

MARCO ISLAND CITY COUNCIL RESOLUTION NO. 04- 02

A RESOLUTION GRANTING CONDITIONAL USE APPROVAL FOR THE INSTALLATION OF A COMMUNICATION TOWER AND ANTENNA ON A RESIDENTIAL SINGLE FAMILY (RSF) ZONED PROPERTY PURSUANT TO SECTION 46-92(2)b MARCO ISLAND CITY CODE LOCATED AT 561 KENDALL DRIVE, FURTHER DESCRIBED AS LOT 1, BLOCK 591, MARCO BEACH UNIT 23, CITY OF MARCO ISLAND, FLORIDA

WHEREAS, the Legislature of the State of Florida established the Charter of the City of Marco Island in Chapter 97-367, Laws of Florida ("City Charter"); and

WHEREAS, the Marco Island Planning Board, being the duly appointed and constituted planning board for the area hereby affected, has held a public hearing after notice, and has considered the advisability of granting Conditional Use approval for a private communication tower and antenna structure on a residential single family zoned district pursuant to Section 46-92(2)b of City Code, on property hereinafter described, and has found as a matter of fact (Exhibit "A") that satisfactory provision and arrangement have been made concerning all applicable matters required by said regulations and in accordance with the Land Development Code for the City of Marco Island; and

WHEREAS, all interested parties have been given an opportunity to be heard by this Board in a public meeting assembled and the Board having considered all matters presented.

NOW, THEREFORE BE IT RESOLVED, BY THE MARCO ISLAND CITY COUNCIL, ACTING AS THE BOARD OF ZONING APPEALS that:

The Petition CU-04-01 filed by Monte Lazarus, Esq., representing Stephen and Donna Kahn with respect to the property hereinafter described as:

561 Kendall Drive, legally described as Lot 1, Block 591, Marco Beach Unit 23, City of Marco Island, Florida.

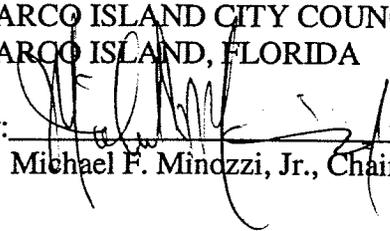
Is hereby granted Conditional Use approved for the installation of a communication tower and antenna on the above-described property in accordance with the terms and conditions provided for in Exhibit "B", and the site plan illustrated as Exhibit "C".

BE IT FURTHER RESOLVED that this Resolution relating to petition Number CU-04-01 be recorded in the Minutes of this Board and filed with the Marco Island City Clerk's Office.

This Resolution adopted after motion, second and majority vote.

Done this 20th day of January, 2004.

MARCO ISLAND CITY COUNCIL
MARCO ISLAND, FLORIDA

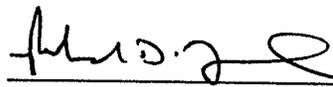
By: 
Michael F. Minozzi, Jr., Chairman

ATTEST:



Laura Litzan
City Clerk

Approved as to Form and legality:



Richard Yovanovich
City Attorney

City Planner/CU-01-01 Resolution

EXHIBIT "B"

Mr. and Mrs. Kahn, in keeping good faith with their neighbors and the Marco Island community, will lower and disengage the existing communication tower and antenna by January 1, 2004.

Upon final agreement by City Council regarding resolution of issue, Mr. and Mrs. Kahn agree to sever all protruding bolts from the existing concrete base and remove the tower from the property within fourteen days following the approval of a conditional use permit for the erection of a new communication tower.

Mr. and Mrs. Kahn shall submit an application for a conditional use permit. City shall waive all application and other fees. City staff shall recommend approval subject to the terms contained herein. Mr. and Mrs. Kahn shall reserve the right to withdraw the conditional use application at any time prior to the final hearing by City Council.

The terms of this agreement shall be submitted for review only to the City Council on January 5, 2004. The review and public hearing by the Planning Board shall be scheduled for January 9, 2004, and the final consideration by City Council shall be scheduled for January 20, 2004.

Mr. and Mrs. Kahn agrees to install a telescopic tubular, steel or aluminum, antenna mast adjacent to the house in the rear yard, according to applicable building codes, in the location shown on the attached exhibit "A". Mr. and Mrs. Kahn agree that the mast, at its lowest level, shall be no higher than 22 feet, 6 inches. A small vertical lightning protector may extend above the 22 feet, 6-inch mast.

Telescopic mast may be extended to a maximum height of 35 feet during those periods when Mr. Kahn is sending and receiving communication utilizing his amateur radio equipment. Otherwise, telescopic mast shall be lowered to its minimum height.

Beam antenna currently affixed to existing tower, or similar antenna, may be mounted to the telescopic mast. The antenna and its array, when not in operation, shall be nested in a position parallel with the house along the roofline. The antenna, when lowered to the nested position may extend beyond the roof structure into the rear by up to seven feet. The antenna and its array may not extend into the required side and rear yard setback at any time (as depicted in exhibit "C").

Mr. and Mrs. Kahn agrees to keep and maintain the existing Coconut Palm Tree, and to replace said tree with one of similar size and shape if necessary, to screen tower of view by adjacent property owners. Furthermore, Mr. and Mrs. Kahn agree to allow the installation of one tree or shrub, at the discretion of the City, near the south property line, so as to screen from view the tower and antenna from the lanai of the property currently owned by Mr. and Mrs. Peter Evelyn. At the discretion of the City, another tree shall be planted in the approximate area of the existing tower base so as to screen from view the mast and antenna from the properties abutting the rear property line. Mr. and Mrs. Kahn agree to maintain the above referenced trees or shrubs and replace said trees or shrubs as may be required, at their expense. (As shown on exhibit "A").

Mr. and Mrs. Kahn agree that the City may review and approve the species, size, and placement, and that the trees or shrub shall be a minimum height of 14 feet with a 100-gallon root ball unless otherwise approved by the City for a smaller size. Mr. and Mrs. Kahn agree to allow the planting of the trees and shrubs by the City, at the expense of the City, within thirty days following the issuance of the conditional use permit.

Said trees or shrubs, if planted, may be removed upon removal of the communication tower and antenna.

Mr. and Mrs. Kahn shall operate within the rules of the Federal Communications Commission, Part 97.101, regarding good operating procedures and to protect against interference with radio, stereo, or television equipment owned and operated by neighbors.

Mr. and Mrs. Kahn agree to remove antenna mast and antenna upon sale or other disposition of the subject property.

The City and Mr. and Mrs. Kahn agree not to be bound by prior decisions of the Marco Island Code Enforcement Board regarding this tower and antenna.

In exchange for the donation of the existing communication tower by Mr. and Mrs. Kahn to the City of Marco Island, the City agrees to compensate Mr. and Mrs. Kahn in an amount not to exceed \$4,000. The City shall pursue recovery of this compensation through an insurance claim with the City's liability insurance carrier.

City agrees to dismiss pending litigation involving the existing communication tower upon issuance of a certificate of completion consistent with the approved conditional use.

EXHIBIT C

SITE PLAN

