

**CITY OF MARATHON, FLORIDA
RESOLUTION 2010-82**

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, REPEALING AND SUPERSEDING RESOLUTION PC 02-11-08 AND APPROVING THE REQUEST BY SOUNDS OF SILENCE RADIO INC FOR AN AMENDMENT TO A CONDITIONAL USE, WHICH REQUESTS THE DELETION OF CONDITION NUMBER 2 CONCERNING LANDSCAPING REQUIREMENTS PURSUANT TO SECTION 9.5-69 OF THE CITY OF MARATHON CODE, WHICH AUTHORIZED THE CONSTRUCTION OF A 255 FOOT HIGH ANTENNA SUPPORTING STRUCTURE AND ACCESSORY EQUIPMENT CABINETS AT PROPERTY LEGALLY DESCRIBED AS A PART OF GOVERNMENT LOT 2, SECTION 19, AND PART OF GOVERNMENT LOT 1 SECTION 30, TOWNSHIP 54 SOUTH, RANGE 34 EAST, AND THE EASTERLY 204 FEET OF TRACT 14 SANS SOUCI SUBDIVISION ACCORDING TO THE PLAT THEREOF AS RECORDED IN PLAT BOOK 2, PAGE 160 OF THE PUBLIC RECORDS OF MONROE COUNTY, FLORIDA; HAVING REAL ESTATE NUMBER 00376010-000000. PROVIDING FOR SEVERABILITY; PROVIDING FOR THE TRANSMITTAL OF THIS RESOLUTION TO THE STATE DEPARTMENT OF COMMUNITY AFFAIRS (THE "DEPARTMENT"); AND PROVIDING FOR AN EFFECTIVE DATE UPON THE APPROVAL OF THIS RESOLUTION BY THE DEPARTMENT IN ACCORDANCE WITH STATE LAW

WHEREAS, on the 19th Day of July, 2010 the City of Marathon (the "City") Planning Commission (the "Commission") and on the 27th day of July, 2010, the City Council (the "Council") conducted properly advertised public hearings (the "Public Hearings") pursuant to Section 102.79 of the Land Development Regulations regarding the request submitted by Sounds of Silence Radio, Inc., (the "Applicant") for a major amendment to its major conditional use permit pursuant to Section 9.5-69 of the City Code (the "Code"); and

WHEREAS, the amendment removes certain conditions of the conditional use permit granted by the City Planning Commission by Resolution PC 02-11-08; and

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, THAT:

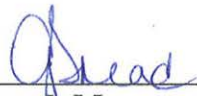
Section 1. The above recitals are true and correct and incorporated herein.

Section 2. The City Council hereby approves the Applicant's request for a Major Amendment to its Conditional Use as specifically described in Exhibit "A" attached hereto.

Section 2. This resolution shall take effect immediately upon its adoption.

PASSED AND APPROVED by the City Council of the City of Marathon, Florida, this 24th day of August, 2010.

THE CITY OF MARATHON, FLORIDA



Ginger Snead, Mayor

AYES: Cinque, Keating, Ramsay, Worthington, Snead
NOES: None
ABSENT: None
ABSTAIN: None

ATTEST:



Diane Clavier
City Clerk

(City Seal)

APPROVED AS TO FORM AND LEGALITY FOR THE USE AND RELIANCE OF THE CITY OF MARATHON, FLORIDA ONLY:



City Attorney



**CITY OF MARATHON, FLORIDA
CONDITIONAL USE
DEVELOPMENT ORDER # 2010-001**

A DEVELOPMENT ORDER APPROVING THE CONDITIONAL USE APPLICATION SUBMITTED BY SOUNDS OF SILENCE, INC., PURSUANT TO SECTION 102.7 OF THE LAND DEVELOPMENT REGULATIONS, REPEALING AND SUPERSEDING RESOLUTION PC02-11-08 AND APPROVING THE REQUEST BY SOUNDS OF SILENCE RADIO INC FOR AN AMENDMENT TO A CONDITIONAL USE, WHICH REQUESTS THE DELETION OF CONDITION NUMBER 2 CONCERNING LANDSCAPING FOR A DEVELOPMENT ORDER WHICH FORMERLY AUTHORIZED THE CONSTRUCTION OF A 255 FOOT HIGH ANTENNA SUPPORTING STRUCTURE AND ACCESSORY EQUIPMENT CABINETS AT PROPERTY LEGALLY DESCRIBED AS A PART OF GOVERNMENT LOT 2, SECTION 19, AND PART OF GOVERNMENT LOT 1 SECTION 30, TOWNSHIP 54 SOUTH, RANGE 34 EAST, AND THE EASTERLY 204 FEET OF TRACT 14 SANS SOUCI SUBDIVISION ACCORDING TO THE PLAT THEREOF AS RECORDED IN PLAT BOOK 2, PAGE 160 OF THE PUBLIC RECORDS OF MONROE COUNTY, FLORIDA; HAVING REAL ESTATE NUMBER 00376010-000000. PROVIDING FOR SEVERABILITY; PROVIDING FOR THE TRANSMITTAL OF THIS RESOLUTION AND DEVELOPMENT ORDER TO THE STATE DEPARTMENT OF COMMUNITY AFFAIRS (THE "DEPARTMENT"); AND PROVIDING FOR AN EFFECTIVE DATE UPON THE APPROVAL OF THIS RESOLUTION BY THE DEPARTMENT IN ACCORDANCE WITH STATE LAW

WHEREAS, Sounds of Silence Radio, Inc. received a Conditional Use Approval under the Land Development Regulations in effect in November of 2001 (PC02-11-08); and

WHEREAS, the Sounds of Silence Radio, Inc. Conditional Use approval required for conditions of the applicant, one of which required the applicant to acquire appropriate documentation and seek approval from FDOT for landscaping in the FDOT Right-of-Way (ROW); and

WHEREAS, the Sounds of Silence Radio project for a 255 foot high antenna supporting structure and accessory equipment, was permitted, constructed, and received a Certificate of Occupancy in December Of 2003; and

WHEREAS, the applicant could not and did not acquire a permit from FDOT to place landscaping on the FDOT ROW; and

WHEREAS, the property owner is seeking to remove Condition number 2 requiring landscaping from the original Conditions of the Conditional Use Approval (PC02-11-08; and

WHEREAS, the Planning Commission (Commission), in accordance with the provisions of Sections 101.02 and 102.75 of the City of Marathon Land Development Regulations, met to review the Application to determine its compliance with the applicable regulations on July 19, 2010; and

WHEREAS, the Commission recommended approval of the Application to the City Council (the "Council"), subject to conditions; and

WHEREAS, the Council of the City of Marathon, Florida, in accordance with the provisions of Sections 101.01 and 102.76 of the City of Marathon Land Development Regulations, met to review the Application to determine its compliance with the applicable regulations on July 27, 2010; and

WHEREAS, the Council has duly considered the recommendation of the Commission, and the information and documentary evidence submitted by First Florida Keys Properties, Inc. and does hereby find and determine as provided below.

FINDINGS OF FACT:

1. The applicant is proposing to remove a condition on a previously approved Conditional Use approval (Resolution PC01-11-08). The project has been completed and has received a Certificate of Occupancy.
2. In accordance with Section 102.77 of the Code, the Commission and Council considered and determined the Applicant met the following criteria:
 - a. The proposed use is consistent with the Comprehensive Plan and LDRs;
 - b. The proposed use is compatible with the existing land use pattern and future uses designated by the Comprehensive Plan;
 - c. The proposed use shall not adversely affect the health, safety, and welfare of the public; and
 - d. The proposed conditional use minimizes environmental impacts, including but not limited to water, air, stormwater management, wildlife, vegetation, wetlands, and the natural functioning of the environment; and
 - e. Satisfactory provisions and arrangements have been made concerning the following matters, where applicable:

1. Ingress and egress to the property and proposed structures thereon with particular reference to automotive, bicycle, and pedestrian safety and convenience, traffic flow and control and access in case of fire or catastrophe;
2. Off-street parking and loading areas where required, with particular attention to item 1 above;
3. The noise, glare or odor effects of the conditional use on surrounding properties;
4. Refuse and service areas, with particular reference to location, screening and Items 1 and 2 above;
5. Utilities, with reference to location and availability;
6. Screening and buffering with reference to type, dimensions and character;
7. Signs, if any, and proposed exterior lighting with reference to glare, traffic safety and compatibility with surrounding properties;
8. Required yards and other open space;
9. General compatibility with surrounding properties; and
10. Any special requirements set forth in the LDRs for the particular use involved.

CONDITIONS IMPOSED:

Granting approval of the Application is subject to the following conditions:

1. Condition 2 of Planning Commission Resolution PC02-11-08 is hereby eliminated from requirements of the previous Planning Commission approval
2. All other conditions of PC02-11-08 stand, though already met, stand as documented immediately below.
 - a. The Applicant shall not receive a building permit for the antenna supporting structure until the Federal Aviation Commission has approved the structure for compliance with Subpart C of Part 77 of the Federal Aviation Regulations per Section 9.5-434.4(a)3(n) of the City Code.
 - b. The Applicant at its sole cost and expense shall record this Resolution in the public records of Monroe County, before the issuance of a building permit. The development approvals herein may not be transferred to a successive owner without notification to the Development Review Coordinator within five (5) days of the transfer.
 - c. An application for a building permit(s) shall be made within six (6) months of the date of the effective date of this Resolution, and all required final inspections shall be procured within two (2) years of the date of issuance of the initial building permit, or the major conditional use

approval granted herein shall become null and void with no further action required by the City. Approval time frames do not change with successive owners. An extension of time may be granted only by the Commission for a period not to exceed one (1) year and only within the original period of validity.

d. All required final inspections shall not issued until conditions one (1) through four (4) have been met.

3. The Applicant at its sole cost and expense shall record this Resolution in the public records of Monroe County

VIOLATION OF CONDITIONS:

The applicant understands and acknowledges that it must comply with all of the terms and conditions herein, and all other applicable requirements of the City or other governmental agencies applicable to the use of the Property. In accordance with the Code, the Council may revoke this approval upon a determination that the Applicant or its successor or designee is in non-compliance with this Resolution or 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 therein.

CONCLUSIONS OF LAW:

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

1. The Application has been processed in accordance with the applicable provisions of the City Code, and will not be detrimental to the community as a whole; and
2. In rendering its decision, as reflected in this Resolution, the Council has:
 - (a) Accorded procedural due process;
 - (b) Observed the essential requirements of the law;
 - (c) Supported its decision by substantial competent evidence of record; and
3. The Application for a conditional use is hereby GRANTED subject to the conditions specified herein.

EFFECTIVE DATE:

This development order shall not take effect for thirty (30) days following the date it is filed with the City Clerk, and during that time, the conditional use approval granted herein shall be subject to appeal as provided in the City Code. An appeal shall stay the effectiveness of this development order until said appeal is resolved.

August 16, 2010
Date

George Garrett
George Garrett
Director of Planning

This Development Order was filed in the Office of the City Clerk of this 17 day of Aug., 2010.

Diane Clavier
Diane Clavier, City Clerk

NOTICE

Under the authority of Section 102.79(c) of the City of Marathon Land Development Regulations, this development order shall become null and void with no further notice required by the City, unless a business license has been issued for the use or a complete building permit application for site preparation and building construction with revised plans as required herein is submitted to the City of Marathon Building Official within one (1) year from the date of conditional use approval, or the date when the Department of Community Affairs waives its appeal and all required certificates of occupancy are procured with three (3) years of the date of this development order is approved by the City Council.

In addition, please be advised that pursuant to Chapter 9J-1, Florida Administrative Code, this instrument shall not take effect for forty-five (45) days following the rendition to the Florida Department of Community Affairs. During that forty-five days, the Florida Department of Community Affairs may appeal this instrument 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.

CERTIFICATE OF SERVICE

A true and correct copy of the above and foregoing Resolution was furnished, via U.S. certified mail, return receipt requested, addressed to Sounds of Silence Radio Inc., this 18 day of Aug., 2010. P.O. BOX 987 Indian Rocks Beach, FL 33785

Diane Clavier
Diane Clavier City Clerk