

## RESOLUTION 2013-39

**A RESOLUTION OF THE TOWN OF LONGBOAT KEY, FLORIDA, GRANTING THE REQUEST FOR AN EXTENSION OF THE PERIOD OF TIME A NONCONFORMING USE OR STRUCTURE CAN REMAIN UNUSED OR VACANT WITHOUT LOSING ITS NONCONFORMING STATUS OF THE COLONY BEACH AND TENNIS CLUB ASSOCIATION, INC., LOCATED AT 1620 GULF OF MEXICO DRIVE, IN ACCORDANCE WITH SECTION 158.138(B)(8)(b) OF THE TOWN OF LONGBOAT KEY ZONING CODE; PROVIDING FOR CONDITIONS; PROVIDING FOR SEVERABILITY; PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, at the request of Colony Beach Associates, Ltd., the Town of Longboat Key (the "Town") at a special meeting of the Town Commission on November 21, 1972, approved the plot plan for the development of a 237 unit tourism resort hotel (the "Colony") on the land that consists of approximately 17.3 acres of land, located at 1620 Gulf of Mexico Drive; and

**WHEREAS**, the zoning of the subject land at the time of the plot plan approval was H-2, which allowed for a maximum density of 14 units per acre of land; and

**WHEREAS**, the current zoning for the Colony is T-6, allowing up to 6 units per acre; and

**WHEREAS**, the Town issued a building permit for the construction of the tourism resort hotel on February 20, 1973, and the Colony was subsequently constructed; and

**WHEREAS**, construction of the Colony occurred prior to current Federal, State, and local Flood Regulations as well as the current State Building Code; and

**WHEREAS**, on November 30, 1973, approximately 15 acres of the site were submitted to condominium ownership (the "Condominium Parcel"); and

**WHEREAS**, the remaining approximately 3 acres were not dedicated to condominium ownership (the "Out Parcels"); and

**WHEREAS**, the Colony Beach and Tennis Club Association, Inc. ("Association") is a not-for-profit corporation formed in 1973 and its membership is made up of the 237 tourist condominium units within the Colony; and

**WHEREAS**, the owners of 232 of the 237 units entered into a Certificate of Agreement of Limited Partnership (the "Limited Partnership") dated December 27, 1973; and

**WHEREAS**, beginning in 1973, the Limited Partnership managed the Colony as a condominium resort hotel under the Agreement of Limited Partnership and other agreements; and

**WHEREAS**, the Limited Partnership filed for Chapter 11 under Federal bankruptcy codes and was converted on August 9, 2010, to Chapter 7 liquidation; and

**WHEREAS**, the Colony closed on August 15, 2010; and

**WHEREAS**, the Association was placed in possession and control of the Association property pursuant to the Bankruptcy Court order and final judgment; and

**WHEREAS**, the Association Board and representatives from the Town met on October 7, 2010, to discuss the future of the tourism resort development; and

**WHEREAS**, Section 158.138(B)(8)(a) of the Town's Zoning Code provides that a nonconforming use or structure not used for a period of one year shall be considered abandoned and, therefore, all nonconforming uses or structures within the Colony could be deemed abandoned after August 15, 2011; and

**WHEREAS**, the Association received a number of development proposals and worked diligently with the Town but, by April 2011, it became apparent that multiple legal restraints would prevent the Colony from reopening prior to the time of abandonment under the Town's Zoning Code; and

**WHEREAS**, the Association, therefore, petitioned the Town for an extension of the one-year period pursuant to Section 158.138(B)(8)(b) of the Town's Zoning Code; and

**WHEREAS**, the owners of the Out Parcels did not object to the requested extension; and

**WHEREAS**, after a public hearing on May 2, 2011, the Town Commission passed Resolution 2011-17 granting an extension of the abandonment provisions of the Zoning Code until December 31, 2012; and

**WHEREAS**, on July 27, 2011, the United States District Court for the Middle District of Florida (the "District Court") reversed the Bankruptcy Court's prior final judgments and remanded the matter back to the Bankruptcy Court for further deliberations; and

**WHEREAS**, the District Court's order raised questions about whether the Partnership or the Association was in control of the Association property and whether the Partnership was entitled to significant damages against the Association; and

**WHEREAS**, on October 14, 2011, the Association appealed the District Court's orders to the United States Eleventh Circuit Court of Appeals (the "Eleventh Circuit"); and

**WHEREAS**, on March 2, 2012, the Eleventh Circuit dismissed the appeal without prejudice; and

**WHEREAS**, on March 26, 2012, the Bankruptcy Trustee filed motions in the Bankruptcy Court seeking to return control of the Association property to the Partnership Trustee; and

**WHEREAS**, the Association had previously selected a developer of the property but that relationship was terminated in May 2012 after the District Court's and Eleventh Circuit's rulings and the subsequent motion filed by the Bankruptcy Trustee; and

**WHEREAS**, on July 13, 2012, the Bankruptcy Court conducted a full day hearing on this matter to consider, among other things, whether the Partnership or the Association should be in control of the Association property and the amount of damages that should be awarded to either party; and

**WHEREAS**, at the time of the passage of Resolution 2012-07, no orders regarding the remanded issues had been issued by the Bankruptcy Court; and

**WHEREAS**, any orders issued by the Bankruptcy Court are subject to appeal; and

**WHEREAS**, the Association believed that the tourism resort could not be redeveloped or reopened in a manner fitting to the resort prior to December 31, 2012; and

**WHEREAS**, on July 30, 2012, the Association submitted a request for an extension of time to comply with the regulations governing nonconforming uses and structures for the Colony; and

**WHEREAS**, the owners of the Out Parcels did not object to the request for an extension; and

**WHEREAS**, the Town Commission granted the Association's request in accordance with Resolution 2012-07; and

**WHEREAS**, the Association and various other entities having an interest in the Colony remain in bankruptcy with various and multiple contested bankruptcy matters; and

**WHEREAS**, Resolution 2012-07 granted an extension of time under certain conditions until a final determination was made concerning control of the Colony (the entire site including the Condominium Parcel and Out Parcels) either as a result of pending litigation, In re Colony Beach & Tennis Club Association, Inc., Case No. 8:08-bk-16972-KRM, Adversary Proceeding Nos. 8:08-ap-00567-KRM and 8:08-ap-00568-KRM, In re: Colony Beach & Tennis Club, Ltd., Case No.: 8:09-bk-22611-KRM, Adversary Proceeding No.: 8:10-ap-00242-KRM, or until a negotiated settlement is reached by the parties; and

**WHEREAS**, no final resolution or settlement has been reached; and

**WHEREAS**, Resolution 2012-07 is about to expire; and

**WHEREAS**, the Association and some, but not all, of the entities with an interest in the Colony entered into an agreement to settle and resolve their differences; and

**WHEREAS**, the Association held a vote of its membership to determine support of the settlement; and

**WHEREAS**, subsequent bankruptcy filings have requested the Bankruptcy Court enter orders confirming the settlement agreement and bankruptcy plans filed by some of the bankrupt interests within the Colony; and

**WHEREAS**, Colony Lender, owner of an undivided 15% interest in the Out Parcels and holder of a mortgage on an 80% undivided interest in the Out Parcels has not signed the settlement agreement and has contested approval and confirmation of the settlement agreement and bankruptcy plan; and

**WHEREAS**, owing to the passage of time and lack of maintenance, the vacant buildings on the Colony property have continued to deteriorate and have become a nuisance, a detriment to the neighborhood and a blight within the Town; and

**WHEREAS**, the existing buildings are a detriment to the redevelopment of the Colony property; and

**WHEREAS**, on November 17, 2013, the Association filed a petition to extend the time to maintain its nonconforming ("grandfathered") status; and

**WHEREAS**, the Owners of the Out Parcels do not object to the Association's request for extension or the Town extending the nonconforming status of the property; and

**WHEREAS**, the request for the extension is consistent with the provisions of the Zoning Code Section 158.138(B)(8)(b), which allows the Town Commission to grant an extension of the period of time a nonconforming use or structure can remain unused or vacant if the nonuse or vacancy is caused by legal restraints upon the owner or lessee; and

**WHEREAS**, pursuant to Section 158.138(B)(8)(b), the Town Commission may require the petitioner to decrease the nonconformity of the building or structure in one or more aspects of its nonconformity; and

**WHEREAS**, abandonment of the nonconforming use or structure would result in the loss of tourism units that could be redeveloped or reopened in the future to approximately 85 units, a loss of approximately 152 units, if redevelopment is based on 14.3 acres of land currently controlled by the Association; and

**WHEREAS**, under single control or ownership, abandonment of the nonconforming use or structure would result in the loss of tourism units that could be redeveloped or reopened in the future to approximately 103 units, a loss of approximately 134 units, based on 17.3 acres of land; and

**WHEREAS**, the Town Commission has determined that multiple legal constraints have prohibited the timely redevelopment or reopening of the Colony and deems it in the public interest to grant an extension of the abandonment provision of Section 158.138(B)(8) to provide additional time to redevelop the Colony, subject to the terms and conditions as set forth below; and

**WHEREAS**, the extension granted herein is for tourism units and uses only as defined by the Town Zoning Code.

**NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COMMISSION OF THE TOWN OF LONGBOAT KEY, FLORIDA, THAT:**

SECTION 1. The above Whereas clauses are true and correct and are hereby ratified and confirmed.

SECTION 2. The Town Commission, pursuant to Section 158.138(B)(8)(b) of the Town's Zoning Code, hereby grants an extension of time to redevelop or use the nonconforming uses at the Colony without being deemed to have abandoned the nonconformities in accordance with Section 158.138(B)(8)(a) as provided below.

SECTION 3. An extension of time to develop the Colony property as a tourism use of 237 grandfathered tourism units is granted until April 30, 2014, subject to the conditions herein.

SECTION 4. The Colony shall:

- 1) Maintain vermin and pest control programs reviewed and approved administratively by the Town;
- 2) Secure and maintain the structures and property in compliance with Longboat Key Code of Ordinances, State, and Federal Regulations;
- 3) In anticipation of structure demolition, decommission and secure the potable water and wastewater system to the satisfaction of the Town.
- 4) Restore and maintain the landscaping, irrigation, and property on the portions of its property that are visible to the public and neighbors in a pre-shutdown condition; and
- 5) The Colony shall maintain with the Town a cash bond in the amount of Two Hundred and Fifty Thousand Dollars (\$250,000.00), approved by the Bankruptcy Court, if necessary, in a form acceptable to the Town, guaranteeing the performance of conditions 1 through 4 above.

SECTION 5. If the Colony, the Association, owners of the Out Parcels, or the Town Manager seeks clarification or believes that any of the conditions set forth in Section 4 in this Resolution have not been met, that party may request a public hearing to be held before the Town Commission to determine compliance with the requirements of this Resolution. After receiving all evidence and testimony at the public hearing, if the Town Commission determines that the requirements of this Resolution have not been met, the Town Commission may take all necessary, reasonable and appropriate actions including, but not limited to, upon ninety (90) days' notice, terminating all or a portion of the extensions of time granted herein.

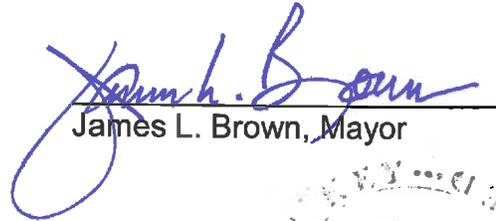
SECTION 6. In accordance with the terms of this Resolution, the subject property may be redeveloped and maintained at the existing density of 237 tourism units as tourism units are defined by the Town's Zoning Code, as may be amended.

SECTION 7. Effective Date. This Resolution shall become effective immediately upon adoption.

Passed by the Town Commission of the Town of Longboat Key on the 11<sup>th</sup> day of December, 2013.

ATTEST:

  
Trish Granger, Town Clerk

  
James L. Brown, Mayor

