

IN THE CIRCUIT COURT OF THE 16th JUDICIAL CIRCUIT OF
THE STATE OF FLORIDA, IN AND FOR MONROE COUNTY

Case No.: 44-2021-CA-157-M

SEAWATCH AT MARATHON
CONDOMINIUM ASSOCIATION,
INC., a Florida not-for-profit corporation,

Petitioner,

vs.

CITY OF MARATHON, a Florida
Municipal corporation, and FLORIDA KEYS
ANIMAL ENCOUNTERS, LLC, a Florida
limited liability company,

Respondents.

**ORDER GRANTING RENEWED JOINT MOTION FOR JUDICIAL
NOTICE AND SUGGESTION OF MOOTNESS AND DISMISSING
AMENDED PETITION FOR WRIT OF CERTIORARI AS MOOT**

THIS CAUSE comes before the Court upon the Respondents' Joint Response to Order to Show Cause and Renewed Suggestion of Mootness ("Renewed Motion") filed on April 19, 2023, requesting that the Court dismiss Seawatch at Marathon Condominium Association Inc.'s ("Seawatch's") Amended Petition for Writ of Certiorari. The Court, having considered the Renewed Motion, Seawatch's Response in Opposition,

pertinent legal authority, and being otherwise fully advised in the premises, finds and orders as follows:

I. Factual and Procedural Background

On May 17, 2021, the City of Marathon Planning Commission (“Planning Commission”) conducted a public hearing on Florida Keys Animal Encounters, LLC’s (“FKAE”) request for an amended conditional use permit and application for a variance to a wetland setback. The Planning Commission voted to recommend approval of the conditional use permit and it granted the variance. On June 21, 2021, the Planning Commission memorialized the variance approval in Resolution 2021-001. Seawatch appealed Resolution 2021-001, and the appeal was denied by the Marathon City Council and memorialized in Resolution 2021-74. The Council also considered and subsequently granted FKAE’s amended request for the conditional use permit over Seawatch’s objection. The Council thereafter adopted Resolution 2021-75 approving the conditional use permit and authorizing the construction of an industrial warehouse on the property.

On October 4, 2021, Petitioner filed a Petition for Writ of Certiorari seeking to quash the City’s Resolution 2021-74 (denying Petitioner’s appeal of FKAE’s variance application approval) and Resolution 2021-75 (approving the amended conditional use permit). On April 22, 2022, the Petitioner filed an Amended Petition with additional facts to establish

standing while maintaining its challenges to the hardship variance and the conditional use permit.

On August 9, 2022, the City of Marathon enacted City of Marathon Ordinance 2022-07 and City of Marathon Ordinance 2022-08. Together, the ordinances reduce the previous 50-foot wetland setback to less than 25 feet in many circumstances. On November 15, 2022, the Respondents filed a Joint Motion for Judicial Notice and Suggestion of Mootness claiming that the new ordinances allow for the setback at issue and there is no longer the requirement for a variance which makes the Petition moot.

On February 10, 2023, the Court entered an “Order Denying Joint Motion for Judicial Notice and Suggestion of Mootness.” The Court found that so long as the Respondents continued to rely on the Planning Commission’s approved hardship variance for wetland setback reduction (Resolution 2021-001), the variance issue was not moot. The Court also noted that the variance was not the only issue before the Court because the Petitioner was also challenging City of Marathon Resolution 2021-75 approving an amended application for a conditional use permit.

On April 18, 2023, the Court issued an Order to Show Cause why Respondents have not filed responses to the Petition for Writ of Certiorari. In response, Respondents filed their Joint Response to Order to Show Cause and Renewed Suggestion of Mootness.

II. Discussion

“A case becomes moot, for purposes of appeal, where, by a change of circumstances prior to the appellate decision, an intervening event makes it impossible for the court to grant a party any effectual relief.” *Montgomery v. Dep’t of Health & Rehabilitative Servs.*, 468 So. 2d 1014, 1016-17 (Fla. 1st DCA 1985). Here, there is no effectual relief that this Court could grant Petitioner based on Petitioner’s claims related to the variance or the conditional use permit.

a. Variance

Since the Court entered its Order Denying the Joint Motion for Judicial Notice and Suggestion of Mootness, Respondent FKA E has withdrawn the variance that is at issue in order to proceed under the newly amended Marathon Code. (Renewed Motion Exhibit A). Since the variance no longer applies to the project, the variance is moot as raised in this appeal.

Petitioner argues that the withdrawal of the variance does not satisfy the requirement that FKA E establish that it qualifies for reduction of the wetland setback. However, whether the proposed development is allowed under the newly amended Marathon Code is a different issue that is not before the Court.


b. Conditional Use Permit

In the Amended Petition for Writ of Certiorari, Petitioner also challenges City of Marathon Resolution 2021-75 approving the conditional use permit authorizing the expansion of the previously approved sea life

amusement park to include a warehouse, office and lab space. The Court ruled on this issue in the related case, *Valdes v. City of Marathon*, No. 44-2021-CA-155-M (Fla. 16th Cir. Ct.) In *Valdes*, the Court dismissed the Petition for Writ of Certiorari concluding that the City of Marathon observed the essential requirements of law and Resolution 2021-75 was supported by competent substantial evidence. This ruling makes the same challenges to Resolution 2021-75 moot in this case.

WHEREFORE, it is hereby **ORDERED AND ADJUDGED** that Respondents' Renewed Joint Motion for Judicial Notice and Suggestion of Mootness is **GRANTED**, and the Amended Petition for Writ of Certiorari is **DISMISSED** as moot.

DONE AND ORDERED at Key West, Monroe County, Florida this Wednesday, July 26, 2023

44-2021-CA-000157-A0-01MR 07/26/2023 11:19:41 AM

Judge Timothy Koenig, Circuit Judge
44-2021-CA-000157-A0-01MR 07/26/2023 11:19:41 AM

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