; and

WHEREAS, the City Council, based on an expressed deficiency in the current Land Development Regulations (LDRs), requested that staff develop an Ordinance which provides an additional for the ability to create a limited access driveway prior to and without the issuance of a permit for a principle use or structure; and

WHEREAS, Section 6-52(a) of the Code of Ordinances of the City of Marathon, Florida (the “Marathon Code”) currently prohibits the construction of an access driveway on a property unless in conjunction with the establishment of a principle use or structure allowed in the zoning district; and

WHEREAS, the proposed changes to the current Land Development Regulations (LDRs) are consistent with the goals, objectives, and policies set forth in the Comprehensive Plan,

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, AS FOLLOWS:¹

Section 1. The above recitals are true, correct, and incorporated herein by this reference.

Section 2. Section 6-52(a) of the Marathon Code is hereby amended to read as follows:

Sec. 6-52. Building or site preparation permits required; exceptions.

(a) With the exception identified in Section 6-52 (b), no permit shall be issued under Chapter 6 and this Section unless it is part of the establishment of a new principle use or continuation of an existing principle use and associated principle structures as defined in Chapter 110; as provided for and allowed in Chapter 103, Article 3, Section 103.15 and Table 103.15.1 and

which may be further elaborated upon in Chapter 104.

(b) A building or site preparation permit shall be required for the following type of work:

(1) Site preparation involving land clearing (including invasive plant species), the placement of fill, commercial demolition, blasting, excavation, or the storage of materials.

a. A site preparation permit for the placement of fill ~~on~~ **over the entirety of** a parcel without a principal use or structure shall only be issued if the site meets the following criteria as determined by the City Biologist, Planning Director and or Public Works Director:

1. The property owner provides a boundary survey showing existing elevations, proposed elevations, flood zone boundaries, the site to be filled, and a stormwater management plan which provides that all stormwater is retained on site in accordance with Article 11 of Chapter 107 of the Marathon Code of Ordinances; and

2. The site in question is not zoned either Conservation Native Area (C-NA), Conservation-Offshore Island (C-OI), or Residential Low-Conservation (RL-C); and

3. The site contains only Class III habitat types as defined in Section 106.16 and Table 106.16.1 of the City Land Development Regulations and would not require a habitat analysis as described in Section 106.18 or KEYWEP Score as is described in Section 106.27. Thus, the site could have no wetlands. Properties on manmade canals which have a narrow band of shoreline mangroves may be permitted for the placement of fill so long as the fill is placed no closer than 20 feet from landward edge of those mangroves and otherwise meets all other sections of the Code and Land Development Regulations; and

4. The placement of fill on the site does not require a Federal or State dredge and fill permit; and

5. No fill may be placed in a "VE" flood zone as described in Article 12 of Chapter 107 of the Marathon Code of Ordinances; and

6. The placement of fill on the site does not affect existing or proposed stormwater structures or functions within the City's right-of-way; and

7. All other sections of the City Land Development Regulations are met.

b. A site preparation permit may be issued for the construction of

a minimal access driveway to a parcel which does not have a principal use or structure only if the site meets the following criteria as determined by the City Biologist, Planning Director and/or Public Works Director:

1. The property owner provides a boundary survey showing existing elevations, proposed elevations, flood zone boundaries, the area of the site to be impacted, and stormwater management structures which provide that all stormwater is retained on site in accordance with Chapter 107, Article 11 of the Land Development Regulations; and
2. The site in question is not zoned either Conservation Native Area (C-NA), Conservation-Offshore Island (C-OI), or Residential Low-Conservation (RL-C); and
3. The access driveway is necessary, with no less invasive alternatives, in order to reach the least sensitive portion of the property in question as defined in Section Chapter 106, Article 3, Section 106.16, "Clustering;" and
4. The area to be cleared for the access driveway is less than or equal to twelve (12) feet in width at the elevation of the driveway surface, does not exceed 200 feet in length, and does not and shall not involve clearing any Class I habitat type as defined in Section 106.16 and Table 106.16.1 of the City Land Development Regulations; and
5. All Open Space requirements are met or exceeded in the area to be cleared and on the site in general in accordance with Chapter 106, Article 3, Table 106.16.1, "Open Space Requirements by Habitat Type" and
6. The placement of fill for the proposed access driveway maintains a minimum 20 foot setback from any Class I habitat and from the landward edge of mangroves on manmade and developed canals; and
7. If required, Federal and/or State dredge and fill permit have been issued which meet or exceed the standards of this Section prior to issuance of a notice of commencement of the City's site preparation permit; and
8. No fill is placed in a "VE" flood zone as described in Article 12 of Chapter 107 of the Marathon Code of Ordinances; and
9. The placement of fill on the site does not affect existing or proposed stormwater structures or functions within the

City's right-of-way; and

10. All other sections of the City Land Development Regulations are met.

(2) Anyone who intends to construct, enlarge, alter, repair, move, demolish, or change the occupancy of a building or structure, or to erect, install, enlarge, alter, repair, remove, convert or replace any electrical work, gas work, mechanical work, plumbing work, and any work involving life safety regardless of value. Signs, fences, the tie-downs of habitable structures, excavation, land clearing, blasting, placement of fill.

(3) Any work subject to floodplain management requirements.

Section 3. Chapter 110 of the Land Development Regulations is hereby amended to include the following definitions, to be placed in appropriate alphabetic order:

Principle Structure: A Principle Structure is a structure which would be required in order to carry out any use established and allowed under in Chapter 103, Article 3, Table 103.15.1, "Uses By Zoning District" and as may be regulated through the "Special Use Regulations" established in Chapter 104 of the City of Marathon Land Development Regulations (LDRs).

Principle Use: A Principle Use is a use specifically shown and allowed in Chapter 103, Article 3, Table 103.15.1, "Uses By Zoning District" and as may be regulated through the "Special Use Regulations" established in Chapter 104 of the City of Marathon Land Development Regulations (LDRs).

Section 4. The provisions Section 6-52 (a) (1) a. shall be reviewed by the Marathon City Council within two years of the effective date of this ordinance for potential sunset of its provisions.

Section 5. The provisions of the Marathon Code and all ordinances or parts of ordinances in conflict with the provisions of this Ordinance are hereby repealed for the term of this Ordinance.

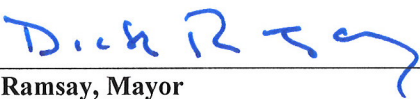
Section 6. The provisions of this Ordinance are declared to be severable, and if any sentence, section, clause or phrase of this Ordinance shall, for any reason, be held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining sentences, sections, clauses or phrases of the Ordinance, but they shall remain in effect it being the legislative intent that this Ordinance shall stand notwithstanding the invalidity of any part.

Section 7. The provisions of this Ordinance constitute a "land development regulation" as state law defines that term. Accordingly, the City Clerk is authorized and directed to forward a copy of this Ordinance to the State Department of Community Affairs for approval pursuant to Sections 380.05(6) and (11), Florida Statutes.

Section 8. This Ordinance shall be effective immediately upon approval by the State Department of Community Affairs pursuant to Chapter 380, Florida Statutes.

PASSED AND ADOPTED ON SECOND READING this 28th day of October, 2014.

THE CITY OF MARATHON, FLORIDA


Dick Ramsay, Mayor

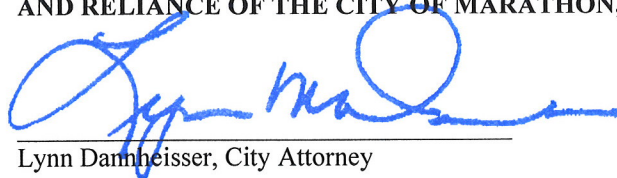
AYES: Bartus, Senmartin, Bull, Keating, Ramsay
NOES: None
ABSENT: None
ABSTAIN: None

ATTEST:



Diane Clavier, City Clerk

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



Lynn Damheisser, City Attorney

**STATE OF FLORIDA
DEPARTMENT OF ECONOMIC OPPORTUNITY**

In re: A LAND DEVELOPMENT REGULATION
ADOPTED BY CITY OF MARATHON
ORDINANCE NO. 2014-18

FINAL ORDER
APPROVING CITY OF MARATHON ORDINANCE NO. 2014-18

The Department of Economic Opportunity (“Department”) hereby issues its Final Order, pursuant to §§ 380.05(6) and 380.0552(9), Florida Statutes, approving land development regulations adopted by the City of Marathon, Florida, Ordinance No. 2014-18 (the “Ordinance”).

FINDINGS OF FACT

1. The Florida Keys Area is designated by § 380.0552, Florida Statutes, as an area of critical state concern. The City of Marathon, is a local government within the Florida Keys Area.
2. The Ordinance was adopted by the City of Marathon on October 28, 2014, and rendered to the Department on November 21, 2014.
3. The Ordinance amends the City of Marathon Code Of Ordinances Chapter 6 (Building and Building Regulation), Division 2 (Permits), Section 6-52 (Building or site preparation permits required; exceptions); Appendix A, Chapter 110 (Definitions), Article 3 (Defined Terms), to provide for a site preparation permit to be issued for the construction of minimal access driveways to parcels which do not have principle use or structure.

CONCLUSIONS OF LAW

4. The Department is required to approve or reject land development regulations that are adopted by any local government in an area of critical state concern. § 380.05(6) and § 380.0552(9), Florida Statutes.

5. The City of Marathon is a local government within the Florida Keys Area of Critical State Concern. §380.0552, Florida Statutes and Florida Administrative Code Chapter 28-29.

6. “Land development regulations” include local zoning, subdivision, building, and other regulations controlling the development of land. § 380.031(8), Florida Statutes. The regulations adopted by the Ordinance are land development regulations.

7. All land development regulations enacted, amended, or rescinded within an area of critical state concern must be consistent with the principles for guiding development for that area. §§ 380.05(6) and 380.0552(9), Florida Statutes. The Principles for Guiding Development for the Florida Keys Area of Critical State Concern are set forth in § 380.0552(7), Florida Statutes.

8. The Ordinance is consistent with the City of Marathon Comprehensive Plan generally, and specifically Policy 4-1.2.1 (Future Land Use Element); Objective 4-1.5 (Conservation Element) and Policy 3-4.2.1 (Infrastructure Element).

9. The Ordinance is consistent with the Principles for Guiding Development in § 380.0552(7), Florida Statutes, as a whole, and is specifically consistent with the following Principles:


(a) Strengthening local government capabilities for managing land use and development so that local government is able to achieve these objectives without continuing the area of critical state concern designation.

(n) Protecting the public health, safety, and welfare of the citizens of the Florida Keys and maintaining the Florida Keys as a unique Florida resource.

WHEREFORE, IT IS ORDERED that the Department finds that the City of Marathon Ordinance No. 2014-18 is consistent with the Principles for Guiding Development for the Florida Keys Area of Critical State Concern and is hereby APPROVED.

This Order becomes effective 21 days after publication in the Florida Administrative Register unless a petition is timely filed as described in the Notice of Administrative Rights below.

DONE AND ORDERED in Tallahassee, Florida.



William B. Killingsworth, Director
Division of Community Development
Department of Economic Opportunity

NOTICE OF ADMINISTRATIVE RIGHTS

ANY PERSON WHOSE SUBSTANTIAL INTERESTS ARE AFFECTED BY THIS ORDER HAS THE OPPORTUNITY FOR AN ADMINISTRATIVE PROCEEDING PURSUANT TO SECTION 120.569, FLORIDA STATUTES.

FOR THE REQUIRED CONTENTS OF A PETITION CHALLENGING AGENCY ACTION, REFER TO RULES 28-106.104(2), 28-106.201(2), AND 28-106.301, FLORIDA ADMINISTRATIVE CODE.

DEPENDING ON WHETHER OR NOT MATERIAL FACTS ARE DISPUTED IN THE PETITION, A HEARING WILL BE CONDUCTED PURSUANT TO EITHER SECTIONS 120.569 AND 120.57(1), FLORIDA STATUTES, OR SECTIONS 120.569 AND 120.57(2), FLORIDA STATUTES.

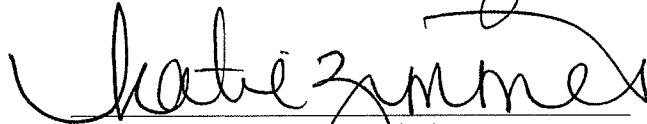
ANY PETITION MUST BE FILED WITH THE AGENCY CLERK OF THE DEPARTMENT OF ECONOMIC OPPORTUNITY WITHIN 21 CALENDAR DAYS OF THE FINAL ORDER BEING PUBLISHED IN THE FLORIDA ADMINISTRATIVE REGISTER. A PETITION IS FILED WHEN IT IS RECEIVED BY:

AGENCY CLERK
DEPARTMENT OF ECONOMIC OPPORTUNITY
OFFICE OF THE GENERAL COUNSEL
107 EAST MADISON ST., MSC 110
TALLAHASSEE, FLORIDA 32399-4128
FAX 850-921-3230

YOU WAIVE THE RIGHT TO ANY ADMINISTRATIVE PROCEEDING IF YOU DO NOT FILE A PETITION WITH THE AGENCY CLERK WITHIN 21 CALENDAR DAYS OF THE FINAL ORDER BEING PUBLISHED IN THE FLORIDA ADMINISTRATIVE REGISTER.

CERTIFICATE OF FILING AND SERVICE

I HEREBY CERTIFY that the original of the foregoing Final Order has been filed with the undersigned designated Agency Clerk, and that true and correct copies have been furnished to the following persons by the methods indicated this 2nd day of January 2015.



Katie Zimmer, Agency Clerk
Department of Economic Opportunity
107 East Madison Street, MSC 110
Tallahassee, FL 32399-4128

By Certified 011-U.S. Mail:

The Honorable Dick Ramsay, Mayor
City of Marathon, City Council
9805 Overseas Highway
Marathon, FL 33050

Diane Clavier, Clerk
City of Marathon
9805 Overseas Highway
Marathon, FL 33050

George Garrett, Director
City of Marathon, Planning Department
9805 Overseas Highway
Marathon, FL 33050