



## **EXECUTIVE SUMMARY**

**To:** Jim Scholl, City Manager

**From:** Kevin Bond, AICP, LEED Green Associate, Senior Planner

**Through:** Donald Leland Craig, AICP, Planning Director

**Meeting Date:** October 21, 2014

**Location:** Sunset Marina, 5555 College Road  
(RE # 00072080-001400, AK # 1076007)

## **ACTION STATEMENT**

**Request:** To grant preliminary City Commission authorization to enter into the development agreement process and pursue negotiations with the property owner pursuant to Section 90-679 of the Land Development Regulations of the Code of Ordinances of the City of Key West, Florida

**Applicant:** Gregory S. Oropeza, Smith | Oropeza, P.L.

**Property Owner:** Sunset Marina, LLC

**Zoning:** Commercial General (CG)

## **BACKGROUND**

The Land Development Regulations (the “LDRs”) of the Code of Ordinances (the “Code”) of the City of Key West, Florida (the “City”) allow the City Commission, at its sole discretion, to enter into development agreements with property owners. City Code Section 90-679 requires the City Commission to first make a preliminary determination regarding their willingness to enter into such an agreement prior to the normal process of submitting a proposed development agreement that is considered by the Planning Board and City Commission. Although there have been prior development and/or settlement agreements regarding the subject property, this would be a new development agreement for the proposed development of new non-transient residential dwelling units at the Sunset Marina property.

Last month, the property owner submitted a Building Permit Allocation System (BPAS) Application for 30 market-rate units related to the overall planned development. Additional development applications will be necessary to implement the proposed project, including the requested development agreement.

## **ANALYSIS**

The Land Development Regulations acknowledge the findings of the state legislature that enable development agreements under Florida Statute, as follows (see City Code Section 90-676):

- (1) The lack of certainty in the approval of development can result in a waste of economic and land resources, discourage sound capital improvement planning and financing, escalate the cost of housing and development, and discourage commitment to comprehensive planning.*
- (2) Assurance to a developer that, upon receipt of a development permit, the applicant may proceed in accordance with existing laws and policies, subject to the conditions of a development agreement, strengthens the public planning process, encourages sound capital improvement planning and financing, assists in ensuring there are adequate capital facilities for the development, encourages private participation in comprehensive planning and reduces the economic costs of development.*
- (3) The comprehensive planning process should be furthered by authorizing local governments to enter into development agreements with developers. The intent is to encourage a stronger commitment to comprehensive and capital facilities planning, ensure the provision of adequate public facilities for development, encourage the efficient use of resources, and reduce the economic cost of development.*

Further, City Code Sections 90-677 through 90-692 guide the submittal, review, approval and administration of any development agreement negotiated by the City Commission. Relevant excerpts from these sections of the City Code are as follows:

**Section 90-677. Applicability.**

(a)The city may, by ordinance, establish procedures and requirements, as provided in F.S. §§ 163.3220—163.3243, to consider and enter into a development agreement with any person having a legal or equitable interest in real property located within its jurisdiction.

(b)The entry into a development agreement by the city shall in no way whatsoever limit or modify any legislative power of the city to adopt ordinances, resolutions or regulations or to make executive or legislative decisions of any kind which it had the power to make prior to the entry into such development agreement, except to the degree that the development agreement, by its express terms and not by implication, gives vested rights to the property owner as to certain development permissions, required improvements and similar matters. No development agreement shall, by its express terms or by implication, limit the right of the city commission to adopt ordinances or regulations or to adopt policies that are of general application in the city, except as is expressly provided by F.S. §§ 163.3220—163.3243.

**Section 90-678. Initiation of process by applicant.**

A property owner desiring to enter into a development agreement with the city shall make a written request for such development agreement to the city administrative official and pay the fee as is established by resolution of the city commission. Such written request shall identify the lands which are desired to be subject to the development agreement and shall identify all legal and equitable owners having any interest in such property. Such ownership interest shall be certified by a title company or an attorney at law licensed to practice law in the state. If any partnership, joint venture or other entity, other than an individual, owns a legal or equitable interest in the subject property, all principals and other persons with interest in such partnership or joint venture shall be revealed. If any corporation owns a legal

or equitable interest in the subject property, the officers and directors and any shareholder owning more than ten percent of the interest in the corporation shall be revealed.

**Section 90-679. Preliminary actions by city commission.**

Upon receipt of a request to enter into a development agreement with the city, the city administrative official shall place the matter on the agenda of the city commission. The city commission, after considering staff comments, shall, in its sole and absolute discretion, determine whether or not to enter into a development agreement and to pursue negotiations with the property owner.

**Sec. 90-680. Required information for application.**

An applicant for a development agreement shall meet the requirements for development plan review set forth in article II of Chapter 108.

**Section 90-682. Content.**

**Sub Section (a.)(10)** - A specific finding in the development agreement that the development permitted or proposed is consistent with the city's comprehensive plan and with the land development regulations. However, if amendments are required to the comprehensive plan or land development regulations, such amendments shall be specifically identified in the development agreement, and the agreement shall be contingent upon those amendments being made and approved by the appropriate governmental agencies.

**Sub Section (a.)(11)** - The city commission may provide for any conditions, terms, restrictions or other requirements determined to be reasonably necessary for the public health, safety or welfare of city residents and property owners.

Should the City Commission give the applicant preliminary authorization to request a development agreement, the applicant would be required to provide a draft agreement, together with a Major Development Plan application as well as other information required by the City Code.

**RECOMMENDATIONS**

Therefore, based on the Land Development Regulations and the Comprehensive Plan, staff recommends **Option 1** as described below.

**Options / Advantages / Disadvantages:**

**Option 1.** Approve the request to initiate the process of entering into a development agreement with Sunset Marina, LLC for the development new non-transient residential dwelling units at Sunset Marina on property located at 5555 College Road, with the following minimum condition for negotiation:

The requirements of City Code Chapter 90, Article IX shall be fully complied with to the satisfaction of the City Attorney.

1. **Consistency with the City's Strategic Plan, Vision and Mission:** With the proposed condition, this action would provide a reasonable use of the property consistent with the Comprehensive Plan and consistent with the mission and vision of the City.
2. **Financial Impact:** The cost of processing of the development agreement would be offset by the required application fee, and thus no financial impact is expected.

**Option 2.** Do not approve the request.

1. **Consistency with the City's Strategic Plan, Vision and Mission:** Denial of the request would not be inconsistent with the City's Strategic Plan.
2. **Financial Impact:** The lack of a development agreement would not prevent the proposed development of the subject property, but may result in greater difficulty and uncertainty for the developer, given the time periods and development approvals necessary in order to fully implement the entire project.