MAJOR CONDITIONAL USE MJ-14-02

RESOLUTION NO. 14-09-60

A RESOLUTION OF THE VILLAGE COUNCIL OF ISLAMORADA, VILLAGE OF ISLANDS, FLORIDA, CONSIDERING THE REQUEST BY EQUITY DEVELOPMENT GROUP, LLC FOR MAJOR CONDITIONAL USE APPROVAL FOR THE DEVELOPMENT OF A 32,862 SQUARE FOOT SUPERMARKET AND 1,200 SQUARE FOOT RETAIL ON PROPERTY LOCATED NEAR MILE MARKER 83.2 BAYSIDE AT THE CORNER OF OVERSEAS HIGHWAY AND RUSSELL STREET ON UPPER MATECUMBEKEY WITH REAL ESTATE NUMBERS 00094940-000000, 00094950-000000, 00094920-000000, 00094930-000000, 00094960-000000 AND 00094550-000100 AS LEGALLY DESCRIBED IN EXHIBIT “A;” WITHIN THE HIGHWAY COMMERCIAL (HC) ZONING DISTRICT; PROVIDING FOR THE TRANSMITTAL OF THIS RESOLUTION TO THE FLORIDA DEPARTMENT OF ECONOMIC OPPORTUNITY; AND PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, Publix Super Markets, Inc. and IAP at Islamorada, Inc. (the “Owners”) are the owners of property located at approximately Mile Marker 83.2 bayside at the corner of Overseas Highway and Russell Street on Upper Matecumbe Key with Real Estate numbers 00094940-000000, 00094950-000000, 00094920-000000, 00094930-000000, 00094960-000000, and 00094550-000100 and as legally described in Exhibit “A” (the “Property”); and

WHEREAS, Equity Development Group, LLC, as the Agent and Applicant (the “Applicant) for the Owners has applied to the Village for Major Conditional Use approval for the development of a supermarket, retail and accessory uses and structures on the Property; and

WHEREAS, pursuant to Section 30-696(d)(1) of the Code of Ordinances (the “Code”) of Islamorada, Village of Islands, Florida (the “Village”), any permitted use greater than 5,000 square feet except restaurants within the Highway Commercial (HC) Zoning District shall be
reviewed as a Major Conditional Use; and

WHEREAS, pursuant to Code Chapter 30, Article IV, Division 2, the Applicant has applied for Major Conditional Use Approval (MJ-14-02) for the development of a 32,862-square-foot supermarket, 1,200-square-foot retail and accessory uses and structures (the “Request”); and

WHEREAS, during a meeting held on July 22, 2014, the Village Development Review Committee (the “DRC”) reviewed the Request and recommended approval of the Request with conditions to the Director of Planning and Development Services (the “Director”); and

WHEREAS, pursuant to the applicable provisions of the Code, the Director in her Council Communication dated September 11, 2014, has recommended to the Village Council that the Request be approved with conditions; and

WHEREAS, at a properly advertised public hearing held on September 11, 2014 (the “Hearing”), the Village Council has considered the Request, the relevant support materials, the DRC's and the Director's recommendations, public testimony and evidence presented at the hearing.

NOW, THEREFORE, BE IT RESOLVED BY THE VILLAGE COUNCIL OF ISLAMORADA, VILLAGE OF ISLANDS, FLORIDA, AS FOLLOWS:

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

Section 2. Findings of Fact. The Village Council, having considered the Request, the relevant support materials, the DRC's and Director's recommendations, public testimony and evidence given at the hearing, does hereby find and determine:

1. The Applicant submitted the Request on April 11, 2014.
2. The Request consists of a Site Plan attached as Exhibit “B” depicting the Request’s configuration, layout and level of impacts.

3. The Property is located within the Mixed Use (MU) Future Land Use Map (FLUM) category.

4. The Property is located within the Highway Commercial (HC) Zoning District.

5. The Request complies with the standards of Code Section 30-216(d) for considering conditional uses.

6. The Request complies with the Concurrency Management and other applicable requirements of Code Chapter 30, Land Development Regulations (the “LDRs”).

7. The Request is consistent with the purposes, goals, objectives and policies of the Village Comprehensive Plan, including standards for building and structural intensities and densities, and intensities of use.

Section 3. Conclusions of Law. Based upon the above Findings of Fact, the Village Council does hereby make the following Conclusions of Law:

1. The Request has been processed in accordance with the applicable provisions of the Village Comprehensive Plan and LDRs, and will not be detrimental to the community as a whole.

2. In rendering its decision as reflected in this Resolution, the Village Council has:
   (a) Accorded procedural due process;
   (b) Observed the essential requirements of the law; and
   (c) Supported its decision by competent substantial evidence of record.

3. The Request is hereby APPROVED, subject to the conditions imposed below.

Section 4. Conditions Imposed. Granting of the Request is subject to the following conditions:
1. The quantities of vegetation as shown on L-1 is required and cannot be reduced. Species shall only be substituted with the prior approval of the Village Biologist.

2. Pursuant to Code Section 30-215(d)(20)(n), the Applicant shall be responsible for installing improvements, at their expense, to the Florida Keys Overseas Heritage Trail multi-use path directly in front of the Property including installation of standard "Share the Road" or "Bike Route" signage, pavement markings, striping, colored asphalt and widening to a minimum standard width where sufficient right-of-way and clearance exists. All improvements shall be completed prior to issuance of any certificate of occupancy associated with the Request.

3. The Applicant shall obtain all FDOT permits necessary to construct the required Overseas Highway improvements, which include (a) the modification of existing curb cuts to provide one point of ingress and egress to the site and the closure of the access point to the Fish Bowl property; (b) a dedicated southbound one way right turn deceleration lane providing access to the site entrance; and (c) new northbound and southbound bus stop pull outs, as depicted on the site plan. A Letter of Intent from FDOT shall be required prior to issuance of any building permit. All improvements shall be completed by the Applicant at its sole expense. All improvements shall be accepted by FDOT prior to the issuance of a certificate of occupancy.

4. Prior to issuance of a Building Permit, the Applicant shall submit a fully-executed and effective Declaration of Restrictive Covenants or similar legal instrument combining Parcels AK #s 1109754, 1110183, 1110159, 1110141, 1110175 and 1110167 for the purposes of development, which shall be reviewed and approved as to form by the Village Attorney.
5. Pursuant to Section 166.033, Florida Statutes, all applicable state and federal permits must be obtained before commencement of the development. Issuance of a development permit by a municipality does not in any way create any right on the part of an applicant to obtain a permit from a state or federal agency and does not create any liability on the part of the municipality for issuance of the permit if the applicant fails to obtain requisite approvals or fulfill the obligations imposed by a federal or state agency or otherwise undertakes actions that result in a violation of state or federal law.

6. The widening and repaving of Russell Street between Overseas Highway and east of Knowles Street to provide for:
   a. A twenty-four (24) foot paved surface within the existing thirty (30) foot right-of-way of Russell Street between Overseas Highway and east of Knowles along the entire site frontage; and
   b. A forty (40) foot curb return radii in the northwest and southwest quadrants for right-turn movements to allow trucks to enter and depart Russell Street.

   The roadway improvements to Russell Street shall be completed during the first phase of construction.

7. The eight (8) foot wall between the properties designated within the R1 zoning district and the Request along the northeast and northwest property lines shall be constructed and completed during the first phase of construction.

8. The 10 foot wide Class A bufferyard between the properties designated within PS zoning district and the Request along the along southwest property line (Russell
Street) shall be constructed and completed during the first phase of construction of the Request.

9. A swing gate shall be installed on the Property access way directly adjacent to Russell Street in a location approved at the discretion of the Director of Planning.

10. The Applicant has proffered to prohibit nonresidential floor area on the Parcel identified with Real Estate Number 00094940-000000.

11. The Applicant has proffered to prohibit the application for a SCOP alcoholic beverage permit on the Property.

12. The Applicant has proffered to make a Fifty Thousand Dollar ($50,000.00) contribution to the Village’s affordable housing fund to be paid prior to issuance of any building permit associated with the Request.

Section 5. Conflicting Provisions. In the event that the conditions or time limitations contained herein, and any conditions or time limitations of any subsequent development approval granted by the Village or the LDRs are in conflict, the more restrictive provisions shall apply.

Section 6. Violation of Conditions. The Owners/Applicant understand and acknowledge that they must comply with all of the terms and conditions herein, and with all other applicable requirements of the Village or other governmental agencies before commencing construction or operation of any use authorized herein. In accordance with Code Section 30-224, this approval may be revoked by the Village Council upon a determination that the Owners/Applicant or its successor or designee is in non-compliance with this Resolution or the Village Code. Failure to adhere to the terms and conditions of approval contained herein is a
violation of the Village Code and persons found violating the conditions shall be subject to the penalties prescribed by the Village Code.

Section 7. Effective Date. This Resolution shall not take effect until after both thirty (30) days following the date it is filed with the Village Clerk, during which time the Request herein shall be subject to appeal as provided in the Code; and following the thirty (30) days, this Resolution shall not be effective or acted upon by the Owner until forty-five (45) days following the rendition to the Florida Department of Economic Opportunity (the "DEO"), pursuant to Chapter 73C-44.003 of the Florida Administrative Code. During those forty-five (45) days, the DEO may appeal this Resolution to the Florida Land and Water Adjudicatory Commission, and that such an appeal stays the effectiveness of this instrument until the appeal is resolved by agreement or order.

Section 8. Term. This Development Order shall become null and void, with no further notice required by the Village, unless a complete building permit application for site preparation and building construction is submitted to the Village Building Official within the time frame specified in the LDRs. Commencement of development shall occur within three (3) years of the date of this Development Order unless a time extension is granted by the Director or the Village Council, pursuant to Code Section 30-225. If the Development Order is appealed under the LDRs or by the DEO, the above time limits shall be tolled until the appeals are resolved.
The foregoing Resolution was offered by Councilman Mike Forster, who moved for its adoption. This motion was seconded by Vice Mayor Deb Gillis, and upon being put to a vote, the vote was as follows:

Mayor Ted Blackburn  YES
Vice Mayor Deb Gillis  YES
Councilman Mike Forster  YES
Councilman Ken Philipson  YES
Councilman Dave Purdo  YES

PASSED AND ADOPTED THIS 11TH DAY OF SEPTEMBER, 2014.

[Signature]
TED BLACKBURN, MAYOR

ATTEST:

[Signature]
KELLY TOOTH, VILLAGE CLERK

APPROVED AS TO FORM AND LEGALITY
FOR THE USE AND BENEFIT OF
ISLAMORADA, VILLAGE OF ISLANDS ONLY

[Signature]
ROGET V. BRYAN, VILLAGE ATTORNEY

This Resolution was filed in the Office of the Village Clerk on this 18TH day of September, 2014.

[Signature]
Kelly Toth, Village Clerk
CERTIFICATE OF SERVICE

A true and correct copy of the above and foregoing Resolution was furnished to the Agent for the Property Owners, via U.S. certified mail, return receipt requested, addressed to Bernard Danzansky, Equity Development Group, LLC as Agent for Public Super Markets, Inc., 6420 Congress Avenue, #1800, Boca Raton, FL 33487, and IAP at Islamorada, LLC, 8890 W Oakland Park Blvd., Suite 201, Sunrise, Florida 33351-7242 this 18th day of October, 2014.

Kelly Toth, Village Clerk
FROM A REFERENCE POINT RIDE AT THE NORTHWEST CORNER OF THE TOWNSHIP OF ASHTRAHAM, ACCORDING TO THE PLAT THEREOF RECORDED IN THE PUBLIC RECORDS OF MANEHE COUNTY, IRELAND, NORTHWEST TOWARD THE NORTHEASTERN RIGHT-OF-WAY LINE OF THE OCEAN HIGHWAY, A DISTANCE OF 28 FEET TO THE POINT OF BEGINNING.

THE ABOVE DESCRIBED PROPERTY IS SHOWN ON THE PLAT AS LOT 2, AN EXHIBIT A, SHOWING THE POINT OF BEGINNING IN DEED BOK. 2259, PAGE 624, IN THE PUBLIC RECORDS OF MANCHESTER COUNTY, FLORIDA.

THE FOREGOING INSTRUCTIONS ARE TO BE FOLLOWED BY THE PERSONAL INSTRUCTION OF THE PERSONALIN EXHIBIT "A".
A PORTION OF GOVERNMENT LOT 1 IN SECTION 27, TOWNSHIP 63 SOUTH, RANGE 37 EAST, MONROE COUNTY, FLORIDA, ALL BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGIN AT THE SOUTHERLY CORNER OF LOT 1 OF "THE HAMMOCK" ACCORDING TO THE PLAT THEREOF AS RECORDED IN PLAT BOOK 3, PAGE 50, OF THE PUBLIC RECORDS OF MONROE COUNTY, FLORIDA, THENCE SOUTH 46°09'58" WEST ON THE SOUTHWESTERLY EXTENSION OF THE SOUTHEASTERLY LINE OF SAID LOT 1, ALSO BEING THE NORTHWESTERLY RIGHT-OF-WAY LINE OF OVERSEAS HIGHWAY (U.S. HIGHWAY NO. 1) FOR 270.50 FEET; THENCE NORTH 43°50'02" WEST 298.17 FEET TO THE INTERSECTION WITH THE WEST LINE OF SAID SECTION 27, ALSO BEING THE EAST LINE OF "BAY HAMMOCK COMMUNITY" ACCORDING TO THE PLAT THEREOF AS RECORDED IN PLAT BOOK 7, PAGE 30 OF SAID PUBLIC RECORDS; THENCE NORTH 01°39'47" WEST ON SAID WEST LINE AND ON SAID EAST LINE 247 FEET TO THE INTERSECTION WITH A LINE 300 FEET NORTHWESTERLY OF AND PARALLEL WITH THE AFOREMENTIONED NORTHWESTERLY RIGHT-OF-WAY LINE, THENCE NORTH 46°09'58" EAST ON SAID PARALLEL LINE 268.84 FEET TO THE WESTERLY CORNER OF LOT 6 OF SAID PLAT, THENCE SOUTH 43°50'02" EAST ON THE SOUTHWESTERLY LINE OF "THE HAMMOCK" PLAT 300.00 FEET TO THE POINT OF BEGINNING.

SAID LANDS SITUATE, LYING AND BEING IN MONROE COUNTY, FLORIDA AND CONTAINING 81,146.50 SQUARE FEET, 1.9629 ACRES.