MAJOR CONDITIONAL USE MJ-15-01

RESOLUTION NO. 15-12-114

A RESOLUTION OF THE VILLAGE COUNCIL OF ISLAMORADA, VILLAGE OF ISLANDS, FLORIDA, CONSIDERING THE REQUEST BY KEYS WI-FI, INC. FOR MAJOR CONDITIONAL USE APPROVAL OF THE PROPOSED INSTALLATION OF A 150 FOOT MONOPOLE WIRELESS COMMUNICATIONS TOWER AND ACCESSORY USES AND STRUCTURES AT THE PROPERTY WITHIN THE PUBLIC AND SEMI-PUBLIC SERVICES (PS) ZONING DISTRICT LOCATED AT 83400 OVERSEAS HIGHWAY ON UPPER MATECUMBE KEY WITH REAL ESTATE NUMBER 00094340-000000 AS LEGALLY DESCRIBED IN EXHIBIT "A"; PROVIDING FOR THE TRANSMITTAL OF THIS RESOLUTION TO THE FLORIDA DEPARTMENT OF ECONOMIC OPPORTUNITY; AND PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, Island Community Church, Inc. (the “Owners”) is the owner of property located at 83400 Overseas Highway on Upper Matecumbe Key with Real Estate numbers 00094340-000000, and as legally described in Exhibit “A” (the “Property”); and

WHEREAS, Keys Wi-Fi, Inc., as the Agent/Applicant for the Property (the “Agent/Applicant”), has applied for Major Conditional Use approval for the proposed installation of a 150 foot monopole wireless communications tower and accessory uses and structures on the Property; and

WHEREAS, pursuant to Section 30-701(d)(3) of the Code of Ordinances (the “Code”) of Islamorada, Village of Islands, Florida (the “Village”), proposed wireless facilities within the Public and Semi-Public (PS) 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-15-01) for the proposed development of the
proposed installation of a 150 foot monopole wireless communications tower and accessory uses and structures (the “Request”); and

WHEREAS, the Village Development Review Committee (the “DRC”) reviewed the Request during a meeting held on September 15, 2015 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 December 3, 2015, recommended to the Village Council that the Request be approved with conditions; and

WHEREAS, the Village Council has considered the Request, the relevant support materials, the DRC’s and the Director's recommendations, public testimony and evidence given at a properly advertised public hearing held on December 3, 2015 (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 2, 2015.

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 Public and Semi-Public Services (PS) Future Land Use Map (FLUM) category.

4. The Property is located within the Public and Semi-Public Services (PS) 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 in Section 4 below.

**Section 4. Conditions Imposed.** The Request is granted subject to the following conditions:
1. Stormwater must be retained on site to eliminate any runoff to adjacent wetlands.

2. Any outdoor lighting shall comply with all sections of the Code of Ordinances, Chapter 30 Article V, Division 5 "Outdoor Lighting".

3. All transplantation and restoration shall be completed prior to C.O. pursuant to Code Section 30-1615(b)(4)h.

4. Pursuant to Code Section 30-1616(f)(3)(b), the wetland setback on disturbed parcels may be reduced to 25 feet, without regard to buildable area, if the entire setback area is planted and maintained with native vegetation double the density of a Class D landscape bufferyard, utilizing suitable native vegetation for the habitat as determined by the director of planning and development services, and thereafter placed under a conservation easement.

5. All planting and bufferyard calculations totals shall be clearly marked and depicted on the site plan.

6. Vegetation shield on the proposed fence and equipment enclosure area shall be at least eight (8) feet tall to screen the height of the proposed fence and equipment enclosure area in accordance with Code Section 30-1225(a)(4).

7. One (1) informational sign for the purpose of identifying the party responsible for the operation and maintenance of the facility with a corresponding phone number, in a size and type approved by the director, shall be required pursuant to Code Section 30-1125(a)(7). Security and safety signs shall be placed upon the fence or wall in such frequency, size and type required by the director. No other signage shall be permitted.
Section 5. Conflicting Provisions. In the event 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 shall apply.

Section 6. Violation of Conditions. The Owners/Applicant understand and acknowledge that he or she must comply with all of the terms and conditions herein, and all other applicable requirements of the Village or other governmental agencies before he or she may commence 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 Code. Failure to adhere to the terms and conditions of approval contained herein is a violation of the Code and persons found violating the conditions shall be subject to the penalties prescribed by the 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 on first reading. This motion was seconded by Councilman Chris Sante, and upon being put to a vote, the vote was as follows:

FINAL VOTE AT ADOPTION
VILLAGE COUNCIL OF ISLAMORADA, VILLAGE OF ISLANDS

Mayor Deb Gillis YES
Vice Mayor Jim Mooney YES
Councilman Chris Sante YES
Councilman Dennis Ward YES
Councilman Mike Forster YES

PASSED AND ADOPTED THIS 3rd DAY OF DECEMBER, 2015.

ATTEST:

DEB GILLIS, MAYOR

KELLY TOOTH, VILLAGE CLERK

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

ROGER V. BRYAN, VILLAGE ATTORNEY
This Resolution was filed in the Office of the Village Clerk on this ___ day of ___ Dec., 2015.

______________________________
Kelly Toth, Village Clerk
CERTIFICATE OF SERVICE

A true and correct copy of the above and foregoing Resolution was furnished to the Applicant, via U.S. certified mail, return receipt requested, addressed to Rick Richter, P.O. Box 999, Tavernier, FL, 33070, this 8th day of Dec, 2015.

[Signature]
Kelly Toth, Village Clerk
Legal Description:
21/22/27 63 37 ISLAND OF UPPER MATECUMBE GOVT LOTS 1 & 2 & PT GOVT LOT 1
G10-214 OR256-334 OR434-1019/28 OR650-150/151 OR768-1975E OR922-1063/66 OR960-
1656/57 OR1153-72CT OR1155-2225CT OR1205-1909CCT OR1212-966