

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

Cecelia Mattino,
Petitioner,

Case No: _____

v.

City of Marathon, Florida,
Respondent.

_____ /

PETITION FOR FORMAL ADMINISTRATIVE HEARING

Comes now Petitioner, CECELIA MATTINO, pursuant to Sections 163.3184(5)(a), 120.569 and 120.57 Florida Statutes, by and through the undersigned counsel, to file this Petition for Formal Administrative Hearing seeking a formal administrative hearing and determination that Comprehensive Plan Amendment 2018-01 adopted by City of Marathon Ordinance 2018-09 (hereinafter “Amendment”) is not “in compliance” pursuant to Section 163.3184(1)(b), Florida Statutes, and is inconsistent with and violates Section 380.0552 Florida Statutes. In support thereof, Petitioner alleges as follows:

PARTIES

1. Petitioner, CECELIA MATTINO (“MATTINO”) lives at 840 80th Street Ocean in Marathon, FL. She is the mother and primary caretaker of her 100% disabled adult daughter, who is prone to aspiration of fluids, seizures, and other emergency issues and often requires immediate access to medical care. Hurricane evacuation, and return afterwards, are extremely dangerous for her daughter because getting stuck in traffic, and long car rides, are agitating, stressful, and painful

to her, and can cause dangerous seizures. They are extremely stressful and difficult for MATTINO as well.

2. MATTINO is concerned that the Amendment's reliance on a two-phased "early evacuation" plan for the residents of the development authorized by the Amendment will make evacuation for her and her daughter, and for her staff, both more time consuming and, due to the risk of inadequate warning of landfall, more dangerous. The extended time in traffic has negative health impacts for her daughter. The additional expense is also burdensome.

3. MATTINO is also concerned that the additional residents would overburden Marathon's already crowded roadways. MATTINO also utilizes Marathon workforce to assist her with her daughter's care and is concerned that the Amendment does not provide a viable solution to the workforce housing problem in Marathon. She is also concerned about the deteriorating quality of life in Marathon as it becomes more and more crowded and as stresses on existing services increase.

4. MATTINO submitted written objections to the City of Marathon ("CITY") prior to the October 23, 2018, public hearing at which the CITY adopted the subject Comprehensive Plan Amendment (Ordinance 2018-009; Comprehensive Plan Amendment 2018-01) challenged herein.

5. Respondent, CITY OF MARATHON, Florida, is a municipality within the Florida Keys Area of Critical State Concern, required by state law to adopt and maintain a comprehensive plan that is "in compliance" with Chapter 163, Part II, Florida Statutes, and consistent with the "Principles for Guiding Development" in the Florida Keys, including the requirement to provide a hurricane evacuation clearance time for permanent residents of no more than 24 hours. The Florida Keys are designated by Section 380.0552, Florida Statutes, as an Area of Critical State Concern.

ALLEGATIONS OF DISPUTED FACTS

City of Marathon Comprehensive Plan

6. The current annual and overall development limitations in the Marathon Comprehensive Plan, and the comprehensive plans of all local governments within the Florida Keys Area of Critical State Concern, were enacted and maintained after years of extensive scientific and other research and analysis and based on infrastructure availability, level of service standards, environmental carrying capacity, and hurricane evacuation clearance time. Hurricane evacuation clearance time serves as a surrogate for the totality of development limitations that exist in the Florida Keys, reflected in a statutory mandate that the population of permanent residents of the Florida Keys be limited to that which can be evacuated in the event of a hurricane in no more than 24 hours.

7. Under the current City of Marathon Comprehensive Plan, the amount of annual and overall building permits for residential and other development is strictly limited. The CITY is limited to issuing thirty (30) (Market Rate 24, Affordable 6) permits (known as Building Permit Allocation System (BPAS) allocations) annually, and a total of approximately 230 additional units through the Year 2023, when its carrying capacity for total development will have been met or exceeded.

City of Marathon Comprehensive Plan Amendment

8. The Amendment would add 300 dwelling units for permanent residents in addition to the current overall development cap in the Marathon Comprehensive Plan. The assumption that this type of development would not cause the evacuation time for the permanent residents of the Florida Keys to exceed 24 hours could enable additional development increases in the future.

9. The Amendment is one component of what the CITY entitles the *Workforce-Affordable Housing Initiative*, and which the state refers to as the *Keys Workforce Housing Initiative*, which state initiative was approved during the June 13, 2018, meeting of the Administration Commission, an overall plan by Florida’s outgoing Governor and Cabinet to seek to increase, by up to 1,300 additional residential dwelling units, the overall amount of residential development in the Florida Keys Area of Critical State Concern. Marathon is only the first of as many as six local governments within the Florida Keys to formally amend its Comprehensive Plan to effectuate this overall proposed increase in residential development.

Two-Phased Evacuation Process

10. The hurricane evacuation clearance time for the permanent residents of the Florida Keys based upon the current caps on development applicable to the CITY OF MARATHON and the other local governments in Monroe County is already equal to or greater than the statutory maximum of 24 hours

11. The Amendment would impermissibly cause the hurricane evacuation time for the permanent residents of the Florida Keys to exceed 24 hours or impermissibly cause that evacuation time to exceed 24 hours to a greater extent than is already the case.

12. The Amendment proposes a two-phased evacuation process in excess of the statutory maximum, requiring the permanent residents of any additional housing built under the Amendment to “early evacuate” at 48 hours prior to anticipated landfall, and exceeds the 24-hour statutory maximum.

13. This “early evacuation” plan is not supported by professionally accepted data or analysis that demonstrates that the “early evacuation” additional permanent residents will have already evacuated prior to the 24-hour evacuation order mandated by state statute. It is not supported by

professionally accepted data and analysis that supports a conclusion that this requirement can be reliably and realistically enforced.

14. The Amendment is not supported by professionally accepted data or analysis that demonstrates that there will always be 48 hours' notice of an impending major storm so as to allow the "early evacuation" upon which the Amendment relies.

15. The Amendment would also cause the evacuation time for permanent residents of the Florida Keys who are not subject to Marathon's "early evacuation" to exceed the 24-hour statutory maximum.

16. *Policy 1-4.13* would exempt from its "early evacuation" policy an unknown number of residents of the 300 proposed new units (all first responders, correction officers, health care professionals, or other first-response workers required to remain during an emergency).

17. The Amendment fails to account for the number of other members of households of exempt persons who may not evacuate early, but instead evacuate at a later time. These "early evacuation" residents who might delay their evacuation time would increase traffic congestion and endanger the remaining permanent residents; and cause them also to exceed the 24-hour mandatory evacuation window.

Amendment is Unsupported by Data or Analysis

18. The Amendment is not supported by professionally accepted data or analysis concerning its impact on the integrity and consistency of the coordinated comprehensive planning strategy for all jurisdictions within the Florida Keys Area of Critical State Concern.

19. The Amendment is not supported by professionally accepted data or analysis that the nearshore waters of Marathon have recovered from their impaired condition so as to allow additional building permit allocations. To wit:

(a) The City of Marathon's central sewage treatment system uses multiple shallow wells to dispose of its partially treated wastewater effluent, rather than a deep well. The use of shallow wells for disposal into the porous subsurface which is subject to tidal pumping allows partially treated sewage effluent containing human pathogens, nutrients, pharmaceuticals, and endocrine disrupting compounds to rise quickly to the surface waters; adversely impact the benthic organisms that support the fisheries; and cause other adverse effects to the water resources and marine life resources of the state of Florida.

(b) The best available data and analysis are that the multiple shallow wastewater effluent disposal wells are continuing to contribute to the ongoing deterioration of the nearshore water quality around Marathon, including degradation of Outstanding Florida Waters, and that the nearshore waters do not have the capacity to assimilate the current wastewater effluent, much less any additional wastewater effluent.

20. The Amendment is not supported by professionally accepted data or analysis concerning the impact of the Amendment on the environmental carrying capacity of the Florida Keys. The Amendment is not supported by professionally accepted data or analysis to support a conclusion that the carrying capacity of the Florida Keys ecosystem has not only recovered from past degradation but expanded to accept significant new development. The best available data and analysis is to the contrary.

21. The Amendment is not based upon professionally accepted data or analysis concerning the Keys-wide impact of the 300 additional residential units the Amendment authorized for the City of Marathon in combination with the 1,000 additional residential units currently proposed for the rest of the Florida Keys by the state's *Keys Workforce Housing Initiative* on:

(a) The evacuation times for the permanent residents of the Florida Keys,

(b) The ecological carrying capacity of the Florida Keys, and

(c) The other public facility and other carrying capacity limitations to development in the Florida Keys.

22. The Amendment is not based upon professionally accepted data or analysis which demonstrates that the existing ecological and public facility constraints on development in the City of Marathon and the Florida Keys no longer require that the amount of development be limited to that authorized prior to the Amendment.

Additional Inadequacies of Amendment

23. The Amendment has not been coordinated, as is required by the Marathon Comprehensive Plan and state law, with the Comprehensive Plans of Monroe County and the other municipalities within the Florida Keys, including with respect to land-use issues and hurricane evacuation plans and times.

24. The Amendment is not based upon, and ignores, alternatives to address housing needs, such as coordinating with other Key's jurisdictions for inter-jurisdictional transfers, a re-allocation of market rate building allocations to affordable housing allocations, and other measures.

25. The Amendment has no requirements for inclusion of very low or low-income housing, nor any definition of "workforce-affordable housing" or "workforce" or "workforce housing." It would allow all of the additional development to be used for the highest income level that qualifies as "affordable housing" in the Florida Keys. It does not require that any resident of the new residential units be a member of the workforce.

26. Although the Amendment requires a deed restriction providing that the property be for "workforce-affordable housing," it does not restrict the authorized buildings to use as rental apartments in perpetuity.

27. Only the deed restrictions for “affordable-workforce housing” are required to be in perpetuity. The other required deed restrictions, including that tenants evacuate during the period in which transient units are required to evacuate, have no specified minimum duration.

28. Although the Amendment requires that the housing have on-site property management and that the managers must be formally trained in evacuation procedures, these terms and requirements are not defined.

29. The requirement that the housing “incorporate sustainable and resilient design principles into the overall site design” is vague and undefined.

30. While the Amendment includes a condition that the housing “ensure accessibility to employment centers,” this phrase is unclear and undefined.

ALLEGATIONS OF LAW

Standing

31. Petitioner is an adversely affected person, pursuant to Section 163.3184(1)(a), Florida Statutes.

32. Petitioner would be adversely affected by the Amendment, should it be approved by a final order under Chapter 163, pursuant to Section 120.68, Florida Statutes.

Not in Compliance, Violations of Law and Inconsistencies

33. The Amendment is not “in compliance” per Section 163.3184(1), Florida Statutes and is inconsistent with and violates Section 380.0552, Florida Statutes.

34. The Amendment is inconsistent with and violates the Community Planning Act, which requires that all plan amendments be based on relevant and appropriate data and analysis. Section 163.3177(1)(f)(2), Florida Statutes.

35. The Amendment is inconsistent with Sections 163.3177 (1)(f), and (6) (a) (2) and (8), Florida Statutes, because it is not based upon surveys, studies, and data regarding the character of undeveloped land and the availability of public facilities and services.

36. The Amendment is inconsistent with Section 163.3177 (6)(a) 3, Florida Statutes, because it does not coordinate future land uses with the availability of facilities and services or ensure the protection of natural resources.

37. The Amendment is inconsistent with Section 163.3177 (6)(a) 8, Florida Statutes, because it is not based upon an analysis of the availability of facilities and services or the suitability of the affected lands for the proposed use considering the character of the undeveloped land, soils, topography, and natural resources.

38. The Amendment is not in compliance, pursuant to Section 163.3184 (1) (b), Florida Statutes, and violates Section 380.0552, Florida Statutes because it is not consistent with the following applicable “Principles for Guiding Development” in Section 380.0552 (7), Florida Statutes:

(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.

(b) Protecting shoreline and marine resources, including mangroves, coral reef formations, seagrass beds, wetlands, fish and wildlife, and their habitat.

(c) Protecting upland resources, tropical biological communities, freshwater wetlands, native tropical vegetation (for example, hardwood hammocks and pinelands), dune ridges and beaches, wildlife, and their habitat.

...

(e) Limiting the adverse impacts of development on the quality of water throughout the Florida Keys.

...

(i) Protecting and improving water quality by providing for the construction, operation, maintenance, and replacement of stormwater management facilities; central sewage collection; treatment and disposal facilities; the installation and proper operation and maintenance of onsite sewage treatment and disposal systems; and other water quality and water supply projects, including direct and indirect potable reuse.

(j) Ensuring the improvement of nearshore water quality by requiring the construction and operation of wastewater management facilities that meet the requirements of Section 381.0065(4)(l) and Section 403.086(10), as applicable, and by directing growth to areas served by central wastewater treatment facilities through permit allocation systems.

....

(l) Making available adequate affordable housing for all sectors of the population of the Florida Keys.

...

(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.

39. The Amendment is inconsistent and violates Section 380.0552(9) (a) (2), Florida Statutes, which requires that each Comprehensive Plan “protect public safety and welfare in the event of a natural disaster by maintaining a hurricane evacuation *clearance time for permanent residents of no more than 24 hours.*” (Emphasis added).

40. The Amendment is inconsistent with Section 163.3177(1) and (2), Florida Statutes, because it is internally inconsistent with and violates existing provisions of the CITY's Comprehensive Plan:

(a) The Amendment is inconsistent with *Policy 4-1.21.2* of Marathon's Comprehensive Plan, which requires the CITY to coordinate with Monroe County in updating policy formulations regarding land use and emergency preparedness, and states that such updates must enable the County and the City to plan for future land use densities that will not adversely impact the efficiency of its hurricane evacuations or increase evacuation times.

(b) The Amendment is inconsistent with *Objective 1-2.1* of the Marathon Comprehensive Plan, which calls for adequate public facilities and services for future growth "to enhance the quality of life, ensure the safety of the City's residents and visitors, and protect valuable natural resources...."

(c) The Amendment is inconsistent with Goals 3-1, 3-2, 3-3, 3-4, and 4-1 of the Marathon Comprehensive Plan because it is not based upon a consideration of the effect of the additional development on public safety (evacuation, traffic), the capacity of public facilities and services (water, wastewater, storm water, schools, law enforcement), and the environment (water quality, marine resources, upland resources, wildlife and their habitats, litter and debris, and effects of sea-level rise, among others).

(d) The Amendment is inconsistent with *Objective 5-1.1* of Marathon's Comprehensive Plan, which requires the CITY to maintain coordination mechanisms with the comprehensive plans of the County and adjacent municipalities.

(e) The Amendment is inconsistent with *Policy 5-1.1.2* of Marathon's Comprehensive Plan which requires the CITY to coordinate with the County and adjacent municipalities for the

development of joint strategies to address development and land-use decisions that transcend jurisdictional boundaries.

(f) The Amendment is inconsistent with *Policy 5-1.1.10* of Marathon's Comprehensive Plan, which requires the CITY to provide and review proposed comprehensive plan amendments of the County and adjacent municipalities to ensure consistency.

(g) The Amendment is inconsistent with *Policy 5-1.1.1j* of Marathon's Comprehensive Plan, which requires the CITY to enter into interlocal agreements or develop joint resolutions in areas of mutual concern, including the coordination of hurricane evacuation plans.

(h) The Amendment is inconsistent with *Policy 4-1.21.2* of Marathon's Comprehensive Plan, which requires the CITY to coordinate with Monroe County in updating policy formulations regarding land use and emergency preparedness, and states that such updates must enable the County and the City to plan for future land use densities that will not adversely impact the efficiency of hurricane evacuations or increase evacuation times.

(i) The Amendment is inconsistent with Objective 1-2.2 of Marathon's Comprehensive Plan, which requires that the "...City shall meet the required 24-hour hurricane evacuation time or other applicable state standard for hurricane evacuation."

(j) The Amendment is inconsistent with Objective 1-3.5, which requires the CITY to "manage the rate of new development ... to support safe and timely evacuation prior to a hurricane."

(k) The Amendment is inconsistent with and violates Goal 3-1, requiring that wastewater disposal facilities must "protect marine resources", including sea grass beds and nearshore

waters; Goal 3-2, requiring that the CITY provide for economically and environmentally sound treatment and disposal of sewage; and *Policy 3-2.2.5*, providing that wastewater disposal facilities shall be designed to meet requirements of state statutes.

41. The Amendment violates and is inconsistent with the Florida Keys Critical Area Act, which requires coordination and efficiency among Monroe County and the Keys municipalities in establishing policy on development issues. Section 380.0552(2), Florida Statutes.

42. The Amendment is inconsistent with Section 163.3178(2)(b), Florida Statutes, because it is not based upon studies, surveys and data and analysis concerning the environmental, socioeconomic, and fiscal impact of the development proposed in the future land use plan on required infrastructure; the natural and historical resources of the coast including coastal wetlands; living marine resources; unique wildlife habitat; and other fragile coastal resources.

43. The Amendment is inconsistent with Section 163.3178(2)(d), Florida Statutes, because it does not take into consideration the capability to safely evacuate the density of coastal population proposed in the future land use plan element in the event of an impending natural disaster.

44. The Amendment violates and is inconsistent with Section 380.0552(2) (g), Florida Statutes and with Section 163.3177(4), Florida Statutes, which require coordination of comprehensive plans with those of adjacent municipalities and the County.

45. The Amendment violates and is inconsistent with Section 380.0552(2) (a), Florida Statutes as it fails to establish a land-use management system that protects the natural environment of the Florida Keys.

46. The Amendment violates and is inconsistent with Section 380.0552(2) (b), Florida Statutes as it fails to establish a land-use management system that conserves and promotes the community character of the Florida Keys.

47. The Amendment violates and is inconsistent with Section 380.0552(2) (c), Florida Statutes as it fails to establish a land-use management system that promotes orderly and balanced growth in accordance with the capacity of available and planned public facilities and services.

48. The Amendment violates and is inconsistent with Section 380.0552(2) (g), Florida Statutes as it fails to promote coordination and efficiency among governmental agencies that have permitting jurisdiction over land use activities in the Florida Keys.

49. The Amendment violates and is inconsistent with Section 380.0552(2) (i), Florida Statutes as it fails to protect and improve the nearshore water quality of the Florida Keys through federal, state, and local funding of water quality improvement projects, including the construction and operation of wastewater management facilities that meet the requirements of Section 381.0065(4)(1); and 403.086(10), Florida Statutes, as applicable.

50. The Amendment violates and is inconsistent with Section 380.0552(2) (j), Florida Statutes as it fails to ensure that the population of the Florida Keys can be safely evacuated.

51. The Amendment is inconsistent with Section 163.3177(1), Florida Statutes because it fails to establish meaningful and predictable standards for the use and development of land.

52. The Amendment violates and is inconsistent Section 380.0552(2)(i) and (7)(b), (i), and (j) Florida Statutes, because the City's wastewater facilities degrade and impair the nearshore waters in violation of Section 403.086 (10), Florida Statutes.

REQUESTED RELIEF

Petitioner requests that the Division of Administrative Hearings assign this matter to an Administrative Law Judge; that the Administrative Law Judge conduct a formal administrative hearing thereon, issue a recommended order determining the Amendment to be not in compliance,

violates and is inconsistent with Section 380.0552 and the “Principals for Guiding Development in the Florida Keys.” Further, Petitioner request a Final Order from the Agency and Administrative Commission finding the same.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of this Petition has been served upon the following persons on this 26th day of November, 2018.

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