

KEY WEST PLANNING BOARD

JULY 15, 2010

CITY COMMISSION CHAMBER

OLD CITY HALL

510 GREENE STREET

KEY WEST, FLORIDA

Item for Public Hearing:

4-a-3: Conditional Use

1010 Kennedy Drive

(RE# 00065650-0005000)

**CERTIFIED
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Planning Board Members Present:

Timothy W. Root, Chair

Michael Browning

Sam Holland, Jr.

Gregory S. Oropeza

Lisa Tennyson

James Gilleran

Ron Demes, Ex-Officio, US Navy

Also Present:

Larry Erskine, Assistant City Attorney

Amy Kimball-Murley, Planning Director

Stenographically Reported by Cathy H. Webster RPR

1 CHAIRMAN ROOT: Okay. Moving on to Item
2 4-a-3, Conditional Use for 1010 Kennedy Drive,
3 conditional use for a proposed wireless facility as
4 a private utility in the GC Zoning District per
5 Section 122-418(9) of the Land Development
6 Regulations of the Code of Ordinance of the City of
7 Key West.

8 We'll hear from staff, first.

9 MS. KIMBALL-MURLEY: Yes, Mr. Chairman and
10 Board Members. This is a conditional use
11 application for a proposed wireless facility in the
12 Commercial General GC Zoning District. And the
13 facilities proposed to be located consists of
14 several parts. It's going to be located adjacent to
15 or upon an existing structure known as the BBT
16 Building on Kennedy Drive, 1010 Kennedy Drive.

17 The facility would be considered a private
18 utility and, therefore, a conditional use
19 application is required. And submitted into the
20 record tonight is the Planning staff's analysis of
21 the conformance of the proposed facility with the
22 conditional use criteria and those are before you
23 this evening. And I won't belabor each of the
24 points involved in that report but I just wanted to
25 hit on a few of the key issues.

1 As you all know, the proposed facility does
2 exceed the height allowed in this zoning district.
3 In fact, the existing structure is a legally
4 nonconforming structure to height and the Board of
5 Adjustment, relative to the City Charter, will be
6 required to review that height variance. And I
7 believe that the original denial of the variance is
8 now subject to a reconsideration and may be agendaed
9 at a future Board of Adjustment agenda. So that
10 item is in play and it's listed as a condition of
11 your approval.

12 The original height proposed for this
13 structure was 125 feet and the application before
14 you tonight was recently amended to be 105 foot at
15 its maximum height. And that's the monopole that's
16 located adjacent to the structure.

17 The equipment shelters that are proposed for
18 the top of the building to hold the equipment that's
19 involved for the operation of the monopole is about
20 70-and-a-half-feet or 71-feet, roughly, tall and is
21 also included in the height variance request.

22 In general, these types of application look at
23 land use compatibility issues. And this is an area
24 that is fairly intense area today. And I think
25 those of you who have looked at the site are well

1 aware it's fairly developed. There are a number of
2 other structures that exist in this area, including
3 power structures, high mass lighting in the ball
4 field and the corridor; the main corridor that runs
5 through here, Kennedy Drive, is really surrounded by
6 such structures.

7 In general the staff has found that the
8 application is compatible with the surrounding area
9 and that the applicant has addressed and succeeded
10 to meet the criteria relative to the conditional use
11 and we are recommending approval with several
12 conditions.

13 And the first one I have already discussed,
14 which would be a height variance, would need to be
15 approved by the City of Key West Board of
16 Adjustment.

17 We also would note that the site plan package
18 includes a number of conditions and requirements
19 relative to this facility. And we wanted to
20 specifically note as a condition that there is a
21 site plan package included in this approval and the
22 general notes are included and constitute conditions
23 of approval, so there is no question about that.

24 Also, there is some pending FAA and National
25 Historic Preservation Act approvals that will need

1 to be obtained for this facility.

2 And, finally, when the revised plans were
3 submitted to us, we noticed some inconsistencies in
4 those plans where there are some references to a
5 125-foot monopole that were still included in the
6 plans and we believe that those inconsistencies need
7 to be remedied as a condition of approval.

8 We certainly understand the applicant's intent
9 is to have 105-foot monopole tower height, but the
10 plans need to reflect that and all the
11 particularities.

12 As always, we're here and available to answer
13 any questions you might have about the facility.

14 Thank you.

15 CHAIRMAN ROOT: Excuse me. I think I ought to
16 bring up one thing. Since we are in a
17 quasi-judicial hearing here, are there any experts?
18 Do we need to swear in anyone for this?

19 ASSISTANT CITY ATTORNEY ERSKINE: Mr. Chair,
20 you can choose, the Board can choose, to swear in
21 any members that are going to give any testimony at
22 all should that be the direction of the Board. It's
23 not required. It often is done in situations like
24 this. So that would be the pleasure of the Chair.

25 CHAIRMAN ROOT: Okay. Are there any expert

1 witnesses that are going to come up?

2 ASSISTANT CITY ATTORNEY ERSKINE: What you may
3 want to do, Mr. Chair, is just go ahead and swear
4 anyone, including Amy, who's already testified,
5 that's going to give testimony in this matter.

6 MS. KIMBALL-MURLEY: Can I retroactively
7 swear?

8 ASSISTANT CITY ATTORNEY ERSKINE: Yes.

9 CHAIRMAN ROOT: Who is going to do the
10 swearing in?

11 ASSISTANT CITY ATTORNEY ERSKINE: You are.

12 CHAIRMAN ROOT: Do you swear to tell the whole
13 truth and nothing but the truth, raise your right
14 hand; you are so sworn.

15 (Participating speakers sworn collectively.)

16 CHAIRMAN ROOT: Also, the staff and
17 applicants, we have 30-minute time limits. For
18 participant members of the public, we'll have a
19 three-minute limit. And speakers representing an
20 organization or a group will have a ten-minute time
21 limit.

22 We'll hear from the applicant.

23 State your name for the record, please.

24 MR. SINGH: Pritam Singh, 901 Flagler Avenue,
25 Key West, Florida.

1 I have some modified plans I would like to
2 give you. These are modified applications. Part of
3 this is clearing up what Amy was talking about.
4 These are the corrected applications. This is some
5 red lined. Unfortunately, frankly, I only brought
6 six of the red lined, but I can walk through the red
7 lines, but these are the modified applications here
8 (indicating).

9 CHAIRMAN ROOT: Mr. Singh, I don't mean to
10 interrupt you, but I just need to talk to
11 Mr. Erskine for a minute.

12 In this quasi-judicial hearing, since he is
13 bringing in new evidentiary materials, will this
14 affect this process?

15 ASSISTANT CITY ATTORNEY ERSKINE: Before we
16 address that, Mr. Chair, I think it would be
17 appropriate for the applicant or someone on his
18 behalf to say what the clarification is on these
19 documents, exactly what the changes are. I would
20 not want -- I mean, I would have a problem with new
21 plans or changes which, for example, extend the size
22 or increase what's being requested because this
23 would not have been publicly noticed for that. I
24 want to hear what the clarification is, as long as
25 this change does not increase or extend the extent

1 of the original request.

2 MR. SINGH: These are the red lined ones.

3 All of the changes -- I'm sorry. I apologize.
4 All of the changes that we made decreased, decreased
5 in a number of areas.

6 ASSISTANT CITY ATTORNEY ERSKINE: I think it
7 would be appropriate for the applicant to go ahead
8 and just state exactly what those are, so there is
9 no misunderstanding about it.

10 MS. KIMBALL-MURLEY: I'm not sure if that mic
11 is working. You might want to use the other one.

12 MR. SINGH: Maybe the easiest thing to do
13 would be to start with this plan here, the one I'm
14 holding up.

15 If you go to the first page of this, what you
16 will see is that we have removed from the plan the
17 shelters on the roof and we have on the roof a metal
18 building platform with equipment similar to what you
19 would do with air conditioning equipment. So, even
20 though we felt that the shelters were just shelters,
21 we decided in an abundance of caution to remove
22 them. So these are just equipment on the roof.
23 That's the first change is no longer do we have
24 shelters. We only have equipment on the roof.

25 The second change, if you go to the second

1 page, is that we have a monopole of 105-feet and not
2 125-feet.

3 That's really the major changes in the
4 project, is the removal of the shelters and the
5 reduction of the tower from 125 feet to 105 feet
6 essentially. If you go to the last page, the last
7 two pages, you will see how that's laid out.

8 And instead of four carriers, we only have
9 three carriers on the pole. So it's a reduction
10 from four carriers to three carriers, a reduction
11 from 125-feet to 105-feet, and a reduction of the
12 removal of the shelters and only having equipment
13 platform with the equipment on the roof.

14 Then if you look at the Development Plan and
15 Conditional Use Application, as I said, I thought I
16 brought 14 of the red lined ones and a few of the
17 other ones but I brought the other ones. I can walk
18 through the red lined ones. I think we handed out
19 some of those to you, but essentially it just says
20 that, on the first page, it just says that we
21 changed -- or the second page -- that we changed the
22 facilities to a single, went from 125 to 105, with
23 equipment and up to five antennas, which would be
24 the height of the equipment. And we only have two
25 other service providers instead of three other

1 service providers. And that's basically really,
2 just repeated, and it says equipment mounted on the
3 roof as opposed to shelters. That's really the main
4 changes there. And then --

5 MEMBER BROWNING: Excuse me, Mr. Singh.
6 Before we go on, is it appropriate to submit an
7 application at the meeting?

8 ASSISTANT CITY ATTORNEY ERSKINE: Well, I
9 think -- What I'm -- The way I'm interpreting this,
10 if I understand it correctly, is that he's
11 submitting the document, which is an application,
12 but it consists of changes. I still want to make
13 sure that I understand. Where exactly on, I think
14 you said the second page --

15 MR. SINGH: Yes.

16 ASSISTANT CITY ATTORNEY ERSKINE: Is it the
17 reference in I guess the third line there, where it
18 now says consists of a single 105-foot utility pole?

19 MR. SINGH: Right.

20 ASSISTANT CITY ATTORNEY ERSKINE: Did that say
21 125 before?

22 MR. SINGH: Yes, exactly.

23 ASSISTANT CITY ATTORNEY ERSKINE: Is there any
24 other change on that page?

25 MR. SINGH: The only -- The change on that

1 page is -- Yes. I can read you -- Would you like me
2 to read you the changes?

3 MR. SINGH: Okay. 105-foot goes from 125-foot
4 utility pole for antennas.

5 MEMBER BROWNING: I'm sorry, Pritam.

6 MR. SINGH: Which will be constructed on the
7 west side and equipment and up to five antennas
8 which will be mounted on the roof in the commercial
9 office building and then "and three unmanned
10 equipment shelters" is crossed off, taken out.

11 ASSISTANT CITY ATTORNEY ERSKINE: Is
12 everything in that sentence you just read the same
13 as before except for the 105?

14 MR. SINGH: No, we took out the word -- Well,
15 here, let me show you, Larry.

16 ASSISTANT CITY ATTORNEY ERSKINE: The five
17 antennas referenced there, was that there before?

18 MR. SINGH: No, but we can take those out if
19 that's an issue. I don't have an issue with that.
20 We can just remove those.

21 What I was trying to do, Michael, was really
22 all we're doing is going from 125 to 105 and taking
23 away the shelters.

24 MEMBER BROWNING: Well, I think all I'm doing
25 is procedure, I think if you are going down, we

1 don't have an issue. If you are going up, then you
2 may have some notice issues. That's all I'm trying
3 to clear up.

4 MR. SINGH: That's all I was trying to do was
5 to give you that and it's basically saying we're
6 going down. We also talked antennas, but I'll take
7 those out, so that there is nothing new being added,
8 but strictly -- What we tried to do is just strike
9 through everywhere we had the old one. It's
10 strictly 125 to 105 and no shelters, only equipment.

11 MEMBER TENNYSON: Were the five antennas
12 originally in the shelter and now they are just not
13 sheltered by the shelter?

14 MR. SINGH: They were in the equipment area,
15 but to avoid any confusion we'll just take them out
16 for the time being.

17 ASSISTANT CITY ATTORNEY ERSKINE: In my view,
18 Mr. Chair, including the reference to the five
19 antennas, if that was not there before, I would
20 think that would push us into another realm that
21 would make it, you know, an application that would
22 need to be noticed that way.

23 MR. SINGH: So I would ask that that -- We're
24 not asking for those. We'll take those out.

25 ASSISTANT CITY ATTORNEY ERSKINE: If those are

1 the only changes, Mr. Chair, I would agree that
2 there is no increase here in what's being requested
3 by the applicant.

4 CHAIRMAN ROOT: We can proceed?

5 ASSISTANT CITY ATTORNEY ERSKINE: Yes.

6 MEMBER BROWNING: That's being entered and
7 he'll make --

8 ASSISTANT CITY ATTORNEY ERSKINE: Right. I
9 think Mr. Singh stated for the record that the
10 reference here in I'm going to call it paragraph 10,
11 which appears at the top of page 2, which has the
12 language "and up to five antennas," I'm hearing him
13 say that he will strike that part of the request.

14 CHAIRMAN ROOT: Stricken that out.

15 MEMBER HOLLAND: It's actually 11. It's
16 indented; you can't see it.

17 ASSISTANT CITY ATTORNEY ERSKINE: It's
18 paragraph 11. I'm sorry.

19 Yeah, that paragraph starts "Description of
20 Proposed Development Use." Thank you.

21 MR. SINGH: The only changes we're asking for
22 is to reduce the tower from 125 to 105 and to reduce
23 the shelters down to just equipment, so shrinking in
24 all cases.

25 CHAIRMAN ROOT: Okay. So are we now going to

1 use this as the application or we just attach it to
2 the other one that's in here?

3 ASSISTANT CITY ATTORNEY ERSKINE: I think that
4 that should be made part of the record. Again, I
5 just want to be clear, if there is any discrepancy
6 between the new application, if you want to call it
7 application, or the changed application that's been
8 handed to you, other than the changes that we just
9 discussed, then the application that was previously
10 filed is going to be the one that we're going to
11 move under, with just those two changes that the
12 applicant discussed.

13 CHAIRMAN ROOT: Okay. Anything else?

14 MR. SINGH: Yes. So our request is for the
15 tower. I would like to ask, first I would like to
16 ask AT&T to testify for a moment, please.

17 MR. LLANES: Good evening, my name is Maiko
18 Llanes, office is 5201 Congress Avenue, Boca Raton.

19 CHAIRMAN ROOT: Speak up a little bit.

20 MR. LLANES: I'm sorry. My name is Maiko
21 Llanes, office is 5201 Congress Avenue, Boca Raton,
22 Florida, 33487.

23 Approximately seven years ago AT&T determined
24 a need for improved wireless service in the eastern
25 half of the City of Key West. Based on direct test

1 data, our prediction simulations and 12 years
2 experience designing wireless networks, I determined
3 that the property at 1010 Kennedy Drive is near the
4 center of AT&T's coverage gap and a wireless
5 facility in this location would address AT&T's need
6 to provide improved coverage and enhanced data and
7 emergency call service to the residents and visitors
8 of Key West.

9 For these reasons I urge the Board to grant
10 the applicant a conditional use variance. And I'm
11 going to be available for any questions of a
12 technical matter or RF matter you may have.

13 Thank you.

14 MR. SINGH: If you also look at this other map
15 which we've provided to you here, I think what this
16 demonstrates, what I would like to walk through is,
17 that this is really the best location for a tower
18 like this.

19 Where we sit in the building is a very unique
20 location for a number of reasons. If you go to
21 the -- If you look at this map where the monopole
22 would be, on one side of Kennedy Drive you have a
23 series of ball fields and you also have the
24 electrical transmission station. And if you look at
25 the next picture, you're going to see all the wires

1 and poles that are right there. If you then look
2 over, and then if you look, you'll see that even
3 higher than the wires and poles of the electrical
4 transmission lines are the ball fields, which are
5 right there. And, of course, those are non
6 residential areas. The tower, by being right next
7 to the building, located next to the building, if
8 you look through here you'll see all these
9 perspectives which we did. It gets basically
10 hidden, frankly, by the forest of poles that's all
11 the way around it. And, you know, by having the
12 existing building, which is 50-plus-feet high,
13 55-feet, 57-feet high, you don't even see the base
14 of it until you're right up on it and it's actually
15 in a kind of crook in the building. And then so
16 everyone that's looking at this is also seeing lots
17 of other poles, so it basically gets blended in with
18 it.

19 And, also, it happens to be in the location
20 that's needed for the gap problem. And it's a huge
21 gap problem out there. I drop at least 50 percent
22 of my calls in that area. So this is the right
23 place for the tower. It geographically will meet
24 the needs and it also is the right place in terms of
25 how it's presented to the rest of the community,

1 what people see with the poles that are already
2 there.

3 As I said, we have reduced the impact of the
4 building of the tower and brought it down. My
5 understanding, in talking to a number of officials
6 in the City, that the poles over at the ball field
7 are 90 feet. So this is pretty close to the poles
8 there. I think it, you know, won't be that very
9 much noticeable, and we really do need it.

10 I don't know, some of you probably live in
11 that area and you would know. It's a real problem.
12 It's actually a worse problem for me over at Parrot
13 Key than it is even over there. I can't get any
14 service at Parrot Key.

15 So I think that's pretty much our
16 presentation.

17 Do you have any questions that I could help
18 you with?

19 CHAIRMAN ROOT: Questions from the Board?

20 MR. SINGH: Amy, was Mr. Richter's letter put
21 in the record?

22 MS. KIMBALL-MURLEY: Yes, it was.

23 MR. SINGH: Okay. Then I think we would like
24 to address that. I'll let Mr. Allison.

25 MR. ALLISON: John R. Allison, III, 1010

1 Kennedy Drive, Suite 302, Key West.

2 In reviewing the file to determine whether or
3 not there were any objections to the application, it
4 was noted that Mr. Richter had filed a letter
5 addressed to our City Planner of June 7, 2010. And
6 the crux of that letter was that Mr. Richter
7 asserted that we would have a floor area ratio issue
8 because we would be increasing the intensity and
9 that resulted from potentially the shelter.

10 I have submitted this letter as part of our
11 evidence today. And while I am of the opinion that
12 even with the shelter we would not have a floor area
13 ratio problem, we have decided to take away the
14 issue totally by taking away the shelters.

15 By taking away the shelters, the only thing we
16 have on the roof is the elevated equipment platform,
17 which under both the City Code and the Florida
18 Building Code, does not affect floor area ratio at
19 all. It's not part of the floor by definition and,
20 therefore, cannot be part of floor area ratio. And
21 that's the sum and substance of the letter. I don't
22 need to read it all. It's part of the record. You
23 have got it there.

24 That was the genesis of taking away the
25 shelter and leaving on the roof only the platform

1 and the equipment, both of which don't count towards
2 floor area ratio.

3 MEMBER BROWNING: Larry, do you concur with
4 that assessment?

5 ASSISTANT CITY ATTORNEY ERSKINE: I might
6 respectfully hand this off to Amy, but I looked at
7 this issue on the front end and Amy, Amy and I
8 discussed it, and Amy's position on it was that the
9 FAR, even with the previous incarnation, was not an
10 issue and I concur with that. But, as Mr. Allison
11 said, it would appear that that issue has been
12 removed, nonetheless.

13 MS. KIMBALL-MURLEY: Mr. Chairman, just so
14 there is no question here, you all were provided a
15 copy of this letter from Rick Richter as part of the
16 materials and also on the dais tonight and, you
17 know, we didn't receive any other comments on the
18 application besides this letter.

19 MR. SINGH: By the way, we did have our good
20 neighbor meetings.

21 MEMBER BROWNING: Was that the only objection,
22 from Mr. Richter? Is he here this evening?

23 MS. KIMBALL-MURLEY: Well, we haven't heard
24 public comment yet but it's the only written
25 objection we received.

1 MR. SINGH: All the folks who came to the
2 meetings said, Hey, how quickly can you get this up.

3 MEMBER BROWNING: Pritam, the third from the
4 last page of this prospective, have you approached
5 the City about removing this tree so it would give
6 greater symmetry, so we'd just have poles in that
7 area?

8 MR. SINGH: Well, you know, I'll meet with the
9 City landscaper afterwards.

10 You know, that tree is lucky it's not a palm
11 tree.

12 MEMBER BROWNING: There you go.

13 MEMBER GILLERAN: I just have a question about
14 the monopole itself. Is the antenna height higher
15 than the 105 feet or is the entire height of the
16 structure with the antenna 105 feet?

17 MR. SINGH: Yes. Yes to the last. The entire
18 height is 105 feet. The top of the monopole is --
19 the top of the antenna is -- The top of the antenna
20 is 105 feet, correct?

21 MR. LLANES: Correct, because the height
22 variance that we're seeking will be 105 feet, the
23 total limitation on height this evening will be 105
24 feet for everything, including antennas, towers.
25 Nothing can exceed that 105 feet. So everything

1 will be below that height.

2 CHAIRMAN ROOT: In this hearing today, too,
3 the height of this is not being judged. It will be
4 done at the City Commission as a variance.

5 MR. SINGH: But that's a good question, and,
6 yes, it's 105.

7 CHAIRMAN ROOT: Any more questions for the
8 applicant?

9 Do we have any public comment, Carlene?

10 DEPUTY CITY CLERK: Margaret Romero, then Rick
11 Richter.

12 MS. ROMERO: My name is Margaret Romero. And,
13 as many of you know, I go to an awful lot of City
14 Commission meetings. I also go to Key West Housing
15 Authority meetings as well. And I first heard about
16 a proposal for a tower out in this area at a Key
17 West Housing Authority meeting where a proposal was
18 brought forward and it was decided not to build it
19 on Housing Authority land because they felt some day
20 they might want to put some other building pertinent
21 to the Key West Housing Authority there.

22 I then heard again about a proposed tower at a
23 City Commission meeting. And at that time there
24 were three, if not four, what I will call cell phone
25 service providers who all testified to another

1 applicant and supported that applicant. So I have a
2 funny feeling that any vendor who's here who wants
3 to get on the tower will get on to any tower. Even
4 if I put one in my backyard, they'd be happy to get
5 it if they thought they could get the space on it.

6 So I guess my point is with what's being heard
7 here tonight there seems to have been a lot of
8 changes made and I am getting more and more
9 concerned with how much time is being usurped by
10 various investors in this community on our Planning
11 Department. I made that clear at the last City
12 Commission meeting, as well. But I also think for
13 the changes to be brought to this meeting at the
14 last minute saying, Well, here are the changes and
15 here's what's different, here's whatever, to me that
16 says there is sloppy preparation and very untimely.
17 So if this proposal is so much of an interest to the
18 people who want to make money off of it, you would
19 think their presentation would have been clear cut,
20 ready to go, and everything in place before coming
21 to this meeting.

22 I also think it's something to note that in a
23 prior meeting the folks at 1010 Kennedy had that
24 item pulled off of your agenda and yet they still
25 took it to a City Commission meeting. And at that

1 City Commission meeting at the time the Planning
2 Department suggested denying. And at that City
3 Commission meeting, guess what? It was denied.
4 Then all of a sudden hearsay has it that somebody
5 said, Oh, I wasn't sure about the vote. So it came
6 back up and they rescinded it.

7 So to me there is just an awful lot of play
8 going on with this and I sure hope this doesn't turn
9 into another Duck Tours. I mean, if we have to,
10 there was an awful lot of people in the neighborhood
11 saying they didn't want it at the other location,
12 and even though I don't live there, I shop there and
13 I'm out there a lot, it can't be more than 1,000
14 feet away from the one being proposed. So maybe
15 with the City needing money, we would rather have
16 the City take a look, if there is any City land or
17 Poinciana land around that maybe we can put the
18 tower on and make some money for the City.

19 So with that I'm going to suggest that you
20 guys deny this variance tonight.

21 Thanks.

22 CHAIRMAN ROOT: Thank you.

23 DEPUTY CITY CLERK: Rick Richter.

24 ASSISTANT CITY ATTORNEY ERSKINE: Mr. Chair,
25 while Mr. Richter is coming up, just for

1 clarification, this is not a variance. Ms. Romero
2 said this is a variance. This is not a variance
3 request. This is a conditional use request.

4 CHAIRMAN ROOT: State your name for the
5 record, please.

6 ASSISTANT CITY ATTORNEY ERSKINE: Hang on, let
7 her go ahead and reset the clock.

8 MR. RICHTER: Rick Richter. Good evening,
9 folks. Rick Richter, representing Keys Wi-Fi's
10 leasehold interest at 2832 North Roosevelt
11 Boulevard.

12 My leased parcel is located approximately 800
13 feet from the site before the Board tonight,
14 abutting the common property Keys Plaza Shopping
15 Center.

16 As you know, Keys Wi-Fi had filed a
17 Conditional Use and Variance Application in the
18 Commercial General Zoning District for a 145-foot
19 tower at the 2832 parcel in June. The conditional
20 use was granted by this Board. Thank you. But the
21 variance was subsequently denied.

22 Keys Wi-Fi has filed federal and state actions
23 to challenge these denials under Federal
24 Telecommunications Act and Florida Statutes.

25 One ground of the lawsuit is based upon the

1 code regulations applied by the City for the
2 placement of towers and facilities. Many local
3 governments in Florida and every other jurisdiction
4 in the Keys have adopted ordinances to address
5 federal and state requirements for placement of
6 telecom infrastructure.

7 Since Key West does not have such an
8 ordinance, applicants are shoehorned in to a
9 bifurcated process which does not fit the
10 circumstances or recognize federal or state laws.

11 Keys Wi-Fi has demonstrated that gap can be
12 closed by one tower and one tower only that presents
13 the only feasible solution and the least intrusive
14 means to provide service to all providers. The
15 demonstration was supported by three different
16 wifeless providers in testimony heard before this
17 Board and at the variance hearing.

18 Keys Wi-Fi will be adversely affected by the
19 City's actions tonight if actions are taken.

20 So the issue tonight is this application.
21 Section 122-62 establishes criteria for conditional
22 use approval by the Planning Board, including scale
23 and intensity of the proposed use as measured by
24 several factors, and I will say including floor area
25 ratio.

1 Section 122-62(b) requires that conditional
2 use application shall demonstrate compliance with
3 federal, state, county and city laws and ordinances.

4 The floor area ratio is one area that has to
5 be complied with.

6 In the CG district it's .8, commercial
7 district.

8 The current floor area ratio for this project
9 is 1.32. Since the building is a noncomplying
10 structure under Section 122-62, the addition of
11 further equipment shelters, air conditioners,
12 cabinets, whatever they're going to be called today,
13 tonight at this last minute, increases the floor
14 area ratio and the intensity of this nonconforming
15 structure in the district.

16 Further, Section 90.394 specifically prohibits
17 the granting of a variance that increases density or
18 intensity beyond that permitted by City Code.

19 Interestingly enough, the Planning Director in
20 the past agreed with my analysis. The 2832 floor
21 area ratio was considered a viable criteria. Even
22 before tonight, at the 1010 application, 800 feet
23 away, that criteria was waived. There is nothing in
24 the Code to support this conclusion that was made to
25 reach that argument.

1 This is about more than towers. This is about
2 a reasonable person submitting an application and
3 expecting to receive equitable and nondiscriminatory
4 treatment. The rules are the rules, regardless of
5 an individual's proximity to the Southernmost Point
6 or their position on the tax roll.

7 Thank you very much.

8 CHAIRMAN ROOT: Thank you.

9 Mr. Erskine, I think I'd like to get some
10 clarification of some things that he said about the
11 FAR.

12 Number one, the variance proceeding that he
13 had discussed really is not pertaining to this
14 meeting tonight?

15 ASSISTANT CITY ATTORNEY ERSKINE: Correct.

16 CHAIRMAN ROOT: This meeting tonight is based
17 on our --

18 ASSISTANT CITY ATTORNEY ERSKINE: Correct.
19 The one bullet point there, granting the variance
20 increases density or intensity beyond that permitted
21 by the Code, we're not here about a variance.

22 Respectfully, Mr. Chair, Amy is the one -- I
23 mean, this FAR thing, in my view, is a planning
24 issue. And, again, I have discussed that with her.
25 We have gone through that. I would ask that she go

1 ahead and bring you up to date on that.

2 MS. KIMBALL-MURLEY: There is no variance
3 request to FAR that's part of this application. I
4 assessed the situation. I received Mr. Richter's
5 letters and I disagree. I do not believe that
6 equipment is part of the floor area ratio in this
7 case.

8 Let me just draw the comparison: Every air
9 conditioning unit on top of every building would
10 then become FAR. I just don't think it's supported
11 by the Code and I don't think it's an issue for this
12 project.

13 CHAIRMAN ROOT: Any more public comment?

14 Is there any more questions from the Board for
15 the applicant or staff?

16 Then I bring it back to the pleasure of the
17 Board.

18 MEMBER OROPEZA: I'd like to make a motion to
19 approve the application.

20 ASSISTANT CITY ATTORNEY ERSKINE: Let's be
21 specific about it. It's the 105. It does not
22 include the five antennas.

23 What was the other thing that I wrote down?

24 MEMBER OROPEZA: The equipment shelters.

25 ASSISTANT CITY ATTORNEY ERSKINE: It does not

1 include equipment shelter. It's more in the line of
2 I guess, according to the applicant, it's a platform
3 that contains equipment.

4 MEMBER OROPEZA: Yes. So the motion would be
5 to approve the height of 105, 105 feet, without the
6 five antennas and without the equipment shelter.

7 CHAIRMAN ROOT: Motion has been made.

8 Is there a second?

9 MEMBER BROWNING: I just want a clarification.

10 CHAIRMAN ROOT: Mr. Browning.

11 MEMBER BROWNING: Recommendations of the
12 Planning staff.

13 MS. KIMBALL-MURLEY: Yes, I think the other
14 conditions would still stand. I just haven't had an
15 adequate opportunity to review the plans presented
16 tonight to be sure that they are completely
17 consistent with the application yet.

18 MEMBER BROWNING: I was asking Greg to clarify
19 you have recommendations pending federal --

20 MS. KIMBALL-MURLEY: There were four other
21 conditions of approval staff recommended, and I'd
22 like to keep those in place.

23 MEMBER OROPEZA: Yes.

24 MEMBER BROWNING: Is that what you meant?

25 MEMBER OROPEZA: Absolutely.

1 CHAIRMAN ROOT: Okay. After discussion, do we
2 have a second?

3 MEMBER GILLERAN: Second.

4 CHAIRMAN ROOT: Seconded by Mr. Gilleran.
5 Please call the roll.

6 DEPUTY CITY CLERK: Michael Browning.

7 MEMBER BROWNING: Yes.

8 DEPUTY CITY CLERK: James Gilleran.

9 MEMBER GILLERAN: Yes.

10 DEPUTY CITY CLERK: Sam Holland.

11 MEMBER HOLLAND: Yes.

12 DEPUTY CITY CLERK: Greg Oropeza.

13 MEMBER OROPEZA: Yes.

14 DEPUTY CITY CLERK: Lisa Tennyson.

15 MEMBER TENNYSON: Yes.

16 DEPUTY CITY CLERK: Tim Root.

17 MEMBER ROOT: Yes.

18 CHAIRMAN ROOT: Thank you, gentlemen.

19 MR. ALLISON: Thank you very much.

20 (End of proceedings).
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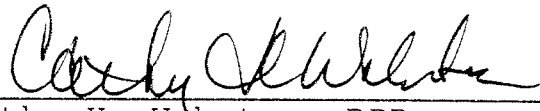
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COURT REPORTER'S CERTIFICATE

STATE OF FLORIDA)
COUNTY OF MONROE)

I, Cathy H. Webster, Registered
Professional Reporter, certify that I was authorized to
and did stenographically report the foregoing
proceedings and that the transcript is a true and
complete record of my stenographic notes.

DATED this 27th day of July, 2010.



Cathy H. Webster, RPR
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