

M E M O R A N D U M

DATE: April 27, 2011

TO: Bruce St. Denis
Town Manager

FROM: Monica Simpson, Director
Planning, Zoning and Building Department

RE : Resolution 2011-17
Extension of Nonconforming Use or Structure Abandonment Period
Colony Beach and Tennis Resort – 1620 Gulf of Mexico Drive

The Colony Beach and Tennis Resort, a longstanding tourism resort hotel development located at 1620 Gulf of Mexico Drive, has been closed since August 15, 2010. The Resort has density and structures that are legally nonconforming under the current Town Zoning Code. In accordance with Section 158.138 (B)(8)(a) of the code, a nonconforming use or structure that is no longer used shall be deemed abandoned after 12 months of non-use. Consequently, the nonconforming use and structures that make up the development known as the Colony will become abandoned on August 15, 2011.

The Colony Beach and Tennis Club Association, Inc., a not-for-profit corporation formed in 1973, consistent with Section 158.138 (B)(8)(b) of the zoning code, submitted to the Planning, Zoning and Building Director a request for an extension of time to comply with the regulations governing nonconforming uses and structures. The request for the extension includes documentation describing the various legal constraints experienced by the owners and the Association. Because of these legal restraints, the Association believes that the Resort cannot be redeveloped or reopened by August 15, 2011, in a condition fitting to the history of the Colony.

Extensions of time may be granted by the Town Commission if the nonuse or vacancy is caused by legal restraints upon the owner or lessee.

Subsequent to the Colony Limited Partnership entering liquidation under Chapter 7 of the Federal Bankruptcy Codes on August 9, 2011, the Association Board and representatives from the Town met to discuss the future of the tourism resort development on October 7, 2010. Since that meeting, the Association Board has diligently worked with the Town in good faith with the goal of reopening the Colony prior to August 15, 2011. To date, the Association Board has received numerous professional proposals to redevelop the site or revive the existing development, and is presently engaged in a process to eventually have the 237 unit owners select one proposal. However, the planning, approvals, and implementation of the chosen professional proposal cannot be reasonably completed prior to August 15, 2011. As a result, the Colony Beach and Tennis Club Association, Inc., has requested an extension until December 31, 2012.

By way of background, on November 21, 1972, Town Commission approved a plot plan for the Colony consisting of a 237 unit tourism resort hotel on land consisting of approximately 17.3 acres. The zoning of the subject land in 1972 was H-2, which allowed for a maximum density of 14 units per acre. After Town approval, all but approximately three acres of the property was submitted to condominium ownership. This is the property controlled by the Association. The remaining approximately three acres of the property located at 1620 Gulf of Mexico Drive are owned by entities other than the Association. It is upon these other properties that certain accessory recreational or commercial amenities were located.

The current underlying zoning of the subject property is Tourist Resort Commercial (T-6), which allows the development of a maximum of six units per acre. Based upon 14.3 acres of land owned or controlled by the Association and its members, abandonment of the nonconforming use or structure would reduce the maximum density that could be redeveloped or reopened to approximately 85 units, a loss of approximately 152 units. Based on 17.3 acres of land under single control or ownership, abandonment of the nonconforming use or structure would result in the allowable density – being approximately 103 tourism units, but would still decrease the number of tourism units by approximately 134 units.

It is staff's opinion that multiple legal constraints have prohibited the timely redevelopment or reopening of the Colony. Staff also believes it is in the public interest to extend the one year abandonment period to December 31, 2012, to provide the Association time to reopen the Colony. Staff recommends that the Town Commission grant the extension by the adoption of proposed Resolution 2010-17.

RESOLUTION 2011-17

A RESOLUTION OF THE TOWN OF LONGBOAT KEY, FLORIDA, GRANTING THE COLONY BEACH AND TENNIS CLUB ASSOCIATION, INC., AN EXTENSION OF TIME TO COMPLY WITH THE REGULATIONS GOVERNING NONCONFORMING USES AND STRUCTURES FOR THE COLONY BEACH AND TENNIS CLUB, LOCATED AT 1620 GULF OF MEXICO DRIVE, ALLOWING THE ASSOCIATION ADDITIONAL TIME TO REOPEN THE TOURISM RESORT DEVELOPMENT IN ACCORDANCE WITH SECTION 158.138 (B)(8)(b) OF THE TOWN OF LONGBOAT KEY ZONING CODE; PROVIDING FOR SERVERABILITY; PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, on November 21, 1972, the Town of Longboat Key ("the Town") at a special meeting of the Town Commission 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 Town issued a building permit for the construction of the tourism resort hotel on February 20, 1973; and,

WHEREAS, the Colony Beach and Tennis Club Association, Inc. ("Association") is a not-for-profit corporation formed in 1973; and,

WHEREAS, 232 of the 237 units were entered into and subject to a Certificate of Agreement of Limited Partnership dated December 27, 1973; 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 has been closed since August 15, 2010; and,

WHEREAS, the tourism units were deemed to be no longer physically suitable for occupancy; 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, it was determined that Section 158.138 (B)(8)(a) of the Town's Zoning Code regarding the abandonment of a nonconforming use or structure applied to the Colony, with the period of one year ending on August 15, 2011; and,

WHEREAS, the Association Board of Directors has diligently worked with the Town in good faith for the past six months with the goal of reopening the Colony prior to August 15, 2011; and,

WHEREAS, the Association has received a number of professional proposals to redevelop the site or revive the existing development; and,

WHEREAS, the Association believes the tourism resort cannot be redeveloped or reopened in a manner fitting to the resort prior to August 15, 2011; and,

WHEREAS, on April 14, 2011, the Association submitted a request for an extension of time to comply with the regulations governing nonconforming uses and structures for the Colony Beach and Tennis Club, located at 1620 Gulf of Mexico Drive; 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, the subject petitioned lands do not include approximately three (3) acres of land owned by a separate entities other than the Association upon which accessory recreational or commercial amenities were developed; and,

WHEREAS, the current underlying zoning of the subject property is Tourist Resort Commercial (T-6), which allows the development of a maximum of six (6) units per acre; 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, based on 14.3 acres of land owned or controlled by the Association and its members; 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 extend the one year abandonment period to December 31, 2012, to provide the Association time to redevelop or reopen the Colony.

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 158.138(B)(8)(b) of the Town's Zoning Code hereby grants the Colony Beach and Tennis Club Association, Inc., an extension of the time until December 31, 2012, to redevelop or use the nonconforming

uses and structures at the Colony without being deemed to have been abandoned in accordance with Section 158(B)(8)(a).

SECTION 3. It is recognized by the Town that the Association may request an additional extension of time from the Town Commission; however, any extension request must be acted upon prior to December 31, 2012.

SECTION 4. In accordance with the terms of this Resolution, the subject property may be redeveloped or maintained at the existing density of 237 tourism units as that term is defined by the Zoning Code, as may be amended.

SECTION 5. Effective Date. This Resolution shall become effective immediately upon adoption.

Passed by the Town Commission of the Town of Longboat Key on the ____ day of _____, 2011.

James L. Brown, Mayor

ATTEST:

Trish Granger, Town Clerk

CARLTON FIELDS

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April 13, 2011

Monica Simpson
Planning, Zoning and Building Director
Town of Longboat Key
501 Bay Isles Road
Longboat Key, FL 34228-3196

Subject: 1620 Gulf of Mexico Drive – The Colony
Discontinued Use – Nonconforming Land Use/Structures

LBK
APR 14 2011
PLANNING
& ZONING

Dear Ms. Simpson:

Pursuant to Town of Longboat Key Zoning Code 158.138(B)(8)(b), please consider this as the Colony Beach and Tennis Club Association's ("the Association's") petition to the Town Commission to extend the time from August 15, 2011, through December 31, 2012, for the Association to use or occupy the condominium resort units at the Colony in order to maintain their "grandfathered status." The Association is a not-for-profit corporation formed in 1973. The Association's membership consists of the owners of the 237 condominium units (the "Unit Owners") at the condominium identified as Colony Beach & Tennis Club, a Condominium Resort Hotel, located at 1620 Gulf of Mexico Drive, Longboat Key, Sarasota County, Florida ("the Colony"). The 237 Unit Owners hold fee simple title to their respective condominium units at the Colony. In support thereof, the Association says:

Introduction: the Colony is a one-of-a-kind property and the Association's efforts to restore and revitalize the Colony as a first-class tourist resort arise in the context of one-of-a-kind circumstances.

1. Since the early 1970s, the Colony has been a first-class one-of-a-kind tourism destination on 18 acres on the Gulf of Mexico. It has often hosted nationally- and internationally-known individuals from government, politics, business, entertainment, and sports. It has hosted many people who would later buy property, and end up residing, within Longboat Key. It is no overstatement to say that many people who now live in Longboat Key and the greater Sarasota area first fell in love with those areas while visiting at the Colony.

2. Recently, however, the Colony fell into less favorable circumstances. The partnership, which ran the Colony since its inception in the early 1970s, went into bankruptcy and is now in liquidation; the Colony has been closed as a tourist resort since August 15, 2010.

Four things are clear:

3. First, since August 15, 2010, the Association and its members have diligently spent time, effort, and monies toward planning to restore or redevelop and to revitalize the Colony. The Association has hired a world-class hospitality consulting firm to survey the Unit Owners' desires, to study the tourism market in Longboat Key and elsewhere, and to solicit interest from developers who would be interested in reformulating the legal relationships at the Colony and in physically restoring or redeveloping the Colony. The Association also has worked closely with Town staff in reviewing 40 years' of records in working through "zoning issues" and in inspecting the condominium resort units at the Colony in connection with restoring, redeveloping, and reopening the Colony.

4. Second, given that the bankruptcy proceedings resulted in terminating the partnership agreement which required 232 of the 237 Unit Owners to make their units available for rental, it will be necessary to structure or restructure the legal relationships involving the Association, the Unit Owners, and the developer in order to make units available for tourism at the Colony. Given the physical state of the Colony, it also will be necessary to invest monies to restore or redevelop the Colony and to plan, design, permit, construct, and finance the restoration or redevelopment.

5. Third, there is no public interest in attempting to assert any artificial one-year deadline calculated from August 15, 2010, which could result in the loss of 129 units at a tourism resort and create almost unimaginably thorny problems for the 237 fee simple Unit Owners at the Colony, which problems would inevitably spill over to the Town. Any loss of units available for tourism use at the Colony is certainly not in the public interest when the Town's voters, the Town's Planning and Zoning Board, and the Town Commission have consistently and overwhelmingly recognized that the loss of units available for tourism use within Longboat Key is not only not in the public interest, but is a major problem. Rather, the voters, the Town board, and the Town Commission have recognized that tourism use inures to, and is fundamental to, the Town's ambience and economic vitality.

6. Fourth, while tourism operations could hurriedly be resumed at the Colony by August 15, 2011, such resumption would be costly, probably wasteful, and certainly damaging to the Colony "brand" and to the Longboat Key "brand." It would be better for the Association, for the Unit Owners, and for the Town that the Colony be re-opened in a way that makes good business sense, to avoid significant short-term expenses which may not be consistent with the long-term restoration or redevelopment of the Colony, and to avoid damaging the "brand" which the Colony and Longboat Key have spent years to develop.

Code authorization to extend one-year period.

7. LBK Code 158.138(B)(8)(b), "Removal of nonconformance; extension of time to comply," provides that

"[a] nonconforming building or structure not used or occupied in a lawful manner or vacant for a period of one year or more shall be considered an abandonment and the nonconforming building or structure shall be removed or made conforming. However, should the period of nonuse or vacancy be caused by legal restraints upon the owner or lessee, the owner or lessee may set forth such grounds in a petition to the Town Commission and serve such petition on the Planning and Zoning Official. The time may be extended by the Town Commission for good cause shown. . . ."

8. On March 3, 2011, the Town wrote the Association, suggesting that the Association could file a petition to extend the one-year deadline pursuant to LBK Zoning Code 158.138(B)(8)(b). A copy of the Town's letter of March 3, 2011, is attached as Exhibit A hereto.

Factual and legal background.

9. On November 21, 1972, the Town Commission approved the plot plan for the 237 units at the Colony. The zoning then in effect was H-2, 14 units per acre, which translated to the 237 units over the 18 acres at the Colony. On February 20, 1973, the building inspector for the Town issued a building permit for the 237 units, which in turn were built. Copies of the Town Commission approval of November 21, 1972, and of the building permit of February 20, 1973, are attached as Composite Exhibit B.

10. As of August 15, 2010, the zoning for the Colony was T-6, six units per acre, which would permit 108 units on the 18 acres at the Colony. The Colony would then have become legally nonconforming as to density.

11. Up through August 15, 2010, the Colony was operating as a condominium hotel ("the Hotel"). Concurrently with the establishment of the Colony, a limited partnership was formed to operate and manage the condominium units at the Colony as rental accommodations in the operation of the Hotel. All but five Unit Owners were limited partners in the Partnership and were required to make their condominium units at the Colony available for occupancy by third parties as rental accommodations for the Hotel. In return, these Unit Owners had the right to use or occupy their respective units at the Colony rent-free for thirty (30) days each year.

Legal restraint: Unit Owners are not presently required to rent their units and the Association lacks authority to operate a hotel or resort; the Association needs to select a developer and to negotiate a deal to structure and/or restructure the relationship between the Unit Owners, the Association, and the developer to restore or redevelop the Colony as a first-class resort.

12. The partnership filed for Chapter 11 and was converted on August 9, 2010, to Chapter 7 liquidation. The Hotel ceased its operations on August 15, 2011. At the same time, the partnership was ejected from control over the use and occupancy of the units. There is no longer any agreement among the Unit Owners governing the use of the units. Thus, as of August 9, 2010, the Unit Owners not only held fee simple title, but were under no legal obligation to make their units available to anyone for rental. Until such time as the Unit Owners may approve a new arrangement that provides for unit rentals, the Association has no legal authority to compel the rental of any of these privately-owned units to the general public. Nor does the Association have legal authority to operate any sort of condominium resort or rental program. The Association is working diligently at this time to review proposals and obtain approval of a new agreement among the Unit Owners under which rentals to the general public could be legally resumed.

13. In summary, as of August 15, 2010, when the Association took control of the common elements at the Colony, the Association had 237 fee simple Unit Owners, but none of the 237 Unit Owners was contractually obligated to rent their units, and many of the 232 condominium units, which had been in the rental pool, were no longer physically suitable for rental. Furthermore, the Association had (and continues to have) no legal authority to operate a resort or rental program, while the partnership, which was the entity with legal authority to operate a resort hotel, was (and is now) in liquidation.

14. Thus as of August 15, 2010, there was a "legal restraint," which precluded the Association (or anyone else) from continuing to use the 232 units at the Colony for third party rental accommodations.

Legal restraint: prior to January 26, 2011, inspections to permit units at the Colony to be repaired and to reopened were deferred because there were overriding "zoning issues."

15. In addition, there was another legal restraint which would preclude the Association from using the 232 units. The Town would need to reinspect the condominium units to clear them for use and for rental to the public, and depending on the reinspections necessary repairs and maintenance would need to be implemented. By October 7, 2010, the Association, which had taken over control of the common elements from the partnership, attempted to have the Town inspect the units in preparation for reopening the Colony, but as will be seen below the necessary inspections were deferred until the overriding "zoning issues" were resolved on January 26, 2011.

16. On October 7, 2010, representatives from the Association and from the Town met to discuss reopening the Colony. The Association requested that the Town inspect the 237 units to permit the units to reopen, hopefully in time for the 2010-2011 winter season which would encourage Unit Owners to make their units available for rent.

17. On October 12, 2010, the Association sent a letter to the Town, formally requesting inspections of the 237 units to permit the units to reopen. A copy of the Association's letter of October 12, 2010, is attached as Exhibit C hereto.

18. On October 22, 2010, the Town responded in light of the meeting of October 7, 2010, and the Association's formal request for inspections. The Town letter read in part,

"While [the Association's] letter of October [12th] inquires about certain building issues for use of the facility, please remember that there are a number of zoning issues that must be addressed prior to reuse or occupancy. Let me start with some of the zoning issues that we discussed. . . .

"[T]here are zoning issues that need to be resolved in order to enable the town to allow the occupancy of any of the units. The immediate issues include, but may not be limited to, the availability of recreational facilities that would be required for a tourism development. . . .

"The Town is in receipt of your recent request, dated October 12, 2010, to 'have the [237] Colony units inspected so that the units which are habitable can be reopened for immediate use by our owners and other units can be repaired for owner use on an interim basis. . . .'

"The Town of Longboat Key understands the Association's desire to have units available for a number of the owners during the holiday season. However, in an attempt to not put the cart before the horse, it is important to remember that the zoning issues must be resolved before use of the units can be authorized, regardless of the physical conditions of the units and structures.

"With the understanding that the zoning issues must be resolved prior to occupancy, the town will gladly inspect the buildings and the units. I recommend that the inspection occur after the zoning issues are resolved to insure that the time, money and effort spent on inspections are not wasted. Prior to inspection, we ask that the Association provide us with a list of the units, in order of priority for use and occupancy, from which the town can work. . . ."

A copy of the Town's letter of October 22, 2010, is attached as Exhibit D hereto.

19. In light of the Town's letter of October 22, 2010, with the Town having recommended that inspections be deferred until the "zoning issues" had been resolved, the Association's and the Town's attention was focused on whether the zoning issues, in particular "the availability of recreational facilities that would be required for a tourism development," could be resolved.

20 Over the next three-plus months, Association and Town representatives independently reviewed the paper and microfiche/microfilm records for the Colony over the prior 35-plus years, and the Association explored opportunities to satisfy the "the availability of [required] recreational facilities. . . ."

21. The three acres, on which are located 12 tennis courts, the swimming pool, and certain other amenities at the Colony, were owned in October 2010 by certain entities related to Dr. Klauber (80 percent undivided interest as tenants in common), by Carolyn L. Field (15 percent undivided interest as tenants in common), and by the William W. Merrill Revocable Trust (five percent undivided interest as tenants in common). On December 9, 2010, Mr. Merrill sold his five percent undivided interest in the three acres to BreakPointe, LLC, and in a simultaneous linked transaction on December 9, 2010, the Association obtained an immediate right to use BreakPointe's interest in the three acres and an option to purchase BreakPointe's interest in the three acres through September 10, 2011.

22. On December 27, 2010, the Town wrote the engineer for the Association that "[a]s I understand it, the Association has possibly taken the necessary steps toward future occupancy of the tourism units. The inspection of the individual structures and units by the Town will be conducted as we are closer to zoning resolution. At that time, I would expect that I would receive the prioritized list of units for inspection from the Association. . . ." A copy of the Town's email of December 27, 2010, is attached as Exhibit E hereto.

23. On January 3, 2011, the Town emailed the Association, indicating that it "understood" that "the Association has obtained 'rights' to recreation parcels at the Colony that may remedy the Town's zoning concerns related to recreational amenities and use of the tourism units." The email indicated that "the Town is awaiting written confirmation with the necessary support documentations so that we can proceed toward the next step, which is the inspection of the tourism units and future occupancy of those units." A copy of the Town's email of January 3, 2011, is attached as Exhibit F hereto.

24. On January 4, 2011, the Association wrote the Town Attorney that "[r]ather than challenge the validity of the 'zoning' concerns. . . I. . . am pleased to report that the Association has acquired the immediate right to use the five parcels comprising many of the recreational amenities, including the swimming pool and 12 tennis courts at the Colony, which right of use should eliminate or moot any 'zoning' concerns precluding the Colony from reopening." A copy of the Association's letter of January 4, 2011, is attached as Exhibit G hereto.

25. Also on January 4, 2011, the attorney for the Association wrote the Town, opining that once the Association exercises its option to purchase BreakPointe's five percent undivided interest in the three acres, the exercised and implemented option would eliminate or moot any zoning concerns which would preclude the Colony from reopening and operating because the Association and its members would have the right to use the three acres, and the assumed legal zoning obstacle to the Town conducting inspections prior to reopening units could be lifted. A copy of the Association attorney's letter of January 4, 2011, is attached as Exhibit H hereto.

26. Meanwhile, Association and Town representatives were continuing to review the 35-year-plus records concerning Town zoning and the Colony. On January 24, 2011, the Town Attorney in response to the Association attorney's letter of January 4, 2011, wrote the Town Planning, Zoning and Building Director that following a review of the historical records dating back to the early 1970s, contrary to what many people had assumed, there was "no requirement for recreational use in the original approvals of the Colony," and that "the 1972 Zoning Code does not have a requirement for recreational space or open space." Therefore, the Town Attorney opined that "while active recreational and accessory use for hotel owners and guests is highly desirable, the Colony without use of the out parcels will not increase the legal non-conformity and, therefore, the Association may proceed to reopen the Colony tourism units so long as all other regulatory requirements are met. . . ." A copy of the Town Attorney's letter of January 24, 2011, is attached as Exhibit I hereto.

27. On January 26, 2011, the Town Planning, Zoning and Building Director wrote the Association that "[a]fter consideration of Mr. Persson's opinion [of January 24, 2011] and re-review of the documents related to [the Colony], I agree that the reopening of the Colony as a tourism development without the use or operation of the active recreational and accessory uses located on the out parcels is not inconsistent with the zoning code requirements in place at the time of the project's approval. . . . Since it appears that the zoning concerns have been addressed, the Town of Longboat Key is now in the position that we can comprehensively and systematically address the condition of the individual tourism units for future occupancy. . . . In order to accommodate the Association's plan to reopen, and ensure the units proposed for tourism occupancy are 'in proper working order,' I request the Association provide me with a written list of the units, in priority order, from which the town can schedule inspections with the Interim Building Official and a consulting engineer. . . ." A copy of the Town Planning, Zoning and Building Director's letter of January 26, 2011, is attached as Exhibit J hereto.

Legal restraint: whether restoring for short-term purpose or redeveloping for longer term use, the restoration and redevelopment must consider and address newer building and other codes.

28. Physically restoring or redeveloping the condominium units at the Colony for tourist use will have to consider and address newer building and other codes.

The Association's due diligence since August 15, 2011.

29. In October 2010, the Association hired Joel Rosen and Horwath HTL, one of the leading hospitality consultants in the world, to study the market for restoring the Colony to a first-class tourist resort. Mr. Rosen has completed a first-phase study of the situation at the Colony and of the tourism markets in Longboat Key and elsewhere. He also has surveyed the Unit Owners with respect to the short-term and long-term future at the Colony. Mr. Rosen has proceeded into the second-phase of his work, obtaining expressions of interest and proposals from would-be developers to participate with the Association and Unit Owners in restoring or redeveloping the Colony into a first-class tourist resort. On March 28, 2010, expressions of interest from sixteen developers were presented at the Association's annual membership meeting. On April 13, 2011, the sixteen developers are scheduled to be narrowed, and a smaller number of developers will be invited to submit more specific, detailed proposals for redeveloping the Colony, leading to negotiations to enter into a relationship with a developer to restore or redevelop the Colony. The negotiations will address both the structuring or restructuring of the underlying legal documents to ensure that units will be made available for tourist rentals and the physical improvement of the condominium units and common areas, including the grounds, at the Colony.

30. In response to the Town's letter of January 26, 2011, requesting "a written list of the units, in priority order, from which the Town can schedule inspection with the Interim Building Official and a consulting engineer," the Association on January 27, 2011, provided such a list requesting that the Town undertake inspections of the mid-rise and of the three beach units at the Colony. On February 4, 2011, the Association provided a second list, requesting the Town to inspect approximately 80 units in seven villa buildings at the Colony. Copies of the Association's letters of January 27, 2011, and of February 4, 2011, are attached as Composite Exhibit K hereto.

31. On February 7, 2011, the Town provided an inspection report for the mid-rise and the three beach units for which inspections had been requested on January 27, 2011. On April 6, 2011, the Town provided an inspection report for the seven villa buildings for which inspections had been requested on February 4, 2011. Providing the inspection reports for the seven villa buildings understandably took much longer than providing the inspection reports for the mid-rise and three beach units because far more condominium units were involved. Copies of the Town's inspection reports of February 7, 2011, and of April 6, 2011, are attached as Composite Exhibit L hereto.

Public interest factors in favor of extending the one-year deadline—protecting the Colony "brand" and the Longboat Key "brand;" avoiding the loss of up to 129 tourism units on Longboat Key; avoiding interference with negotiations and plans to reopen the Colony as a first-class resort; economic waste.

32. The Association has proceeded with many of the maintenance items in the mid-rise units with the hope of reopening well prior to August 15, 2011. But the Association is concerned that about a hurried reopening to meet the Town-imposed deadline of August 15, 2011, under circumstances where Unit Owners are under no legal obligations to rent their units, where the Association currently has no legal authority to operate a resort or rental program or compel condominium units to be rented, and where tourism use even if it were re-started prior to August 15, 2011, would be far from optimal, and could dilute not only the Colony "brand," but also the Longboat Key "brand." Granting the extension to accommodate a cleaner, more impressive reopening would be more consistent with protecting the Colony and Longboat Key "brands."

33. There is no public interest in attempting to eliminate the Colony's "grandfathered" density. Indeed, such elimination would be contrary to the public interest. If the "grandfathered" status were eliminated, the Town would lose at least 129 units which have traditionally been used for tourism. Town of Longboat Key voters voted overwhelmingly in March, 2008, to authorize an ordinance which would create a pool of 250 additional tourism units which could be allocated within the Town to help make up for the loss of approximately 250 tourism units earlier in the 2000s. In placing the allocation of 250 tourism units on the referendum, the Town was concerned about the loss in vitality and economic activity inherent in the reduction of tourism units within Longboat Key. Persons renting at the Colony help support businesses on Longboat Key. Many persons who have rented units at the Colony have purchased homes within Longboat Key. A copy of LBK Code 158.180 implementing the referendum is attached as Exhibit M hereto.

34. Prematurely reopening the Colony also would interfere with plans to restore or redevelop the Colony as a first-class tourist destination. The Colony has retained Horwath HTL to study restoration and redevelopment possibilities for the Colony. Horwath HTL has completed its study, moving into the second phase of receiving 16 expressions of interest to restore or redevelop the Colony. Horwath HTL and the Association are in the process of screening the 16 expressions of interest, of interviewing the developer candidates, of soliciting and reviewing proposals, and hopefully choosing a developer candidate with which to begin negotiations toward the goal of restoring or redeveloping the Colony into a first-class tourist destination. Spending substantial monies to meet an artificial deadline of August 15, 2011, would divert time and money from long-range restoration and redevelopment of the Colony as a first-class tourist destination to hurrying to implement a far-less-than-perfect short-term short-lived fix.

The extension should go at least through December 31, 2012, and should be renewable as long as the Association is diligently proceeding toward the restoration or redevelopment of the Colony into a first-class tourism resort.

35. The extension should at a minimum be granted to December 31, 2012. Prior to January 26, 2011, inspections were deferred pending resolution of the "zoning" issues. Resolution of the "zoning" issues alone would justify an extension through January 26, 2012, which is one year following the date on which the extensive historical research by the Town and the Association through nearly 40 years' documents served to overcome widely-held

misconceptions about the zoning "issues" and thus removed what had been previously a legal restraint to beginning inspections of the 237 condominium units at the Colony.

36. Even if the inspections were complete and even if the necessary repairs were completed to make a reopening physically possible, however, there are still legal restraints in the form of the Unit Owners not being legally required to rent condominium units and the Association not having the legal authority to operate a hotel or a rental program. Thus, the extension should be extended to at least December 31, 2012, and preferably longer, to allow the Association time to negotiate among its Unit Owners and with possible developers the necessary legal agreements that will remove the current legal restraints, to design the physical restoration or redevelopment of a 40-year-old facility in light of present building requirements, to obtain permits for the physical redevelopment, and to restore or redevelop the resort prior to the subsequent reopening of the Colony as a first-class tourist destination. This also would minimize the likelihood of the Town being burdened by having to consider multiple extension requests.

37. Moreover, the resolution granting the extension through December 31, 2012, should contain a condition that the extension should be renewable as long as the Association is diligently proceeding with its Unit Owners and developers toward restructuring the underlying documents and toward restoring, redeveloping, or reopening the Colony. There undoubtedly may be unforeseen events which will delay the Association's projected timeline, whether those events be delays in negotiations with developers, delays in preparing permissible plans, delays in obtaining permits, or delays in physically restoring or redeveloping the Colony. The Association assures the Town that it is the Association's interest and intent to proceed as expeditiously as reasonably possible toward restoring or redeveloping and reopening the Colony as a first-class tourist destination, because only once the Colony is restored or redeveloped and reopened will the resort generate any cash flow for the Association and the Unit Owners.

If I can provide any further assistance in expediting the Town Commission's consideration of this request to extend the time, please let me know. I can be reached at 813-229-4101 (direct), 813-205-1735 (cell), or dhemk@carltonfields.com. The Association wants to do everything possible to restore or redevelop the Colony so that it can reopen the Colony as a first-class tourist-oriented development, something which will benefit both the Unit Owners and the Town of Longboat Key.

Very truly yours,

A handwritten signature in black ink, appearing to read "D. E. Hemke", with a long horizontal line extending to the right.

Donald E. Hemke

Copy furnished
David Persson, Town Attorney
Jay Yablon, President, Colony Beach and Tennis Club Association, Inc.



TOWN OF LONGBOAT KEY

Incorporated November 14, 1955

Town Hall
501 Bay Isles Road
Longboat Key, Florida 34228-3196
(941) 316-1999
SUNCOM 516-2760
Fax (941) 316-1656
www.longboatkey.org

March 3, 2011

Mr. Donald E. Hemke
Carlton Fields
4221 West Bay Scout Boulevard, Suite 1000
Tampa, Florida 33607

RE: 1620 Gulf of Mexico Drive – The Colony
Discontinued Use – Nonconforming Land Use/Structures

Dear Mr. Hemke:

On November 5, 2010, Jay Yablon, President of the Colony Beach and Tennis Club Association, Inc., confirmed by email that "...the final date on which the Colony was used for a hotel...was Sunday, August 15, 2010." By way of my correspondence dated October 22, 2010, the Association was reminded that Section 158.138 (B)(8) of the Town's Zoning Code states: "a nonconforming use not used for a period of one year...shall be considered an abandonment" of the legally nonconforming use. The code provides the Town Commission the power to grant an extension of that one year period under two scenarios:

- 1) *...should the period of nonuse or vacancy be caused by legal restraints upon the owner or lessee, the owner or lessee may set forth such grounds in a petition to the town commission and serve such petition on the planning and zoning official...(Section 158.138 (B)(8)(b))*
- 2) *The town commission may grant a special extension for the continuance of an abandoned nonconforming building or structure for a period not to exceed five years to provide for the removal of the nonconforming building or structure, or the making of the building or structure conforming, on or before the end of the period approved...(Section 158.138 (B)(8)(c))*

As set forth in the zoning code, both subsections dealing with the Town Commission granting a time extension to the unused nonconformity allows the town to adopt special conditions and requirements regarding the continued use or redevelopment of the nonconformity.

The Town Attorney and I have determined that a request for an extension would be a quasijudicial proceeding that would required legal notice and advertising, and would be considered by the Town Commission at a regular meeting. The granting of the extension would be through the adoption of a resolution.

EXHIBIT A

The tolling of the abandonment time clock can be stopped, however, at any time prior to the year time period if the tourism use at the Colony is resumed. Essentially, the property must be used as a hotel/resort in keeping with its legally conforming grandfathered use prior to the expiration of the one year period. Occupancy of the units by the owners or members of the Association does not constitute resumed use of the tourism use. Additionally, as previously noted both in writing and verbally, these units cannot be utilized as a permanent residence, as the Colony is approved as a tourism resort development and the density assigned to it is for tourism use, not residential use.

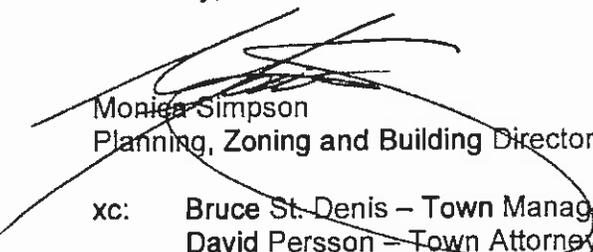
The Town has been inspecting the tourism units as requested by the Association for possible occupancy by tourism patrons. To date, approximately 14 tourism units have been inspected, as noted in my correspondence dated February 7, 2011. However, none have been authorized by the Town as appropriate for occupancy because of the work identified which is necessary to allow such occupancy.

The aforementioned letter was accompanied by the inspection reports prepared by both the Town's Interim Building Official and Fire Marshal citing issues that would require at minimum the issuance of a building permit for the work necessary to remedy the problem. Additionally, the building inspection report noted the need to access the hot water heater for inspection in several units. At the writing of this letter, building permit applications have not been submitted and access to the hot water heaters has not been provided.

Until such time as the tourism units are cleared for occupancy and the active renting of the units has resumed, the year period continues to elapse. If the Association wishes to avail itself of either of the options to seek an extension of the one year time period, please remember that the Town Commission's last regular meeting prior to August 14, 2011, is in July. Notice of the hearing will need to be provided as previously outlined. Difficulties regarding notice or a quorum can arise. It is my recommendation that if this is the option you choose, all material be filed with me no later than May 1, 2011, in order to have this heard by the Town Commission in June. That way, if the Commission wishes additional time to consider the matter, or if there is some unforeseen problem, there is still time for consideration at the July meeting. If the use lapses, I know of no way under our current code to restore it.

Please do not hesitate to contact me at 941/361-6411 extension 284 should you have any questions.

Sincerely,



Monica Simpson
Planning, Zoning and Building Director

xc: Bruce St. Denis – Town Manager
David Persson – Town Attorney
Jay R. Yablon – President, Colony Beach and Tennis Club Association, Inc.
Building/Reading File

MINUTES OF SPECIAL MEETING OF LONGBOAT KEY TOWN COMMISSION, NOVEMBER 21, 1972, 4:00 P.M.

Present: Mayor Gibbon, Commissioners Jones, Kenney, Lee, Montgomery, Petrick,
Ridyard

Also

Present: Town Manager Allgire, Town Clerk Hager

Absent: None

Meeting called to order at 4:00 P.M.

1. PLOT PLAN APPROVED

Plot plan was presented for Colony Beach and Tennis Club for 237 units which would meet the density requirements and allow for a 20 foot roadway to the main clubhouse and restaurant. Final development plans would be submitted after approval by the Town's engineers. It was duly moved and seconded that the plot plan for 237 units be approved. Motion carried unanimously.

2. UTILITIES TAX REPEAL ORDINANCE (232)

At the direction of the Commission, Ordinance No. 232 repealing Ordinance No. 183, as amended by Ordinance No. 209 which levied a tax on the purchase of electricity, gas, fuel oil and local telephone service effective December 1, 1970, was placed on first reading. It was duly moved and seconded that the ordinance be passed on first reading. Explanation was given that the ordinance was in accordance with a referendum in the Spring which had directed substitution of an ad valorem tax for the utilities tax as of the first of the year. Motion carried. Jones, aye; Kenney, aye; Lee, aye; Montgomery, aye; Petrick, aye; Ridyard, aye; Gibbon, aye.

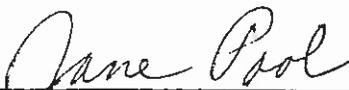
3. ADJOURNMENT

Mayor Gibbon declared the meeting adjourned.



Samuel Y. Gibbon, Mayor

The above minutes were produced from a tape of the proceedings of the Town Commission, November 21, 1972.



Jane Pool, Deputy Town Clerk

11/21/72

EXHIBIT B

TOWN OF LONGBOAT KEY, FLORIDA

County of Sarasota

DATE February 20, 1973

Building Permit No. 2566

Approximate Cost \$3,120,000.00

Fee Paid \$6,255.00

LEGAL DESCRIPTION ATTACHED

Work to be done at: Lot _____ Block _____ Subdivision _____

Street Address ~~XXXXXXXX~~ 1621 Gulf of Mexico Drive, Longboat Key, Florida Zone H-2

Owner's Name Colony Beach Association, LTD.

Present Address 1621 Gulf of Mexico Drive, Longboat Key, Florida Phone _____

THIS BUILDING PERMIT IS FOR THE FOLLOWING WORK:

Gulf Contracting Company to erect two hundred, thirty-seven (237) Hotel-Motel Condominium units to be known as The Colony Beach and Tennis Club. Hotel and Restaurant Commission approval A-7326, 2/14/73. Florida Department of Pollution Control approval DC 73161, 2/8/73.

Size (sq. ft.) _____ Wide _____ Long _____ Height _____ Lot 17.339 acres ft.

Elevation 8.0

Contractor Gulf Contracting Company Address Sarasota, Florida

Architect Marshall Novac Address Tampa, Florida

Work to Start About (date) February 1973.

THIS PERMIT ISSUED BY *A. L. Lovett*

Building Inspector Clark

(If issued by other than Building Inspector this permit is subject to his approval.)

Separate and additional permits are required for Septic Tank, Plumbing, Electrical work, and Pools.

Two sets of building and plot plans are required.

Septic Tank Permit No. _____

THE COLONY BEACH AND TENNIS CLUB ASSOCIATION, INC.

A Florida Condominium Association

BOARD OF DIRECTORS
Jay R. Yablon, President
Bruce V. Pinsky, Vice President
Bob Erasmus, Treasurer
Herb Lipton, Secretary

1620 Gulf of Mexico Drive
Longboat Key, Florida 34228

W. Andrew Adams
Robert Israeloff
Ruth Kreindler
Leonard A. Siudara
Barry Spiegel

October 12, 2010

Mr. Bruce St. Denis, Town Manager
Town Hall
501 Bay Isles Road
Longboat Key, FL 34228

RE: THANK YOU, AND REQUEST TO BEGIN COLONY UNIT INSPECTIONS TO PERMIT OWNER USE

Dear Bruce,

First of all, let me thank you for hosting our Board's visit with David, Monica and yourself last Thursday. It was a very informative meeting for all of us, and I am certain we will be able, working together, to navigate the rather challenging set of circumstances which confront all of us in getting The Colony revitalized and reopened as one of the prime properties on Longboat Key.

Second, I would like to formally make a request that has already been orally made, to have the Colony units inspected so that those units which are habitable can be reopened for immediate use by our owners and other units can be repaired for owner use on an interim basis, while we work in parallel on our long-term plans.

Specifically, on August 20, 2010, John Fernandez wrote the Board's attorney Pete Kelly that the Planning, Zoning and Building Department will require the Colony property to pass an inspection for each building and unit before it is reopened. This letter reiterates and formalizes our request to begin these inspections.

While we recognize that some of the units at The Colony are likely not suitable for safe usage right away, it is also clear that many other units can be immediately reopened and safely used with little if any cost or effort.

Thus, working with our engineering consultant David Karins, I would ask you as soon as possible to please inspect each and every one of the 237 units at The Colony, and certify which units are safe to reopen immediately for owner use, and approve their reopening. For units which are not safe for reopening, please let us know what specific problems need to be remedied before you can approve those units for reopening and use by owners.

Once this is done, we will be in a position to enable units which are certified as safe for reopening to be used by owners right away, and we can begin to implement a repair program to bring all other units into condition for use by owners on an interim basis, all while we develop,

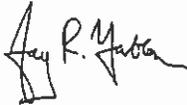
EXHIBIT C

approve, and implement our longer term plans for reopening the property for use by our owners, and for commercial rental to the general public.

As you know, David Karins will be our point of contact for these inspections and Beth Callans is our property manager, and they both will be reporting to Herb Lipton who is managing the property on behalf of the Board.

I look forward to getting this inspection program underway and completed as soon as possible so that our owners can once again use their units, and I again thank you for last week's productive meeting.

For the Board,

A handwritten signature in black ink, appearing to read "Jay R. Yablon". The signature is written in a cursive style with a large initial "J" and "Y".

Jay R. Yablon
President

cc: David Persson, Esq.
Monica Simpson
John Fernandez
Peter J. Kelly, Esq.
Herb Lipton
David Karins
Beth Callans Management



TOWN OF LONGBOAT KEY

Incorporated November 14, 1955

Town Hall
501 Bay Isles Road
Longboat Key, Florida 34228-3196
(941) 316-1999
SUNCOM 516-2760
Fax (941) 316-1656
www.longboatkey.org

October 22, 2010

Jay R. Yablon, President
The Colony Beach and Tennis Club Association, Inc.
1620 Gulf of Mexico Drive
Longboat Key, Florida 34228

RE: 1620 Gulf of Mexico Drive – The Colony
Meeting of October 7, 2010, and Request for Inspection
Follow-Up Letter

Dear Mr. Yablon:

It was my pleasure meeting with you and the other members of The Colony Beach and Tennis Club Association, Inc. board of directors on Thursday, October 7, 2010, together with the Town Manager and the Town Attorney. Because so many issues were discussed during that meeting, and in response to your recent request for inspections of the 237 units on the property, I have prepared this follow-up correspondence in hopes of summarizing the points of concern discussed at the meeting regarding the existing development known as The Colony. While your letter of October 7th inquires about certain building issues for use of the facility, please remember that there are a number of zoning issues that must be addressed prior to reuse or occupancy. Let me start with some of the zoning issues that we discussed.

The property located at 1620 Gulf of Mexico Drive has an underlying zoning classification of Tourist Resort Commercial (also known as T-6), which allows the development of a maximum of six units per acre. The currently approved land use for the property is for tourism use, with a maximum of 237 legally non-conforming tourism units.

A tourism use is defined by the town's Zoning Code Section 158.006 as:

Use, or occupancy, or the design for such use or occupancy, by any person, of any property for transient lodging purposes where the term of occupancy, possession or tenancy of the property by the person entitled to such occupancy, possession or tenancy is less than 30 consecutive calendar days or one entire calendar month, whichever is less.

The units within the existing structures are tourism units, which do not permit them to be used as permanent residences. In order for the units to be converted to residential units, compliance with the town code and approval through a public hearing process must be obtained.

EXHIBIT D

For zoning purposes, the Colony is considered to be one unified development despite its form of ownership. It is a resort hotel. We understand that there are various "parcels" having separate ownership that provide some or all of the required recreational amenities for the resort. To the best of my knowledge, these "parcels" are not recognized by the town as legal individual lots of record for zoning purposes. I am not aware of a way that redevelopment of any portion of the property can be considered in isolation or without the authorization of the remaining property owners. The same would be true for the town to consider a request to change the use of the property.

The existing development appears to include several legal non-conformities. Additionally, the majority of the structures on the property, if not all of them, are considered FEMA noncompliant. Any consideration for redevelopment would require the reduction or complete elimination of the non-conformities and noncompliant issues.

Thus there are zoning issues that need to be resolved in order to enable the town to allow the occupancy of any of the units. The immediate issues include, but may not be limited to, the availability of recreational facilities that would be required for a tourism development.

With regard to the inspection and future occupancy of the tourism units, in December 2009, the Town was notified by the Association through a report prepared by David Karins, of Karins Engineering Group, Inc., that there were structural integrity issues with many of the buildings on the property. In response, John Fernandez, Interim Building Official, Brian Stirling of Stirling Wilbur Engineering Group (the town's independent structural engineering consultant), and Mr. Karins inspected several of the tourism units. As a result of the inspections, the town was able to authorize the occupancy of some of the units, a number of the units required structural improvements before occupancy was allowed, and some of the units were deemed inhabitable by Messrs. Fernandez and Wilbur.

The town has also received a copy of Mr. Karins' September 3, 2010, *Observations and Project Feasibility* report. In that report, Mr. Karins notes that "[d]eterioration of the structures has progressed" with some structural items in a state of failure, with imminent danger of collapse. The town is in receipt of your recent request, dated October 12, 2010, to "have the [237] Colony units inspected so that the units which are habitable can be reopened for immediate use by our owners and other units can be repaired for owner use on an interim basis..."

The Town of Longboat Key understands the Association's desire to have units available for a number of the owners during the holiday season. However, in an attempt to not put the cart before the horse, it is important to remember that the

zoning issues must be resolved before use of the units can be authorized, regardless of the physical conditions of the units and structures.

It appears from the analysis provided by Mr. Karins, the Association is aware of the improvements and work that needs to be done to the buildings in order to make them structurally sound and habitable. As discussed at the meeting, there is no prohibition to the maintenance and repair of the structures or units, within the thresholds of the town's local flood control ordinance for FEMA noncompliant structures if applicable. The Planning, Zoning and Building Department can accept and process building permit applications with the appropriate legal authorizing signatures for maintenance and repair work at anytime.

With the understanding that the zoning issues must be resolved prior to occupancy, the town will gladly inspect the buildings and the units. I recommend that the inspection occur after the zoning issues are resolved to insure that the time, money and effort spent on inspections are not wasted. Prior to inspection, we ask that the Association provide us with a list of the units, in order of priority for use and occupancy, from which the town can work. Staff time and consultant time charges may be incurred during the inspection process.

The last point that needs to be mentioned is, as a property with non-conforming uses, portions of Section 158.138 *Status of Nonconformities*, including, but not limited to, the following subsections may apply:

(B)(5) Unsafe Structures. If a nonconforming structure or portion of structure or any structure containing a nonconforming use becomes unsafe or unlawful due to lack of repairs or maintenance and is declared by the Planning and Zoning Official to be unsafe or unlawful by reason of its condition, it shall not thereafter be restored, repaired or rebuilt except in conformity with the provisions of this chapter; and its removal shall be deemed voluntary.

and

(B)(8)(a)...a nonconforming use not used for a period of one year or the change of use to a more restricted or conforming use for any period of time shall be considered an abandonment thereof and the nonconforming use shall not thereafter be revived

At the meeting of October 7, 2010, the Town Attorney, David Persson, expressed his concern regarding this issue. He said that he would examine the issue of when abandonment would be calculated and requested that the Association provide the town with the facts surrounding when the use was discontinued. To date, we have not received this information, but in the meantime, the Town Attorney and I have determined that since this is a unified site, and not individual

Yablon, Jay R. – President, The Colony Beach
And Tennis Club Association, Inc.
Meeting of October 7, 2010, and Request for Inspection
Follow-Up Letter

October 22, 2010
Page 4 of 4

residential units, the date from which abandonment would be calculated would be the last day the property was used as a hotel. Please let us know what that date was so that we can both be assured that there is no misunderstanding if that issue becomes important as we go forward.

If I have omitted any information or facts that were discussed in the meeting, please feel free to bring them to my attention. Having everyone operate under the same facts and understandings will most certainly make the process easier for everyone.

I look forward to working with the Association and all of the various owners of the property in the coming days. The town is optimistic and appreciates the open lines of communication.

In closing, I need to add a disclaimer. Any error or omission in this correspondence does not authorize or justify violation of the Town of Longboat Key Zoning Codes. Should you have any questions, please feel free to contact me at 941/361-6411 extension 284.

Sincerely,

A handwritten signature in black ink, appearing to read 'Monica Simpson', with a large, stylized flourish at the end.

Monica Simpson
Planning, Zoning and Building Director

xc: Building/Reading File

\\pzb\monica\correspondences\colony follow-up ltr 10-22-10

Hemke, Donald E.

From: Monica Simpson [msimpson@longboatkey.org]
Sent: Monday, December 27, 2010 9:54 AM
To: 'David Karins'
Cc: David Persson; Bruce St Denis; jyablon@nycap.rr.com; Hemke, Donald E.
Subject: RE: Colony Beach and Tennis Resort - Karins report

Mr. Karins,

I completely understand that you must limit your comments to only those structure and public areas that you have personally witnessed and inspected. Of those structures that you reference in your letter dated December 16, which of the following do you believe access by realtors and their perspective buyers should be restricted or prohibited for life safety reasons based on your professional observations, or are your concerns related more toward the occupancy of the tourism units:

Unit 634
Unit 734
Unit 606
Unit 706
Walkway in villa building 12 adjacent to unit 634
Villa building 13 near unit 630

As I understand it, the Association has possibly taken the necessary steps toward future occupancy of the tourism units. The inspection of the individual structures and units by the Town will be conducted as we are closer to zoning resolution. At that time, I would expect that I would receive the prioritized list of units for inspection from the Association as requested and agreed upon.

Thank you again.

Monica Simpson
Town of Longboat Key
Planning, Zoning and Building Director

From: David Karins [mailto:dk@keg-engineering.com]
Sent: Friday, December 24, 2010 9:35 AM
To: Monica Simpson
Cc: David Persson; Bruce St Denis; jyablon@nycap.rr.com; dhemke@carltonfields.com
Subject: RE: Colony Beach and Tennis Resort - Karins report

Hi Monica.

I am only certain about the ones I referenced in the letter, though it has been a while since I've reviewed all of the buildings. I would like to do a more detailed walkthrough with you or John F. present so that we can be on the same page relative to public safety. I am available next week Tuesday, Wednesday and Thursday and the first half of the following week.

Thank you for the kind wishes and I hope you also have a great holiday weekend.

David

From: Monica Simpson [mailto:msimpson@longboatkey.org]
Sent: December 23, 2010 11:32 AM
To: David Karins
Cc: David Persson; Bruce St Denis; 'jyablon@nycap.rr.com'; 'dhemke@carltonfields.com'
Subject: Colony Beach and Tennis Resort - Karins report

Mr. Karins,

I greatly appreciate your follow-up correspondence regarding the structural conditions of the buildings located at the Colony Beach and Tennis Resort. Do you believe there are any buildings (residential, public or otherwise) that you believe to which access by realtors and their perspective buyers should be restricted or prohibited for life safety reasons? If so, which buildings?

Thank you again. Hope you and yours have a Happy Holidays.

Sincerely,
Monica Simpson
Town of Longboat Key
Planning, Zoning and Building Director

From: David Karins [mailto:dk@keg-engineering.com]
Sent: Friday, December 17, 2010 10:43 AM
To: Monica Simpson
Cc: jyablon@nycap.rr.com; dhemke@carltonfields.com
Subject: Colony Beach and Tennis Resort

Ms. Simpson,

Mr. Yablon and Mr. Hemke asked that I forward this correspondence to you. A hard copy follows via USPS. Please don't hesitate to call if questions arise.

Regards,

David G. Karins, PE
President



2017 Fiesta Drive, Sarasota, FL 34231
Phone: 941.927.8525
Fax: 941.927.8075
dk@keg-engineering.com

Hemke, Donald E.

From: Monica Simpson [msimpson@longboatkey.org]
Sent: Monday, January 03, 2011 2:17 PM
To: 'Jay R. Yablon'
Cc: David Persson; Bruce St Denis; Hemke, Donald E.
Subject: In Your Absence - Association Representative to the Town

Jay,

On a different matter, it is my understanding that the Association has obtained "rights" to recreation parcels at the Colony that may remedy the Town's zoning concerns related to recreational amenities and use of the tourism units. If this good news is true, the Town is awaiting written confirmation with the necessary support documentation so that we can proceed toward the next step, which is the inspection of the tourism units and future occupancy of those units. In your absence, will Mr. Lipton also be the person working with the Town on behalf of the Association's Board regarding the zoning matter? Additionally, when do you anticipate that we might be in receipt of the aforementioned written confirmation?

Thank you.
Monica

THE COLONY BEACH AND TENNIS CLUB ASSOCIATION, INC.

A Florida Condominium Association

BOARD OF DIRECTORS
Jay R. Yablon, President
Bruce V. Pinsky, Vice President
Bob Erasmus, Treasurer
Herb Lipton, Secretary

1620 Gulf of Mexico Drive
Longboat Key, Florida 34228

W. Andrew Adams
Robert Israeloff
Ruth Kreindler
Leonard A. Siudara
Barry Spiegel

January 4, 2011

David P. Persson
Hankin Persson Davis & McClenahan
1820 Ringling Boulevard
Sarasota, FL 34236-5917

Dear Mr. Persson:

As you know, the Colony Beach and Tennis Club Association, Inc. ("the Association") has been extensively engaged in efforts to reopen the Colony with a view to satisfying the "safety" and "zoning" concerns raised in Ms. Simpson's letter of October 22, 2010.

Mr. Karins has corresponded with Ms. Simpson concerning the "safety" concerns, and repairs and inspections will soon be underway.

Rather than challenge the validity of the "zoning" concerns at this time, I also am pleased to report that the Association has acquired the immediate right to use the five parcels comprising many of the recreational amenities, including the swimming pool and 12 tennis courts at the Colony, which right of use should eliminate or moot any "zoning" concerns precluding the Colony from reopening.

The Association also has acquired an option to purchase an undivided interest in the five parcels. Prior to exercising the option, however, the Association would like to confirm with the Town that the exercised and implemented option will eliminate or moot any zoning concerns which would preclude the Colony from operating.

As you may know, three owners had owned fee title to the five parcels where many of the recreational amenities, including the swimming pool and 12 tennis courts, at the Colony are located.

On December 9, 2010, one of those three owners, William W. Merrill, as trustee of the William W. Merrill Revocable Trust, by warranty deed, granted and sold to BreakPointe, LLC, "his undivided five percent (5%) interest" in the five parcels which include the swimming pool and 12 tennis courts at the Colony.

Also on December 9, 2010, the Association acquired the right to use and an option to purchase BreakPointe, LLC's five percent undivided interest. The Association intends to ask its unit owners to agree to exercise this option to purchase the undivided 5% interest once the Town confirms that the Association's interest in those five parcels will resolve any concerns the Town

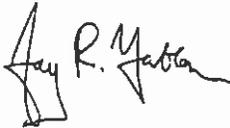
EXHIBIT 9

may have concerning satisfying Town standards for providing recreational amenities at the Colony.

The Association understands that the Town may consider the Colony as non-conforming in certain respects, but reopening the Colony would not "alter," "enlarge," "change," or "modify" any nonconforming building or any nonconforming use.

Please let us know what other information, if any, the Town may need to permit the Colony to re-open. As we have discussed, re-opening the Colony and permitting the unit owners to again use their units is the critical first step in our efforts to restore and revitalize the Colony.

Very truly yours,

A handwritten signature in black ink, appearing to read "Jay R. Yablon". The signature is written in a cursive style with a prominent initial "J" and "Y".

Jay R. Yablon
President

CARLTON FIELDS

ATTORNEYS AT LAW

ATLANTA
MIAMI
ORLANDO
ST. PETERSBURG
TALLAHASSEE
TAMPA
WEST PALM BEACH

Donald E. Hemke
813.229.4101 direct
dhemke@carltonfields.com

4221 W. Boy Scout Boulevard
Suite 1000
Tampa, Florida 33607-5780
P.O. Box 3239
Tampa, Florida 33601-3239

813.223.7000
813.229.4133 fax
www.carltonfields.com

January 4, 2011

Monica Daigle Simpson
Planning, Zoning and Building Director
Town of Longboat Key
501 Bay Isles Road
Longboat Key, FL 34228-3196

VIA E-MAIL
msimpson@longboatkey.org
and U.S. FIRST CLASS MAIL

Subject: The Colony Beach & Tennis Club Association/Town of Longboat Key

Dear Ms. Simpson:

In response to the Town Attorney's email of January 3, 2011, I am providing this letter on behalf of the Colony Beach & Tennis Club Association ("the Association") detailing the reasons why the Colony is in compliance with the Town's comprehensive plan and zoning code and why there are no "zoning" issues which preclude the Colony from resuming operations. I also will particularly address the issues raised in your letter of October 22, 2010, and in the Town Attorney's email of November 17, 2010.

The most significant issue raised in your letter and in the Town Attorney's email is whether the Colony would satisfy the recreation and open space requirements if it were no longer to be able to use the three recreation acres at the Colony. As will be explained in much more depth at pages 2 through 8 below, the Association has acquired an immediate right to use the three recreation acres through September 10, 2010, and has an option to purchase an interest in the three recreation acres to provide it a much longer term right to use the three recreation acres. As Mr. Yablon's letter of January 5, 2011, indicates, the Association intends to ask its unit owners to exercise the option once the Town confirms that the exercised and implemented option will eliminate or moot any zoning concerns which would preclude the Colony from operating. Given the presently-existing right to use the three recreation acres and the Association's intent to exercise the option to purchase an interest in the three recreation acres, the most significant issue raised in your letter and in the Town Attorney's email has disappeared. As will be seen at pages 8 and 9 below, the Association's immediate right to use the three recreation areas and the option to purchase an interest in the three recreation acres should also eliminate any other zoning concerns raised in your letter or the Town Attorney's email.

A. The facts indicating that the Association has acquired the right to use the three recreation acres at the Colony

The Association is a not-for-profit corporation formed in 1973. The Association was established as a condominium association pursuant to the Declaration of Condominium of Colony Beach & Tennis Club dated November 29, 1973 ("the Declaration"). The Association's membership consists of the owners ("the unit owners") of the 237 condominium units ("the units") at the condominium identified as Colony Beach & Tennis Club, a Condominium Resort Hotel ("the Colony").

The initial developer of the Colony was Colony Beach Associates, Ltd. ("CBA"). On September 12, 1972, CBA acquired approximately 18 acres of real estate located on the Gulf of Mexico in Longboat Key from Herbert and Rebecca Field. When the Colony was formed, excluded from the Declaration of Condominium of the Colony were four separate, non-contiguous parcels of land, aggregating 3.186 acres ("the three recreation acres") on which the pool area and 12 tennis courts are located.

CBA has not held any interest in the three recreation acres for decades. Through a series of transactions outlined below, the three recreation acres were conveyed such that today the three recreation acres are owned by four co-tenants in common as follows: a forty-five percent (45%) interest is owned by the Colony Beach and Tennis Club, Inc. ("Colony Beach and Tennis Club"), a thirty-five percent (35%) interest is owned by Colony Beach, Inc. ("CBI"), a fifteen percent (15%) interest is owned by Carolyn L. Field as Trustee of the Carolyn L. Field Family Trust ("Field"), and a five percent (5%) interest is owned by BreakPointe, LLC ("BreakPointe").

1. The forty-five percent (45%) interest owned by Colony Beach and Tennis Club.

On April 8, 1974, CBA transferred an undivided forty-five percent (45%) interest in the three recreation acres to First Diversified Properties, Inc., a subsidiary of two savings and loan institutions. That forty-five percent (45%) interest was ultimately transferred to Colony Beach and Tennis Club in 1980.

2. The thirty-five percent (35%) interest owned by CBI.

On November 4, 1975, CBA transferred a thirty-five percent (35%) interest in the three recreation acres to CBI.

3. The fifteen percent (15%) interest owned by Field.

On July 8, 1974, CBA conveyed to Herbert Field and Colony Beach Club, Inc., as tenants in common, "an undivided fifteen percent (15%) interest" in the three recreation acres. On October 20, 1983, Mr. Field and the trustees of Colony Beach Club, Inc., a Florida corporation which was, at the time, dissolved, quitclaimed the fifteen percent (15%) interest in the three recreation acres to Herbert P. Field, as Trustee of the Herbert P. Field Family Trust. On August 26,

1986, Herbert P. Field, Trustee of the Herbert P. Field Family Trust quitclaimed the fifteen percent (15%) interest to Carolyn L. Field as Trustee of the Carolyn L. Field Family Trust.

4. The five percent (5%) interest owned by BreakPointe.

On April 8, 1974, CBA, by warranty deed, conveyed to W. W. Merrill "an undivided five percent (5%) interest in" the three recreation acres. By assignment and deed dated December 9, 2008, Mr. Merrill conveyed his undivided five percent (5%) interest in the three recreation acres to William W. Merrill, as Trustee of the William W. Merrill Revocable Trust.

On December 9, 2010, Mr. Merrill, as trustee of the William W. Merrill Revocable Trust, by warranty deed, granted and sold to BreakPointe "his undivided five percent (5%) interest" in the three recreation acres.

Also on December 9, 2010, the Association purchased the immediate right to use BreakPointe's interest in the three recreation acres and an option to purchase BreakPointe's interest in the three recreation acres through September 10, 2011.

Because of the transfer of the five percent (5%) undivided interest to Mr. Merrill, and then to Mr. Merrill as trustee, then to BreakPointe, BreakPointe is now a tenant in common with Colony Beach and Tennis Club, CBI and Field with regard to the three recreation acres. When the Association acquired the option from BreakPointe on December 9, 2010, the Association also acquired an immediate right to use BreakPointe's undivided five percent (5%) interest in the three recreation acres.

The immediate right to use is contained in section 14 of the option agreement of December 9, 2010, which section provides,

"Right of Use. From the date of full execution of this Agreement [December 9, 2010] and through the earlier of Closing [of the sale-purchase of the undivided five percent interest] or the expiration of the Option Term [September 10, 2011] BreakPointe grants and assigns to Association all of BreakPointe's rights to the use, possession and enjoyment of the acquired Merrill 5% Interest. . . ."

Thus, the Association has a presently-existing right to use the three recreation acres and an option through September 10, 2011, to purchase BreakPointe, LLC's five percent undivided interest in the three recreation acres.

B. The law indicating that the Association has acquired the right to use the three recreation acres at the Colony

There appears to be little Florida case law concerning the rights of co-tenants in common holding an "undivided interest." Florida law appears consistent with general common law

concerning co-tenancies in common and "undivided interests." Thus, factually-close cases from outside Florida will be cited below.

1. Right to use the entire estate.

The holder of a five percent (5%) undivided interest, such as the Association here, has "a right to possess the entire estate," but cannot use the underlying property "to interfere with the equal rights of his cotenant." See, e.g., Rayonier, Inc. v. Polson, 400 F.2d 909, 919 (9th Cir. 1968) ("[t]he well settled general rule, followed in Washington, is that one cotenant of real property may use and enjoy the entire property to the fullest extent consistent with the ordinary manner of deriving profits from property of like character"); Wagman v. Carmel, 601 F. Supp. 1012, 1015 (E.D. Pa. 1985) ("[a] tenancy in common is an estate in which there is a unity of possession, but separate and distinct titles. Each tenant has a right to possess the entire estate, but this right of possession is not exclusive. Although a tenant in common may freely sell or otherwise dispose of his own interest in jointly held property, he may not act so as to prejudice the rights of his co-tenants"); Whiting v. de Leon, 311 B.R. 539 (Bkrcty. N.D. Cal. 2004) ("[i]t is well established that tenants in common are entitled to use and possess the entire property"); Taylor v. Canterbury, 92 P.3d 691, 694 (Colo. 2004), citing Powell & Rohan, Real Property § 40.01[1] ("[a] tenancy in common is a form of ownership in which each co-tenant owns a separate fractional share of undivided property. All co-tenants share a single right to possession of the entire estate"); State v. Jackson, 197 Ga.App. 619, 622, 399 S.E.2d 88, 91 (1990), citing Allstate Ins. Co. v. Ammons, 163 Ga. 385, 386, 294 S.E.2d 610 (1982), as holding that "tenants in common have an undivided interest and right to use and possess the entire property"; Rogers v. Rogers, 473 N.W.2d 36 (Iowa 1991) ("[i]n a tenancy in common, each tenant has a separate, distinct and undivided interest in all of the property so held. . . [and] is entitled to possession and use of the whole"); Knotts v. Hall, 85 N.C. App. 463, 466, 355 S.E.2d 237, 239 (1987) ("[e]ach cotenant is entitled to possess the entire property"); Stevahn v. Meidinger, 79 N.D. 323, 57 N.W.2d 1, 7, 12 (1952), quoting 14 Am.Jur., "Joint Tenancy" §§ 23, 85 ("[i]t is a rule of general application that any co-owner of real property has a right to enter upon the common estate and take possession of the whole thereof, subject only to the equal right of his companions in interest with whose possession he may not interfere"); De La Pole v. Lindley, 131 Wash. 354, 358, 230 P. 133 (1924) ("[t]he rule is that each tenant in common is entitled to the use, benefit, and possession of the entire estate, the only limitation on his right being that he must so exercise his right as not to interfere with the equal rights of his cotenant"); Butler v. Craft Engineering Construction, Inc., 67 Wash.App. 684, 694, 843 P.2d 1071 (1992), citing 2 Powell, American Law of Property § 6.10 at 46 (1952) ("[e]ach cotenant, regardless of the size of the undivided fractional share, has a co-equal right to the possession, use and enjoyment of the whole of the property, the only limitation being that it must exercise its right so as not to interfere with the co-equal rights of the other tenants").

The right of the holder of an undivided interest in real estate to use the entire estate seems comparable to the right of an easement holder in Florida to use the easement he shares with other easement holders. See, e.g., Sweetwater Oaks Condominium Ass'n v. Creative Concepts of Tampa, Inc., 432 So.2d 654, 656 (Fla. 2d DCA 1093) (Grimes, A.C.J.), citing Monell v. Golfview

Board Association, 359 So.2d 2 (Fla. 4th DCA 1979) ("[t]he rights of the common owners of an easement may not be exercised in derogation of the rights of other common owners. Although a majority of the easement holders have voted to erect a wall along the common boundary, they have no right to substantially impair the rights of other owners by eliminating one's means of ingress and egress").

2. Persons owning and using the condominium units at the Colony may use the Association's undivided interest in the three acres.

Technically, the right to use the undivided interest is in the Association. The Association itself as a corporate entity is incapable of exercising any right to use, and the right to use must be construed as inuring in the unit owners and lawful occupants of the units at the Colony.

Florida Statutes 718.103(2) defines "[a]ssociation" as including "any entity which operates or maintains other real property in which unit owners have use rights, where membership in the entity is composed exclusively of unit owners or their elected or appointed representatives and is a required condition of unit ownership." Florida Statutes 718.103(3) defines "[a]ssociation property" as "that property, real and personal, which is owned. . .by. . .the association for the use and benefit of its members." Florida Statutes 718.114 provides that "[a]n association has the power to enter into agreements, to acquire leaseholds, memberships, and other possessory or use interests in lands or facilities. . . ."

In addition, Section 8.3 of the Declaration of Condominium for the Colony grants the Association the following power:

"to enter into agreements whereby it acquires leaseholds, memberships and other possessory or use interests in lands or facilities, including but not limited to country clubs, club houses, golf courses, marinas, swimming pools, tennis courts, locker rooms and other recreation facilities, whether or not contiguous to the lands of the condominium, intended to provide for the enjoyment, recreation or other use or benefit of unit owners. . . ."

3. Even if the unit owners and lawful occupants of the units presently did not have the right to use the Association's undivided interest in the three recreation acres, the Association has the right to "freely alienate" its undivided interest to the unit owners and lawful occupants of the units.

To the extent that it would be necessary for the Association to formally subdivide its five percent (5%) interest among the owners and lawful occupants of the 237 condominium units at the Colony, the holder of a right to use and the holder of a five percent (5%) undivided interest, such as the Association would have once it exercises the option, also has the right to freely alienate and "subdivide" the five percent (5%) interest.

For Florida cases, see, e.g., Bermudez Y Santos v. Bermudez Y Santos, 773 So.2d 568, 570 (Fla. 3d DCA 2000) (explicitly "agree[ing] with the master's analysis" that "the husband was free to split his fifty percent share with his wife"); Estate of Cleeves, 509 So.2d 1256, 1258-1259 (Fla. 2d DCA), review denied, 518 So.2d 1273-1274 (Fla. 1987), citing landoli v. landoli, 504 So.2d 426 (Fla. 4th DCA 1987) (noting that "interest of a tenant in common may be . . . freely alienable"); In re Willoughby, 212 B.R. 1011, 1015 (Bkrptcy. M.D. Fla. 1997) (noting that a tenant in common "may freely transfer or encumber his or her undivided one-half interest. . . .").

For out-of-Florida cases similarly indicating that a tenant in common may "freely alienate" or "subdivide" his undivided interest, see, e.g., Rayonier, Inc. v. Polson, 400 F.2d 909, 919 (9th Cir. 1968) ("[t]he well settled general rule, followed in Washington, is that one cotenant of real property. . . may grant to other persons freely and without the necessity of the consent of his cotenants, his interest in the property and whatever rights he enjoys"); Pellow v. Arctic Mining Co., 164 Mich. 87, 128 N.W. 918 (1910) ("[a] tenant in common may sell the whole or any aliquot [fractional] part of his undivided interest in the whole"); White v. Despres, 1994 WL 879840 (Mass. Super. 1994) (noting that "[t]he most important of those rights [of a tenant in common] is the right to freely alienate the interest in property held as a tenant in common"); Stevahn v. Meidinger, 79 N.D. 323, 57 N.W.2d 1, 7, 12 (1952), quoting 14 Am.Jur., "Joint Tenancy" §§ 23, 85 ("[a]ny cotenant. . . can effectively convey his own moiety or any factional proportion thereof"); Barstow v. State, 742 S.W.2d 495, 508 (Tex. App. 1987) (rejecting Barstow's "inference" of "a rule of law that one cotenant may not convey an undivided interest without the consent of his cotenants. We hold there is no such rule of law. One cotenant may freely convey his interest in common property as long as he does not prejudice the rights of his cotenant in the premises. In such a case, such a conveyance is not void but only voidable at the instance of the non-consenting cotenant. . . . Barstow does not contend and did not obtain a finding that he was prejudiced by the conveyances of which he now complains. . . ."); Lake v. Reid, 252 S.W.2d 978, 982 (Tex.Civ.App. 1952) ("[t]he rule is well known that each cotenant may freely assign or convey his interest in the common property, and his assignee or vendee at once becomes the owner of the interest conveyed, and as such, as matter of law, a cotenant with the former cotenants of his vendor, and entitled to all the rights of possession and re-sale"); Watson v. Beall, 279 S.W. 543, 545 (Tex. Civ. App. 1925) ("a party who owns an undivided interest in real estate can sell his interest, or any portion thereof, without in any way encumbering or affecting the undivided interest therein by his cotenants"); Garner v. Anderson, 67 Utah 553, 562, 248 P. 496, 499 (1926) ("[t]he interests of tenants in common are several. Each tenant has the unquestionable right to alienate his interests as he may choose, regardless of the wishes of the other tenants or joint owners"); Butler v. Craft Engineering Construction, Inc., 67 Wash.App. 684, 694, 843 P.2d 1071 (1992), citing 2 Powell, American Law of Property § 6.10 at 46 (1952) ("[a] tenant in common has a separate, undivided interest which is descendible and which may be conveyed by deed or will. Moreover, a tenant in common may further subdivide its interest into as many fractional shares as it pleases and convey to as many grantees as it wishes").

Again, the only limitation would be that the holder of an undivided interest cannot "freely alienate" or subdivide where such action would "substantially impair" other co-tenants' rights. See, e.g., Wagman v. Carmel, 601 F. Supp. 1012, 1015 (E.D. Pa. 1985) ("[a]lthough a tenant in

common may freely sell or otherwise dispose of his own interest in jointly held property, he may not act so as to prejudice the rights of his co-tenants"); Butler v. Craft Engineering Construction, Inc., 67 Wash.App. 684, 694, 843 P.2d 1071, 1078-1079 (1992), citing 2 Powell, American Law of Property § 6.10 at 46 (1952) ("a tenant in common may further subdivide its interest into as many fractional shares as it pleases and convey to as many grantees as it wishes. . . .The only limitation is that a cotenant may not interfere with the co-equal rights of the other cotenants. . . .[A] cotenant's ability to convey its undivided interest or some fractional share thereof must be limited to such conveyances as shall not interfere with the right of the other cotenants and their easement grantees to the possession, use and benefit of the whole of the roadway. . . .Craft Eng does not propose to block the roadway nor to convey its undivided interest for any purpose other than road purposes. Instead it proposes to improve the whole of the roadway at its sole expense and to extend its length so as to provide ingress and egress"); 86 CJS, Tenancy in Common § 149 ("unless prejudicial to the rights of cotenants, a conveyance by a tenant in common of less than his or her interest may operate to convey the fractional interest intended").

4. Permitting the unit owners and lawful occupants of the 237 condominium units to use the three recreation acres will not prejudice any other co-tenant's right to use the three recreation acres because use of the three recreation acres is limited to those persons lawfully occupying the 237 condominium units.

No co-tenant of the three acres could claim that permitting the owners and lawful occupants of the 237 condominium units would interfere with the co-tenant's "right" to use the three acres or otherwise overburden the three recreation acres. In 1972, when the Town approved the plot plan for the Colony, and presently, no generalized recreation use has been permitted at the Colony.

I have been unable to find the primary source document in Town records or elsewhere, such as a zoning map, to indicate how the property which would become the Colony was zoned in 1972, but presumably the land which would become the Colony was zoned "H-2 Large Hotel, Motel and Multi-Family District" when the Town Commission approved the plot plan for the Colony in 1972. Section 22-65 of the then-existing Zoning Code listed as principal uses in H-2 "[h]otels, motels, apartment hotels and bungalow courts" and "[m]ultiple family dwellings." Section 22-65 then listed as accessory uses in H-2 "[c]ustomary accessory uses of large hotels and motels, [and of] multiple family dwellings." Section 22-65 listed as "prohibited uses" "[a]ll commercial uses except as specifically permitted" as a principal use, as an accessory use, or as a special exception use.

Presently, the Colony is zoned "T-6 High Density Tourist Resort Commercial District." Permitted uses (with site plan review) in T-6 include "[m]ultifamily developments with 10 or more dwelling units," and "[h]otels, motels, and other tourism and time-share tourism units." Accessory uses in T-6 include "[p]rivate recreation facilities designed for the exclusive use of occupants."

Therefore, the only permissible use for the three recreation acres is, and remains, as a recreation amenity to the unit owners and to the lawful occupants of the 237 units. No co-tenant could reasonably plan on using, or use, the three recreation acres for the general public. The recreation amenity at the Colony has been more than sufficiently sized pursuant to Town standards for "living area" within the 237 condominium units. Indeed, Town calculations indicate that the Colony has approximately three times more recreation space than Town standards would require.

C. Response to other "zoning" issues raised in your letter of October 22, 2010, and in the Town Attorney's email of November 17, 2010.

- 1. The concern in your letter of October 22, 2010, that "the existing structures are tourism units, which do not permit them to be used as permanent residences."**

Without addressing the merits of what is or is not permitted, reopening the Colony will not change the use from what existed prior to August 15, 2010.

- 2. The concern in your letter that "[t]he existing development appears to include several legal-nonconformities."**

Any nonconformities are "grandfathered." Reopening the Colony will not "alter," "enlarge," "change," or "modify" any nonconforming building or any nonconforming use.

- 3. The concern in your letter concerning "safety" issues.**

I understand that Mr. Karins will be working with the Town to expedite inspections and any necessary repairs prior to reopening units.

- 4. The concern in your letter about "abandoning" the nonconforming uses at the Colony.**

With the "safety" and "zoning" issues being resolved, the Colony plans to reopen units and resume operations very shortly and certainly well prior to August 15, 2010, the one year period from the closing of the Colony.

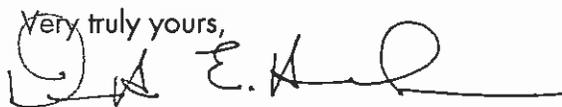
- 5. The concern in the Town Attorney's email about satisfying Town standards for open space, parking, recreation, density, land coverage, and the like.**

Reopening the Colony will not "alter," "change," or "modify" the open space, the parking, the recreation amenities, the density, land coverage, or similar criteria at the Colony, which existed prior to August 15, 2010.

D. Conclusion.

I would hope that given this letter, Mr. Karins' letter, and Mr. Yablon's letter of January 5, 2011, the Town would agree that the Colony may be reopened immediately, subject to any inspections of individual units or buildings. Reopening the Colony immediately is the necessary first step to restoring and revitalizing the Colony, which will certainly be in the Association's and in the Town's interest.

Should the Town have any further questions or concerns, please let Mr. Yablon or me know immediately. Because Mr. Yablon will be traveling through January 20, 2010, you also may contact Mr. Pinsky, the Association's vice president, in Mr. Yablon's absence. We are all ready to respond as immediately as possible. The Association cannot over-emphasize its goal to reopen, restore and revitalize the Colony as expeditiously as possible.

Very truly yours,


Donald E. Hemke

Copy furnished

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Hankin Persson Davis & McClenahan
1820 Ringling Boulevard
Sarasota, FL 34236-5917

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President
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January 24, 2011

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** Board Certified State and Fed. Govt. & Admin. Practice

Ms. Monica Simpson
Planning, Zoning and Building Director
Town of Longboat Key
501 Bay Isles Road
Longboat Key, FL 34228

RE: Colony Beach and Tennis Association, Inc. / Town of Longboat Key
Zoning Issues Relative to Colony Beach Owners' Association Reopening

Dear Monica:

This is in response to your request for me to analyze the information received from Mr. Donald Hemke, the attorney for the Colony Beach Owners' Association, as set forth in his letter of January 4, 2011, as well as to review the Town's records for the purpose of determining any zoning impediments for the Colony Owners' Association to reopen the facility pending compliance with other non-zoning issues. I have had the opportunity to review Mr. Hemke's letter and material, review subsequent information submitted to me by Mr. Hemke as well as other attorneys for other interested parties, and have reviewed the Town's records concerning the history and approval of the Colony Beach and Tennis Resort. The focus of this review is upon approximately 3 acres not owned by the Association (the "out parcels") and the effect, if any, upon the Owners' Association's request to reopen the Colony if the Association is deprived of the use of these out parcels. I offer the following.

At a special meeting on November 21, 1972, the Town Commission approved the Colony. The minutes state: "Plot plan was presented for the Colony Beach Club for 237 units which would meet the density requirements and allow for a 20-foot roadway to the main clubhouse and a restaurant. Final development plans would be submitted after approval by the Town's Engineers. It was duly moved and seconded that the plot plan for 237 units be approved. Motion carried unanimously."

A building permit was subsequently issued in February 1973 to erect 237 hotel/motel/condominium units to be known as the Colony Beach and Tennis Club. The plot plan was submitted thereafter and stamped "Approved by the Town of Longboat Key subject to zoning in existence at the time that the building permit is issued." It is dated September 12, 1973. I am able to find portions of the approved plot plan. The plot plan is a schematic representation of the Colony property.

There is a condominium plat ("the plat") filed pursuant to a survey performed November 19, 1973. The plat is more detailed than the plot plan previously approved by the Town. The plat created the out parcels. There is no indication on the plat that the Town approved the plat. It appears that the Town only became aware of the creation of the out parcels in connection with a re-zoning application dated November 11, 1981. The re-zoning application was a request to re-zone the Colony *without* inclusion of the tourism units. In a letter dated January 15, 1982, the Town's Code Enforcement Officer noted, "The survey submitted to the Town appears to be in violation of the Town's subdivision ordinance. No application or approval of the Town reflects the subdivisions shown in the survey." An amended application was filed which included the tourism units and changed the legal description to include all of the Colony property. John Meshad, attorney for the Colony Beach and Tennis Club, by subsequent letter dated January 21, 1982, described the Code Enforcement Officer's observation about an unapproved subdivision as "at best to be absurd."

There is a memorandum from Al Cox, Public Works Director, to Town Manager Dennis Kelly dated July 6, 1984, which ends with a notation "We have recently obtained copies of the recorded plat which appears to indicate a five (5) parcel subdivision. There was no subdivision approval by the Town."

This letter does not reach the issue of whether the property was lawfully divided since it appears to be irrelevant for the purpose of determining the narrow issue of whether the Owners' Association may proceed under the Comprehensive Plan and Zoning Code without control of these "out parcels."

At the time of the approval in 1972, the Colony property was zoned H2. H2 provided for a maximum density of 14 units per acre. If the out parcels were not considered for density calculations that would leave slightly less than 15 acres. Based upon 15 acres, the maximum allowable density would have been 210 units (15 acres times 14 units per acre). The applicant requested and the Town approved 237 units. The approval of 237 units would have been illegal if it was based upon 15 acres. Therefore, the entire site was considered as the "Colony Beach and Tennis Resort" when determining the density for the property. (A newspaper article describing the project, which is included in the Town's records from 1973, reflects the following: "... it calls for 237 units on the 17.4 acre tract of land ...")

Based upon these facts, it seems clear that the original approval of the Colony considered the entire property and assigned density accordingly. The remaining property within the Colony (whether out parcels or not) was accessory to the Colony Beach and Tennis Resort and had no density assigned to it.

I find no requirement for recreational use in the original approvals of the Colony. Therefore, we must examine the 1972 zoning code requirements that were in effect at the time of approval. For the zoning district in which this property was located, the 1972 Zoning Code does not have a requirement for recreational space or open space. Use, however, is restricted to accessory use for the principal use of the property. Moreover, I am unable to find anything in the record at the time of approval that *requires* the accessory facilities to be actively used. But if used, the property is restricted as accessory to the hotel owners and guests.

Therefore, it is my opinion that based upon the facts and information available, the Colony Beach and Tennis Association, Inc., has a legal nonconforming density of 237 units. There was no density assigned to the accessory out parcels and the total acreage of the Colony was utilized in determining the total allowable density. While restricted to accessory use, there is no requirement that the accessory use be active. No other use of the out parcels may occur without subsequent approval by the Town under its current Comprehensive Plan and Zoning Code.

This letter is in response to and addresses only the "known" zoning issues as identified in your letter to Mr. Yablon, President of the Association dated October 22, 2010, Mr. Hemke's letter to you dated January 4, 2011, and Mr. Yablon's letter to you dated January 5, 2011, all of which are attached to this letter. This letter is not meant to address any zoning issues not previously raised in these communications. It is not intended to resolve the issue of whether the out parcels were lawfully created and is only intended to address the narrow issue of whether reopening the Colony without use of the out parcels will result in an enlargement, expansion, intensification or extension of a legal nonconformity (which is explicitly prohibited by the Town's Comprehensive Plan). Based upon the above, I am of the opinion that while active recreational and accessory use for hotel owners and guests is highly desirable, reopening the Colony without use of the out parcels will not increase the legal non-conformity and, therefore, the Association may proceed to reopen the Colony tourism units so long as all other regulatory requirements are met.

I hope this letter has been of some assistance. Should you have any questions, please contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "David P. Persson", written over a large, stylized flourish.

David P. Persson

DPP/dgb
Attachments

cc: Donald Hemke
Morgan Bentley
Charles Bartlett
Bruce St. Denis
Trish Granger



TOWN OF LONGBOAT KEY

Incorporated November 14, 1955

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January 26, 2011

Jay R. Yablon
President
The Colony Beach and Tennis Club Association, Inc.
1620 Gulf of Mexico Drive
Longboat Key, Florida 34228

RE: 1620 Gulf of Mexico Drive – The Colony
Zoning Issues Relative to Reopening

Dear Mr. Yablon:

As you are aware, the Town Attorney David Persson provided me with a correspondence, dated January 24, 2011, that included his legal analysis of the "known" zoning issues that have been identified by you and Donald Hemke, the attorney for the Colony Beach Owners' Association previously in writing. After consideration of Mr. Persson's opinion and re-review of the documents related to the subject development, I agree that the reopening of the Colony as a tourism development without the use or operation of the active recreational and accessory uses located on the out parcels is not inconsistent with the zoning code requirements in place at the time of the project's approval. Additionally, the reopening under these circumstances will not increase any existing legal nonconformities. Having said that, I know that you and all of your members can recognize the value and benefit of the recreational and accessory uses that once made the Colony the first class, world renowned resort that attracted people to Longboat Key.

Since it appears that the zoning concerns have been addressed, the Town of Longboat Key is now in the position that we can comprehensively and systematically address the condition of the individual tourism units for future occupancy, as outstanding issues noted in David Karins', of Karins Engineering Group, Inc., report of September 3, 2010, still remain. In order to accommodate the Association's plan to reopen, and ensure the units proposed for tourism occupancy are "in proper working order," I request that the Association provide me with a written list of the units, *in priority order*, from which the town can schedule inspections with the Interim Building Official and a consulting engineer. As previously stated, staff time and consultant time charges may be incurred during the inspection process.

EXHIBIT J

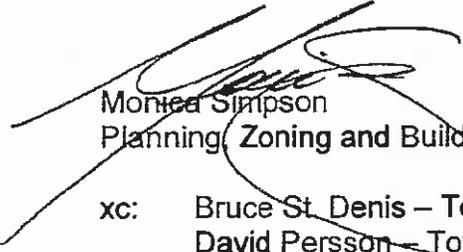
Yablon, Jay R. – President, The Colony Beach
and Tennis Club Association, Inc.
Zoning Issues Relative to Reopening

January 26, 2011
Page 2 of 2

As the next phase of work to a future reopening of the Colony begins, I would like to take the time to personally thank you for the work you have done on behalf of the Association thus far. Moreover, I continue to look forward to working with you and the Association.

Please do not hesitate to contact me at 941/361-6411 extension 284 should you have any questions.

Sincerely,



Monica Simpson
Planning, Zoning and Building Director

xc: Bruce St. Denis – Town Manager
David Persson – Town Attorney
Building/Reading File

\\pzb\monica\correspondences\reopening letter 1-26-11

THE COLONY BEACH AND TENNIS CLUB ASSOCIATION, INC.

A Florida Condominium Association
1620 Gulf of Mexico Drive
Longboat Key, Florida 34228

BOARD OF DIRECTORS
Jay R. Yablon, President
Bruce V. Pinsky, Vice President
Bob Erasmus, Treasurer
Herb Lipton, Secretary

W. Andrew Adams
Robert Israeloff
Ruth Kreindler
Leonard A. Siudara
Barry Spiegel

January 27, 2011

Monica Simpson
Planning, Zoning and Building Director
Town of Longboat Key
501 Bay Isles Road
Longboat Key, FL 34228-3196

RE: UNIT INSPECTION PRIORITIES

Dear Ms. Simpson:

This is in response to your request dated January 26 for a written list of the units, in priority order, from which the Town can schedule inspections with the necessary parties.

To keep things as simple and low cost as possible at this early stage, I would ask you to please move ahead with inspections of all the owner units in the *midrise building*, and well as the three units known as *Beach 1, 2 and 3*, since these units to our knowledge are all uniformly in working order. We do not expect that the inspection of these units will be very time consuming, so if it is not an imposition, I would ask for these units to please be inspected during this coming week of January 31 through February 4. This will enable us to make at least some owner units accessible during the February breaks under the interim owner consent program that we will initiate once we have the town's clearance to reopen some of the units.

The conditions of the "Villa" units are not as uniform as those of the aforementioned units, so I will separately send you a prioritization of these units in the next few days, once David Karins and some of our board members who have done unit walkthroughs have had a chance to confer.

I will take this opportunity to personally thank you for the good work that you and Mr. Persson and others at the Town have done on behalf of the community of Longboat Key. You are all to be commended for your diligence and professionalism in helping the Town move forward to help restore one of its most historic and valued assets, The Colony Beach and Tennis Resort.

Very truly yours,



Jay R. Yablon
President

cc: Don Hemke
David Karins
Bruce St. Denis
David Persson
Association Board of Directors

EXHIBIT 

Hemke, Donald E.

From: Jay R. Yablon [jyablon@nycap.rr.com]
Sent: Friday, February 04, 2011 2:00 PM
To: David Persson; Bruce St. Dennis; Monica Simpson
Cc: Hemke, Donald E.; Ruth Kreindler; Bruce Pinsky; Andy Adams; Barry Spiegel; Bob Erazmus; LEONARD SIUDARA; Herb Lipton; David Karins
Subject: Next units for inspection
Attachments: Yablon to Simpson 2-4-11.pdf

Good afternoon Monica,

Please see attached regarding the next set of units to be queued up for inspection.

Have a great weekend!

Jay

PRIVILEGED AND CONFIDENTIAL COMMUNICATION

Law Office of Jay R. Yablon
910 Northumberland Drive
Schenectady, New York 12309-2814
Phone / Fax: 518-377-6737
Email: jyablon@nycap.rr.com

THE COLONY BEACH AND TENNIS CLUB ASSOCIATION, INC.

A Florida Condominium Association

BOARD OF DIRECTORS
Jay R. Yablon, President
Bruce V. Pinsky, Vice President
Bob Erasmus, Treasurer
Herb Lipton, Secretary

1620 Gulf of Mexico Drive
Longboat Key, Florida 34228

W. Andrew Adams
Robert Israeloff
Ruth Kreindler
Leonard A. Siudara
Barry Spiegel

February 4, 2011

Monica Simpson
Planning, Zoning and Building Director
Town of Longboat Key
501 Bay Isles Road
Longboat Key, FL 34228-3196

RE: UNIT INSPECTION PRIORITIES, NEXT SET OF UNITS

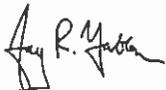
Dear Ms. Simpson:

Thank you for prompt reply to my January 27 letter, and for the equally prompt inspections which I understand Mr. Fernandez has been conducting.

The next set of units that I would ask you to please schedule for inspection are all units in Villa buildings 1, 2, 8, 9, 10, 11, 18, plus the Beachcomber and Castaways units. These are all units which, to the best of my knowledge, were in still in operation at the time the hotel closed on August 15, 2010, and which the Town may have already taken a look at back when the hotel reopened with a limited number of units following its brief closure in late-2009. Thus, we expect these units to be operable without a great deal of additional work at this time. And because these units are closest to the beach and are expected to still be fully furnished inside due to their use for tourism through August 15, 2010, they are also the most desirable units in the short term for attracting both owner and tourism use.

We respect the workload that you have at the Town, so I ask you to please schedule these inspections as soon as you can consistent with your other commitments. I have asked David Karins to make himself available to you for this purpose.

Very truly yours,



Jay R. Yablon
President

cc: Don Hemke
David Karins
Bruce St. Denis
David Persson
Association Board of Directors



TOWN OF LONGBOAT KEY

Incorporated November 14, 1955

Town Hall
501 Bay Isles Road
Longboat Key, Florida 34228-3196
(941) 316-1999
SUNCOM 516-2760
Fax (941) 316-1656
www.longboatkey.org

February 7, 2011

Jay R. Yablon
President
The Colony Beach and Tennis Club Association, Inc.
1620 Gulf of Mexico Drive
Longboat Key, Florida 34228

RE: 1620 Gulf of Mexico Drive – The Colony
Initial Inspections – Mid-Rise Building and Beach 1, 2 and 3

Dear Mr. Yablon:

As requested, the Town inspection staff conducted initial inspections of the accessible portions of the mid-rise tourism, as well as the tourism units at Beach 1, 2 and 3 at the Colony. There were several areas of the mid-rise building that were not inspected due to the fact that staff could not gain the necessary access: non-lobby area of the first floor; fifth and sixth floors; and, secured areas of the tourism units which appear to contain the hot water heaters.

Attached is the building inspection report prepared by John Fernandez, Interim Building Official, as well as the Fire Prevention Inspection Report prepared by Fire Marshal Lou Gagliardi. Both reports indicate corrective action that needs to be taken prior to the tourism units being occupied. Additionally, full access to the tourism units is required to complete the inspections as noted in Mr. Fernandez's report.

In short, it has been determined that none of the tourism units can be occupied at this time. I would request that any questions regarding the building inspection report or the Fire Prevention Inspection Report be directed to either Mr. Fernandez or Mr. Gagliardi, respectively. However, as always, any question regarding the utilization/occupancy of the tourism units should be directed to me. Both Mr. Fernandez and Mr. Gagliardi will continue to provide me with their inspection results so that I can forward them to you in a streamlined manner.

EXHIBIT L

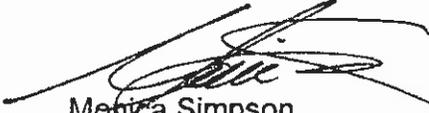
Yablon, Jay R. – President
The Colony Beach and Tennis Club Association, Inc.
1620 Gulf of Mexico Drive
Initial Inspections – Mid-Rise Building and Beach 1, 2 and 3

February 7, 2011
page 2 of 2

During the next weeks, we will conduct the initial inspections of the villa buildings 1, 2, 8-11 and 19, plus the Beachcomber and Castaway tourism units. The same inspection procedures apply with regard to the need to utilize the services of the Town's structural engineering consultant.

Please do not hesitate to contact me at 941/361-6411 extension 284 should you have any questions.

Sincerely,



Monica Simpson
Planning, Zoning and Building Director

xc: Bruce St. Denis – Town Manager
David Persson – Town Attorney
John Fernandez – Interim Building Official
Paul Dezzi – Fire Chief
Lou Gagliardi – Fire Marshal
Building/Reading File

MEMORANDUM

DATE: February 4, 2011

TO: Monica Simpson, Director
Planning, Zoning and Building Department

FROM: John Fernandez, Interim Building Official
Planning, Zoning and Building Department

RE : The Colony Beach and Tennis Club
Mid-Rise Building and Beach Units 1, 2, and 3
Inspection for Occupancy of Tourism Units

Please accept the following as the initial inspection report for the midrise building and Beach units 1, 2, and 3 at the Colony Beach and Tennis Club. The inspections revealed the following code deficiencies that must be corrected prior to occupancy of the tourism units:

Midrise Structure

1-The first floor lobby area has no noted deficiencies. The north side elevator is not operational. The south side elevator was found to have the elevator certification expired as of 08-31-2009. ***The corrective action is to make the north elevator operational and to have the elevators inspected and the certifications made current.***

2-The second floor conference area known as the Bistro Kitchen has several kitchen items removed leaving broken or unattached plumbing pipes open to the atmosphere. Electrical issues associated with the kitchen equipment have left electrical wiring exposed. ***The corrective action is to remove and/or repair the plumbing and electrical issues.***

3-The third floor tourism units

Unit 307 N. Water intrusion was noted in ceiling and around sliding glass doors. ***Corrective action is to find the source of leak and repair.***

The water heater was not inspected as it was behind a door that was screwed shut. ***Corrective action is to access the water heater and inspect.***

Unit 305 N. Water heater has no pan and the temperature relief valve does not terminate properly. The electric feed for the heater is an appliance cord that has been altered. Water intrusion noted. ***Corrective action is to properly install a water heater and determine and repair the source of water intrusion.***

Unit 303 N. Water heater electric is fed through unprotected romex type wire. ***Corrective action is to rewire with proper electrical conductors.***

Unit 309 N. Water heater not inspected as it was not accessible behind locked or screwed panel. Water intrusion noted. ***Corrective action is to access the water heater and inspect, as well as determine and repair the source of water intrusion.***

Unit 311 N. Water heater not inspected as it was not accessible behind locked door or screwed panel. Water intrusion noted. ***Corrective action is to access the water heater and inspect, as well as determine and repair the source of water intrusion.***

4-The fourth floor tourism units

Unit 407 N. Water intrusion noted. ***Corrective action is to determine and repair the source of water intrusion and repair.***

Unit 405 S. Water heater has no pan and the temperature pressure. Relief valve does not terminate properly. The electric cord feeding the water heater is an altered appliance cord. Water intrusion noted. ***Corrective action is to properly install the water heater, as well as determine and repair the source of water intrusion.***

Unit 403 S. Water heater has no pan. Water intrusion noted. ***Corrective action is to place a pan under the heater, as well as determine and repair the source of water intrusion.***

Unit 409 S. Water heater not inspected as it is located behind locked or screwed panels. Water intrusion noted. ***Corrective action is to access the water heater and inspect, as well as determine and repair the source of water intrusion.***

Unit 401 S. Water heater has temperature relief valve improperly terminated. Water intrusion noted. ***Corrective action is to terminate relief properly, as well as determine and repair the source of water intrusion.***

Unit 411 S. Water heater improperly grounded (green conductor not visible). Water intrusion noted. ***Corrective action is to correct grounding of water heater, as well as determine and repair the source of water intrusion.***

5-The fifth floor units

Not inspected. Security did not have access to these tourism units.

6-The sixth floor units

Not inspected.

7-The roof top

The gable end wall bracing is showing signs of extensive corrosion. A/C units have several units with the disconnecting means laying on the roof top some with the conductors exposed. Two abandoned A/C units were left on the roof. **Corrective action is to repair or replace the wall bracing, repair and/or replace the electrical disconnects on the roof. Abandoned unsecured A/C units shall be removed.**

8-Exterior of Building

Found broken conduit on North side of building. No G.F.C.I. receptacles on the outside of the building in wet locations. **Corrective action is to repair broken conduit and replace receptacles with the proper G.F.C.I.**

Beach Units 1, 2 and 3

Comments apply to all three tourism units:

1. Electrical panels have open spaces at breakers. Wire feeding the A/C units on the exterior have exposed conductors. Some of the units may not be operational due to the condition of the units. Water heaters were not inspected as they are behind screwed or nailed panels. **Corrective action is to repair the electrical panels and A/C feeds and remove panels to inspect water heaters.**
2. Exterior condition shows concrete spall in several areas with the rebar exposed. **Corrective action is to repair the spall areas.**

General Comments:

Please note these inspections were by visual observations. No invasive actions were taken to determine the conditions that are behind walls or other concealed areas, such as but not limited to roofs, crawl spaces, and wall chases. Repairs mentioned in the aforementioned will require permits to be issued prior to the start of work, and the work will require licensed contractors. In the case of structural repairs, they shall bear the seal of a licensed engineer.

Occupancy of the tourism units will be determined individually as other issues may affect the occupancy. These issues may be related to fire safety and other discoveries when repairs are undertaken.



TOWN OF LONGBOAT KEY
FIRE RESCUE DEPARTMENT

FIRE RESCUE DEPARTMENT
5490 Gulf of Mexico Drive
Longboat Key, FL 34228
(941) 316-1944
FAX (941) 316-1946
www.longboatkey.org

BETH CALLANS MANAGEMENT COMPANY
COLONY BEACH AND TENNIS
1620 GULF OF MEXICO DR
LONGBOAT KEY, FL 34228

Corrective action
required by :03-02-2011

FIRE PREVENTION INSPECTION REPORT
AS OF: 02-04-2011

LOCATION: COLONY BEACH & TENNIS CLUB **INSPECTION #:** 151310
1
1620 GULF OF MEXICO DR
DATE: 02-02-2011 **TOTAL VIOLATIONS:** 14 **CORRECTED:** 0 **TYPE:** ANNUAL

6. IMPROPER FIRE PROTECTION SEPARATION BETWEEN FIRE PUMP ROOM AND LOBBY.
A HOLE HAS BEEN CUT THROUGH THE FIRE RATED BLOCK WALL.

ACTION REQUIRED : INSTALL MIN. 1 HR. RATED SEPARATION
Reference: NFPA-101, LIFE SAFETY CODE

7. EXTINGUISHER(S) NOT INSPECTED. PORTABLE FIRE EXTINGUISHERS THROUGHOUT
BUILDING ARE OUT OF DATE.

ACTION REQUIRED : CONTRACTOR TO INSPECT ANNUALLY
Reference: NFPA-10, PORTABLE FIRE EXTINGUISHERS

8. EMERGENCY LIGHTS: IT WAS UNDETERMINED IF ANY EMERGENCY LIGHTING EXISTS IN THE
BUILDING. LIGHTING CAN BE CHECKED WHEN EMERGENCY GENERATOR IS TESTED.

ACTION REQUIRED : REPAIR EMERGENCY LIGHTING FIXTURES
Reference: NFPA-70, NAT'L ELECTRIC CODE

9. IMPROPER STORAGE IN METER ROOM 4TH FLOOR. NO STORAGE IS ALLOWED IN
ELECTRICAL METER ROOMS.

ACTION REQUIRED : STORE COMBUSTIBLES PROPERLY
Reference: NFPA-101, LIFE SAFETY CODE

10. EXIT SIGN BULB(S) NOT OPERATING ON 4TH FLOOR NORTH AND SEVERAL OTHER
LOCATIONS THROUGHOUT BUILDING.

ACTION REQUIRED : REPLACE EXIT SIGN LIGHT BULBS WHERE NECESSARY.
Reference: NFPA-101, LIFE SAFETY CODE

All persons shall be required to correct or remedy the violations or defects within a reasonable time and when not
otherwise specified. Town of Longboat Key Fire Prevention Code 94.99 provides for the imposition of a penalty for each
and every violation and noncompliance, including punishment by fines or imprisonment.



TOWN OF LONGBOAT KEY

FIRE RESCUE DEPARTMENT

FIRE RESCUE DEPARTMENT

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Longboat Key, FL 34228

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FAX (941) 316-1946

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BETH CALLANS MANAGEMENT COMPANY
COLONY BEACH AND TENNIS
1620 GULF OF MEXICO DR
LONGBOAT KEY, FL 34228

Corrective action
required by :03-02-2011

FIRE PREVENTION INSPECTION REPORT

AS OF: 02-04-2011

LOCATION: COLONY BEACH & TENNIS CLUB INSPECTION #: 151310
1
1620 GULF OF MEXICO DR
DATE: 02-02-2011 TOTAL VIOLATIONS: 14 CORRECTED: 0 TYPE: ANNUAL

1. FIRE ALARM SYSTEM NOT INSPECTED

ACTION REQUIRED : INSPECT ALARM SYSTEM ANNUALLY

Reference: NFPA-72, FIRE ALARM SYSTEMS-USE & MAINT.

2. SMOKE/HEAT DETECTORS-IMPROPER COND.

ACTION REQUIRED : REPAIR/REPLACE HEAT/SMOKE DETECTORS. THE SMOKE DETECTOR IN UNIT 411-S BEDROOM IS MISSING. ALL SMOKE DETECTORS IN ALL UNITS MUST BE INSPECTED AND TESTED AS PART OF THE ANNUAL INSPECTION / MAINTENANCE SERVICE.

Reference: NFPA-72, FIRE ALARM SYSTEMS-USE & MAINT.

3. SPRINKLER/STANDPIPE SYSTEM NOT INSPECTED. ANNUAL CERTIFICATION OF FIRE SPRINKLER SYSTEM AND STANDPIPE SYSTEM OVERDUE.

ACTION REQUIRED : HAVE CONTRACTOR INSPECT ANNUALLY

4. ELEVATOR CERTIFICATION OUT OF DATE

ACTION REQUIRED : HAVE ELEVATOR INSPECTED/CERTIFIED

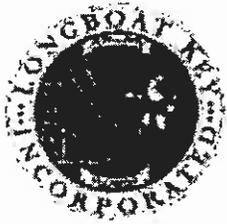
Reference: CHAPTER-94, TOWN FIRE CODE

5. A KNOX BOX CONTAINING ACCESS KEYS TO BUILDING IS REQUIRED TO BE INSTALLED PER TOWN FIRE CODE, CHAPTER 94.

ACTION REQUIRED : CONTACT FIRE MARSHAL'S OFFICE @ 316-1944 FOR LOCK BOX ORDER FORM.

Reference: CHAPTER-94, TOWN FIRE CODE

All persons shall be required to correct or remedy the violations or defects within a reasonable time and when not otherwise specified. Town of Longboat Key Fire Prevention Code 94.99 provides for the imposition of a penalty for each and every violation and noncompliance, including punishment by fines or imprisonment.



TOWN OF LONGBOAT KEY

FIRE RESCUE DEPARTMENT

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COLONY BEACH AND TENNIS
1620 GULF OF MEXICO DR
LONGBOAT KEY, FL 34228

Corrective action
required by :03-02-2011

FIRE PREVENTION INSPECTION REPORT

AS OF: 02-04-2011

LOCATION: COLONY BEACH & TENNIS CLUB INSPECTION #: 151310
1
1620 GULF OF MEXICO DR
DATE: 02-02-2011 TOTAL VIOLATIONS: 14 CORRECTED: 0 TYPE: ANNUAL

11. NON-RATED, NON-UL LISTED DOOR CLOSERS INSTALLED ON STAIR TOWER DOORS 3RD FLOOR NORTH AND 4TH FLOOR NORTH. ALL NON-LISTED CLOSERS MUST BE REMOVED AND REPLACED WITH PROPER CLOSERS. THESE EXIT DOORS AND RATED FIRE DOOR ASSEMBLIES
ACTION REQUIRED : REPLACE NON-LISTED CLOSERS WITH PROPER FIRE RATED CLOSERS.

12. ALL UNIT DOORS HAVE BEEN UNDERCUT TO ALLOW FOR A/C VENTILATION OR TILE FLOOR. PER THE FLORIDA FIRE PREVENTION CODE, NFPA 101 LIFE SAFETY CODE, SECTION 29.3.6.2.2: DOORS SHALL RESIST THE PASSAGE OF SMOKE.

ACTION REQUIRED : INSTAL THRESHOLDS. THRESHOLDS AT DOORWAYS SHALL NOT EXCEED 1/2 INCH IN HEIGHT. NFPA 101, SECTION 7.2.1.3.3.

13. **NOTE: THIS ANNUAL FIRE INSPECTION IS FOR THE MID-RISE HOTEL.
ACTION REQUIRED: [REDACTED]

14. ALL VIOLATIONS MUST BE ABATED PRIOR TO OCCUPYING THE BUILDING.

ACTION REQUIRED : CONTACT THE FIRE MARSHAL'S OFFICE WITH A REPAIR TIME-LINE @316-1944

All persons shall be required to correct or remedy the violations or defects within a reasonable time and when not otherwise specified. Town of Longboat Key Fire Prevention Code 94.99 provides for the imposition of a penalty for each and every violation and noncompliance, including punishment by fines or imprisonment.



TOWN OF LONGBOAT KEY

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1620 GULF OF MEXICO DR
LONGBOAT KEY, FL 34228

Corrective action
required by :03-02-2011

FIRE PREVENTION INSPECTION REPORT

AS OF: 02-04-2011

LOCATION: COLONY BEACH & TENNIS CLUB INSPECTION #: 151310
1
1620 GULF OF MEXICO DR
DATE: 02-02-2011 TOTAL VIOLATIONS: 14 CORRECTED: 0 TYPE: ANNUAL

Fire Marshal Lou Gagliardi

All persons shall be required to correct or remedy the violations or defects within a reasonable time and when not otherwise specified. Town of Longboat Key Fire Prevention Code 94.99 provides for the imposition of a penalty for each and every violation and noncompliance, including punishment by fines or imprisonment.



TOWN OF LONGBOAT KEY

Incorporated November 14, 1955

Town Hall
501 Bay Isles Road
Longboat Key, Florida 34228-3196
(941) 316-1999
SUNCOM 516-2760
Fax (941) 316-1656
www.longboatkey.org

April 6, 2011

Jay R. Yablon
President
The Colony Beach and Tennis Club Association, Inc.
1620 Gulf of Mexico Drive
Longboat Key, Florida 34228

RE: 1620 Gulf of Mexico Drive – The Colony
Phase 2 Inspections - Villa Buildings 1, 2, 8, 9, 10 11, 18 and the
Beachcomber and Castaway Units

Dear Mr. Yablon:

As requested, the Town inspection staff conducted the second phase of initial inspections of the units within the Villa Buildings 1, 2, 8, 9, 10 11, 18 and the Beachcomber and Castaway Units at the Colony. Attached is the building inspection report prepared by John Fernandez, Interim Building Official, as well as the Fire Prevention Inspection Report prepared by Fire Marshal Lou Gagliardi. Both reports indicate corrective action that needs to be taken prior to the tourism units being occupied.

It has again been determined that none of the tourism units requested for inspection can be occupied at this time. Additionally, as noted in Mr. Fernandez's report, all of the possible code deficiencies cannot be identified without a comprehensive destructive investigation for each of the units. It was also reported that the town's inspection staff experienced irritation to the eyes, nose, and throat, causing them to request the purchase and use of protective dust masks and gloves during the inspections, which was done.

Once again, I would request that any questions regarding the building inspection report or the Fire Prevention Inspection Report be directed to either Mr. Fernandez or Mr. Gagliardi, respectively. However, as always, any question regarding the utilization/occupancy of the tourism units should be directed to me. Mr. Fernandez and Mr. Gagliardi will continue to provide me with their inspection results so that I can forward them to you in a streamlined manner.

EXHIBIT L

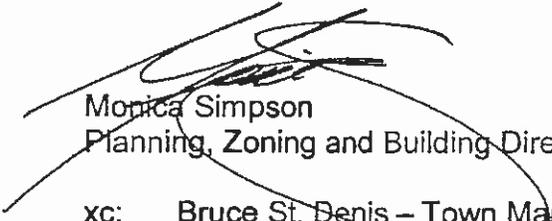
Yablon, Jay R. – President
The Colony Beach and Tennis Club Association, Inc.
1620 Gulf of Mexico Drive
Phase 2 Inspections Villa Buildings 1, 2, 8, 9, 10 11, 18
and the Beachcomber and Castaway Units

April 6, 2011
page 2 of 2

At this time, the town has concluded all of the initial inspections as requested by the Association. As I am sure you are aware, there remain outstanding issues resulting from the first request for initial inspections on the mid-rise building and the Beaches units 1, 2 and 3.

Please do not hesitate to contact me at 941/361-6411 extension 284 should you have any questions.

Sincerely,



Monica Simpson
Planning, Zoning and Building Director

xc: Bruce St. Denis – Town Manager
David Persson – Town Attorney
John Fernandez – Interim Building Official
Paul Dezzi – Fire Chief
Lou Gagliardi – Fire Marshal
Building/Reading File

\\pzb\monica\correspondences\Phase 2 Inspections-Villas Castaway and Beachcomber Letter 04-06-11

MEMORANDUM

DATE: February 6, 2011

TO: Monica Simpson, Director
Planning, Zoning and Building Department

FROM: John Fernandez, Interim Building Official
Planning, Zoning and Building Department

RE : The Colony Beach and Tennis Club
Villa Buildings 1, 2, 8, 9, 10 11, 18 and the Beachcomber and Castaway
Units
Inspection for Occupancy of Tourism Units

Please accept the following as the initial inspection report for the Villa Buildings 1, 2, 8, 9, 10 11, 18, and the Beachcomber and Castaway Units at the Colony Beach and Tennis Club. The inspections revealed the following code deficiencies that must be corrected prior to occupancy of the tourism units:

Villa Building Number 1 Exterior

1. The access to the building including the boardwalk and stairs show signs of disrepair. The walking surfaces are uneven and splintered throughout. The entry stairs and handrails exhibit the same condition. **The corrective action is to repair and replace the portions that are loose and uneven to prevent falls.**
2. The foundation and crawlspace are noted to have piers that are fractured and spall has occurred exposing the reinforcement bars. The steel beams show signs of significant oxidation. **The corrective action is to repair the items to support the loads that are imposed upon them.**
3. The exposed plumbing waste lines in the crawlspace were seen to have cracks and evidence of leakage was observed. **The corrective action is to repair and/or replace the waste lines.**
4. The exposed electrical in the crawlspace is improperly attached with several conductors lying on the ground. **The corrective action is to secure the conductors and remove any abandoned conductors.**
5. The main wind force resistant system (exterior sheathing) indicates water intrusion and active wood destroying organisms. Active termite evidence was noted. The sheathing has openings and a lack of water resistant coating (paint) allowing water to penetrate into the substrate causing significant deterioration. The bump outs on the building that are located on end units (kitchen area) are settling causing undo stress on the building. **The corrective action is to replace and/or repair the sheathing and the underlying framing to support the intended loads. Repair and replace as needed the underpinning of the bump outs to support the loads imposed.**

6. The exterior mechanical equipment have conductors exposed and are not secured to the structure. **The corrective action is to secure and properly attach the conductors to the disconnects and the building.**
7. The laundry equipment is located in a wet area with receptacles not intended for wet locations. **The corrective action is to remove the equipment or verify that the manufacturer allows their washers and dryers in an exposed location.**

Villa Building Number 1 Interior

The following units within Villa Building Number 1 all exhibit the same conditions as listed below: 101, 102, 103, 104, 105, 106, 201, 202, 203, 204, 205, and 206.

1. The mechanical closets containing the water heater and H.V.A.C. equipment indicates signs of mildew and mold in and around the units. Holes in the walls provide a point of entry for vermin into the building. **The corrective action is find the source of the mold and mildew, remove the mold and mildew, and seals the holes in the closet.**
2. Water heaters indicates leakage has occurred (water is off). The electrical to the water heaters is substandard. Appliance cords have been altered and disconnecting means have been altered. **The corrective action is to repair or replace the defective units and make code compliant.**
3. H.V.A.C. equipment has the disconnecting means unsecured and several have non-compliant splices in the conductors. **The corrective action is repairing the units and the electrical components to a code compliant state.**
4. The visible steam pump generators servicing the bathrooms have been repaired in a non-compliant manner, with unsecured electrical boxes and copper pipes repaired with heater hose. **The corrective action is to repair or replace in a code compliant manner.**
5. Several of the units have electrical panels indicating parts have been altered, using parts that may void the listing requirements of the manufacturer. **The corrective action is to repair or replace with code compliant parts.**

In conclusion, without a comprehensive destructive investigation a full determination of all of the issues for Villa Building Number 1 cannot be determined. An investigative analysis performed by licensed professionals on behalf of the Association is required to determine the structural integrity of the building. A full written report from the licensed professional shall be submitted for Town review and consideration. The report shall also address life safety concerns including, but not limited to, indoor air quality, fire safety, and safely functioning mechanical systems.

Villa Building Number 2 Exterior

1. The access to the building including the boardwalk and stairs show signs of disrepair. The walking surfaces are uneven and splintered throughout. The entry stairs and handrails exhibit the same condition. **The corrective action is to repair and replace the portions that are loose and uneven to prevent falls.**
2. The foundation and crawlspace are noted to have piers that are fractured and spall has occurred exposing the reinforcement bars. The steel beams show signs of significant oxidation. **The corrective action is to repair the items to support the loads that are imposed upon them.**
3. The exposed plumbing waste lines in the crawlspace were seen to have cracks and evidence of leakage was observed. **The corrective action is to repair and/or replace the waste lines.**
4. The exposed electrical in the crawlspace is improperly attached with several conductors lying on the ground. **The corrective action is to secure the conductors and remove any abandoned conductors.**
5. The main wind force resistant system (exterior sheathing) indicates water intrusion and active wood destroying organisms. Active termite evidence was noted. The sheathing has openings and a lack of water resistant coating (paint) allowing water to penetrate into the substrate causing significant deterioration. The bump outs on the building that are located on end units (kitchen area) are settling causing undue stress on the building. **The corrective action is to replace and/or repair the sheathing and the underlying framing to support the intended loads. Repair and replace as needed the underpinning of the bump outs to support the loads imposed.**
6. The exterior mechanical equipment have conductors exposed and are not secured to the structure. **The corrective action is to secure and properly attach the conductors to the disconnects and the building.**
7. The laundry equipment is located in a wet area with receptacles not intended for wet locations. **The corrective action is to remove the equipment or verify that the manufacturer allows their washers and dryers in an exposed location.**

Villa Building Number 2 Interior

The following units within Villa Number 2 all exhibit the same conditions as listed below: 107, 108, 109, 110, 111, 112, 207, 208, 209, 210, 211, and 212.

1. The mechanical closets containing the water heater and H.V.A.C. equipment indicates signs of mildew and mold in and around the units. Holes in the walls provide a point of entry for vermin into the building. **The corrective action is to eliminate the source of the mold and mildew, remove the mold and mildew, and seal the holes in the closet.**
2. Water heaters indicates leakage has occurred (water is off). The electrical to the water heaters is substandard. Appliance cords have been altered and disconnecting means have been altered. **The corrective action is to repair or replace the defective units and make code compliant.**
3. H.V.A.C. equipment has the disconnecting means unsecured and several have non-compliant splices in the conductors. **The corrective action is repairing the units and the electrical components to a code compliant state.**
4. The visible steam pump generators servicing the bathrooms have been repaired in a non-compliant manner, with unsecured electrical boxes and copper pipes repaired with heater hose. **The corrective action is to repair or replace in a code compliant manner.**
5. Several of the units have electrical panels indicating parts have been altered, using parts that may void the listing requirements of the manufacturer. **The corrective action is to repair or replace with code compliant parts.**

In conclusion, without a comprehensive destructive investigation a full determination of all of the issues for Building Number 2 cannot be determined. An investigative analysis performed by licensed professionals on behalf of the Association is required to determine the structural integrity of the building. A full written report from the licensed professional shall be submitted for Town review and consideration. The report shall also address life safety concerns including, but not limited to, indoor air quality, fire safety, and safely functioning mechanical systems.

Villa Number 8 Exterior

1. The access to the building including the boardwalk and stairs show signs of disrepair. The walking surfaces are uneven and splintered throughout. The entry stairs and handrails exhibit the same condition. **The corrective action is to repair and replace the portions that are loose and uneven to prevent falls.**

2. The foundation and crawlspace are noted to have piers that are fractured and spall has occurred exposing the reinforcement bars. The steel beams show signs of significant oxidation. **The corrective action is to repair the items to support the loads that are imposed upon them.**
3. The exposed plumbing waste lines in the crawlspace were seen to have cracks and evidence of leakage was observed. **The corrective action is to repair and/or replace the waste lines.**
4. The exposed electrical in the crawlspace is improperly attached with several conductors lying on the ground. **The corrective action is to secure the conductors and remove any abandoned conductors.**
5. The main wind force resistant system (exterior sheathing) indicates water intrusion and active wood destroying organisms. Active termite evidence was noted. The sheathing has openings and a lack of water resistant coating (paint) allowing water to penetrate into the substrate causing significant deterioration. The bump outs on the building that are located on end units (kitchen area) are settling causing undue stress on the building. **The corrective action is to replace and/or repair the sheathing and the underlying framing to support the intended loads. Repair and replace as needed the underpinning of the bump outs to support the loads imposed.**
6. The exterior mechanical equipment have conductors exposed and are not secured to the structure. **The corrective action is to secure and properly attach the conductors to the disconnects and the building.**
7. The laundry equipment is located in a wet area with receptacles not intended for wet locations. **The corrective action is to remove the equipment or verify or verify that the manufacturer allows their washers and dryers in an exposed location.**

Villa Building Number 8 Interior

The following units within Villa Number 8 all exhibit the same conditions as listed below: 145, 146, 147, 148, 245, 246, 247, and 248.

1. All water heaters shows signs of leakage, improper temperatures, and pressure relief line connections issues, and inadequate electrical connections. **The corrective action is to repair or replace the defective units and make code compliant**
2. The A/C units have no secondary condensate relief lines. **The corrective action is to add the secondary relief system.**

3. The mechanical closets containing the water heater and H.V.A.C. equipment indicates signs of mildew and mold in and around the units. Holes in the walls provide a point of entry for vermin into the building. **The corrective action is to eliminate the source of the mold and mildew, then remove the mold and mildew, and seal the holes in the closet.**

In conclusion, without a comprehensive destructive investigation a full determination of all of the issues for Building Number 8 cannot be determined. An investigative analysis performed by licensed professionals on behalf of the Association is required to determine the structural integrity of the building. A full written report from the licensed professional shall be submitted for Town review and consideration. The report shall also address life safety concerns including, but not limited to, indoor air quality, fire safety, and safely functioning mechanical systems.

Villa Building Number 9 Exterior

1. The access to the building including the boardwalk and stairs show signs of disrepair. The walking surfaces are uneven and splintered throughout. The entry stairs and handrails exhibit the same condition. **The corrective action is to repair and replace the portions that are loose and uneven to prevent falls.**
2. The foundation and crawlspace are noted to have piers that are fractured and spall has occurred exposing the reinforcement bars. The steel beams show signs of significant oxidation. **The corrective action is to repair the items to support the loads that are imposed upon them.**
3. The exposed plumbing waste lines in the crawlspace were seen to have cracks and evidence of leakage was observed. **The corrective action is to repair and/or replace the waste lines.**
4. The exposed electrical in the crawlspace is improperly attached with several conductors lying on the ground. **The corrective action is to secure the conductors and remove any abandoned conductors.**
5. The main wind force resistant system (exterior sheathing) indicates water intrusion and active wood destroying organisms. Active termite evidence was noted. The sheathing has openings and a lack of water resistant coating (paint) allowing water to penetrate into the substrate causing significant deterioration. The bump outs on the building that are located on end units (kitchen area) are settling causing undue stress on the building. **The corrective action is to replace and/or repair the sheathing and the underlying framing to support the intended loads. Repair and replace as needed the underpinning of the bump outs to support the loads imposed.**

6. The exterior mechanical equipment have conductors exposed and are not secured to the structure. **The corrective action is to secure and properly attach the conductors to the disconnects and the building.**
7. The laundry equipment is located in a wet area with receptacles not intended for wet locations. **The corrective action is to remove the equipment or verify that the manufacturer allows their washers and dryers in an exposed location.**

Villa Building Number 9 Interior

The following units within Villa Building Number 9 all exhibit the same conditions as listed below: 149, 150, 151, 152, 153, 154, 155, 156, 249, 250, 251, 252, 253, 254, 255, and 256. Units 249 and 255 have added deficiencies as noted below.

1. Unit 249 has rotted framing members adjacent to the entry. **The corrective action is to repair and or replace the rotted members.**
2. Unit 255 has deteriorated balcony beams. **The corrective action is to repair and or replace these members.**
3. The mechanical closets containing the water heater and H.V.A.C. equipment indicates signs of mildew and mold in and around the units. Holes in the walls provide a point of entry for vermin into the building. **The corrective action is to eliminate the source of the mold and mildew, then remove the mold and mildew, and seal the holes in the closet.**
4. Water heaters indicates leakage has occurred (water is off). The electrical to the water heaters is substandard. Appliance cords have been altered and disconnecting means have been altered. **The corrective action is to repair or replace the defective units and make code compliant.**
5. H.V.A.C. equipment has the disconnecting means unsecured and several have non-compliant splices in the conductors. **The corrective action is repairing the units and the electrical components to a code compliant state.**
6. The visible steam pump generators servicing the bathrooms have been repaired in a non-compliant manner, with unsecured electrical boxes and copper pipes repaired with heater hose. **The corrective action is to repair or replace in a code compliant manner.**
7. Several of the units have electrical panels indicating parts have been altered, using parts that may void the listing requirements of the manufacturer. **The corrective action is to repair or replace with code compliant parts.**

In conclusion, without a comprehensive destructive investigation a full determination of all of the issues for Villa Building Number 9 cannot be determined. An investigative analysis performed by licensed professionals on behalf of the Association is required to determine the structural integrity of the building. A full written report from the licensed professional shall be submitted for Town review and consideration. The report shall also address life safety concerns including, but not limited to, indoor air quality, fire safety, and safely functioning mechanical systems.

Villa Building Number 10 Exterior

1. The access to the building including the boardwalk and stairs show signs of disrepair. The walking surfaces are uneven and splintered throughout. The entry stairs and handrails exhibit the same condition. **The corrective action is to repair and replace the portions that are loose and uneven to prevent falls.**
2. The foundation and crawlspace are noted to have piers that are fractured and spall has occurred exposing the reinforcement bars. The steel beams show signs of significant oxidation. **The corrective action is to repair the items to support the loads that are imposed upon them.**
3. The exposed plumbing waste lines in the crawlspace were seen to have cracks and evidence of leakage was observed. **The corrective action is to repair and/or replace the waste lines.**
4. The exposed electrical in the crawlspace is improperly attached with several conductors lying on the ground. **The corrective action is to secure the conductors and remove any abandoned conductors.**
5. The main wind force resistant system (exterior sheathing) indicates water intrusion and active wood destroying organisms. Active termite evidence was noted. The sheathing has openings and a lack of water resistant coating (paint) allowing water to penetrate into the substrate causing significant deterioration. The bump outs on the building that are located on end units (kitchen area) are settling causing undue stress on the building. **The corrective action is to replace and/or repair the sheathing and the underlying framing to support the intended loads. Repair and replace as needed the underpinning of the bump outs to support the loads imposed.**
6. The exterior mechanical equipment have conductors exposed and are not secured to the structure. **The corrective action is to secure and properly attach the conductors to the disconnects and the building.**
7. The laundry equipment is located in a wet area with receptacles not intended for wet locations. **The corrective action is to remove the equipment or verify that the manufacturer allows their washers and dryers in an exposed location.**

Villa Building Number 10 Interior

The following units within Villa Building Number 10 all exhibit the same conditions as listed below: 645, 646, 647, 648, 745, 746, 747, and 748. Unit 648 has added deficiencies as noted below.

1. Unit 648 has portions of the balcony unsecured to the building. **The corrective action is to repair the loose members of the balcony.**
2. The mechanical closets containing the water heater and H.V.A.C. equipment indicates signs of mildew and mold in and around the units. Holes in the walls provide a point of entry for vermin into the building. **The corrective action is to eliminate the source of the mold and mildew, then remove the mold and mildew, and seal the holes in the closet.**
3. Water heaters indicates leakage has occurred (water is off). The electrical to the water heaters is substandard. Appliance cords have been altered and disconnecting means have been altered. **The corrective action is to repair or replace the defective units and make code compliant.**
4. H.V.A.C. equipment has the disconnecting means unsecured and several have non-compliant splices in the conductors. **The corrective action is repairing the units and the electrical components to a code compliant state.**
5. The visible steam pump generators servicing the bathrooms have been repaired in a non-compliant manner, with unsecured electrical boxes and copper pipes repaired with heater hose. **The corrective action is to repair or replace in a code compliant manner.**
6. Several of the units have electrical panels indicating parts have been altered, using parts that may void the listing requirements of the manufacturer. **The corrective action is to repair or replace with code compliant parts.**

In conclusion, without a comprehensive destructive investigation a full determination of all of the issues for Villa Building Number 10 cannot be determined. An investigative analysis performed by licensed professionals on behalf of the Association is required to determine the structural integrity of the building. A full written report from the licensed professional shall be submitted for Town review and consideration. The report shall also address life safety concerns including, but not limited to, indoor air quality, fire safety, and safely functioning mechanical systems.

Villa Building Number 11 Exterior

1. The access to the building including the boardwalk and stairs show signs of disrepair. The walking surfaces are uneven and splintered throughout. The entry stairs and handrails exhibit the same condition. **The corrective action is to repair and replace the portions that are loose and uneven to prevent falls.**
2. The foundation and crawlspace are noted to have piers that are fractured and spall has occurred exposing the reinforcement bars. The steel beams show signs of significant oxidation. **The corrective action is to repair the items to support the loads that are imposed upon them.**
3. The exposed plumbing waste lines in the crawlspace were seen to have cracks and evidence of leakage was observed. **The corrective action is to repair and/or replace the waste lines.**
4. The exposed electrical in the crawlspace is improperly attached with several conductors lying on the ground. **The corrective action is to secure the conductors and remove any abandoned conductors.**
5. The main wind force resistant system (exterior sheathing) indicates water intrusion and active wood destroying organisms. Active termite evidence was noted. The sheathing has openings and a lack of water resistant coating (paint) allowing water to penetrate into the substrate causing significant deterioration. The bump outs on the building that are located on end units (kitchen area) are settling causing undue stress on the building. **The corrective action is to replace and/or repair the sheathing and the underlying framing to support the intended loads. Repair and replace as needed the underpinning of the bump outs to support the loads imposed.**
6. The exterior mechanical equipment have conductors exposed and are not secured to the structure. **The corrective action is to secure and properly attach the conductors to the disconnects and the building.**
7. The laundry equipment is located in a wet area with receptacles not intended for wet locations. **The corrective action is to remove the equipment or verify that the manufacturer allows their washers and dryers in an exposed location.**

Villa Building Number 11 Interior

The following units within Villa Number 11 all exhibit the same conditions as listed below: 639, 640, 641, 642, 643, 644, 739, 740, 741, 742, 743, and 744.

1. All water heaters shows signs of leakage, improper temperatures, and pressure relief line connections issues, and inadequate electrical connections. **The corrective action is to repair or replace the defective units and make code compliant**
2. The A/C units have no secondary condensate relief lines. **The corrective action is to add a secondary relief system.**
3. The mechanical closets containing the water heater and H.V.A.C. equipment indicates signs of mildew and mold in and around the units. Holes in the walls provide a point of entry for vermin into the building. **The corrective action is to eliminate the source of the mold and mildew, then remove the mold and mildew, and seals the holes in the closet.**

In conclusion, without a comprehensive destructive investigation a full determination of all of the issues for Castaway Building cannot be determined. An investigative analysis performed by licensed professionals on behalf of the Association is required to determine the structural integrity of the building. A full written report from the licensed professional shall be submitted for Town review and consideration. The report shall also address life safety concerns including, but not limited to, indoor air quality, fire safety, and safely functioning mechanical systems.

Villa Building Number 18 Exterior

1. The access to the building including the boardwalk and stairs show signs of disrepair. The walking surfaces are uneven and splintered throughout. The entry stairs and handrails exhibit the same condition. **The corrective action is to repair and replace the portions that are loose and uneven to prevent falls.**
2. The foundation and crawlspace are noted to have piers that are fractured and spall has occurred exposing the reinforcement bars. The steel beams show signs of significant oxidation. **The corrective action is to repair the items to support the loads that are imposed upon them.**
3. The exposed plumbing waste lines in the crawlspace were seen to have cracks and evidence of leakage was observed. **The corrective action is to repair and/or replace the waste lines.**

4. The exposed electrical in the crawlspace is improperly attached with several conductors lying on the ground. **The corrective action is to secure the conductors and remove any abandoned conductors.**
5. The main wind force resistant system (exterior sheathing) indicates water intrusion and active wood destroying organisms. Active termite evidence was noted. The sheathing has openings and a lack of water resistant coating (paint) allowing water to penetrate into the substrate causing significant deterioration. The bump outs on the building that are located on end units (kitchen area) are settling causing undo stress on the building. **The corrective action is to replace and/or repair the sheathing and the underlying framing to support the intended loads. Repair and replace as needed the underpinning of the bump outs to support the loads imposed.**

Villa Building Number 18 Interior

The following units within Villa Building Number 18 all exhibit the same conditions as listed below: 601, 602, 603, 604, 605, 606, 701, 702, 703, 704, 705, and 706. Units 701 and 702 have added noted deficiencies as noted below.

1. 701 Balcony rails are loose and in disrepair. The bedroom has a crack in the drywall signifying building settlement. **The corrective action is to determine and repair the settling of building and repair and or replace the balcony.**
2. 702 The balcony has rotted members in the joist system. **The corrective action is to repair or replace the rotted members.**
3. The mechanical closets containing the water heater and H.V.A.C. equipment indicates signs of mildew and mold in and around the units. Holes in the walls provide a point of entry for vermin into the building. **The corrective action is find the source of the mold and mildew, remove the mold and mildew, and seals the holes in the closet.**
4. Water heaters indicates leakage has occurred (water is off). The electrical to the water heaters is substandard. Appliance cords have been altered and disconnecting means have been altered. **The corrective action is to repair or replace the defective units and make code compliant.**
5. H.V.A.C. equipment has the disconnecting means unsecured and several have non-compliant splices in the conductors. **The corrective action is repairing the units and the electrical components to a code compliant state.**

6. The visible steam pump generators servicing the bathrooms have been repaired in a non-compliant manner, with unsecured electrical boxes and copper pipes repaired with heater hose. **The corrective action is to repair or replace in a code compliant manner.**
7. Several of the units have electrical panels indicating parts have been altered, using parts that may void the listing requirements of the manufacturer. **The corrective action is to repair or replace with code compliant parts.**

In conclusion, without a comprehensive destructive investigation a full determination of all of the issues for Villa Building Number 18 cannot be determined. An investigative analysis performed by licensed professionals on behalf of the Association is required to determine the structural integrity of the building. A full written report from the licensed professional shall be submitted for Town review and consideration. The report shall also address life safety concerns including, but not limited to, indoor air quality, fire safety, and safely functioning mechanical systems.

Beachcomber Building Exterior

1. The exterior balcony is in disrepair with the walking surfaces uneven, loose, and splintered. **The corrective action is to repair and or replace the portions that are loose and uneven to prevent falls.**
2. The main wind force resistant system (exterior sheathing) indicates water intrusion and active wood destroying organisms. Active termite evidence was noted. The sheathing has openings and a lack of water resistant coating (paint) allowing water to penetrate into the substrate causing significant deterioration. Many wood shake shingles are missing on the exterior, thus allowing water intrusion into the structure. **The corrective action is to replace and/or repair the sheathing/wood shakes and the underlying framing to support the intended loads.**
3. Evidence of roof leaks are evident soft spots on the roof were noted and visible water stains on the kitchen ceiling area below. **The corrective action is to repair the roof area.**
4. The foundation and crawl space has limited visibility as the grade below is approximately 16" to 24" of crawlspace. The limited observation indicates electrical conductors lying on the ground. Plumbing was not observed. **The corrective action is to repair the electrical. Excavate areas to allow for further observations of the area.**
5. The H.V.A.C. air handler in the exterior closet has a disconnect without protection (cover). n.m. cable is used in an unprotected environment. **The corrective action is**

to repair the disconnect with the appropriate cover, remove the n.m. cable and or protect appropriately.

Beachcomber Building Interior

1. Evidence of water intrusion in ceiling and walls. **The corrective action is to repair the source of the leaks.**
2. Rodents are evident in the building (feces found). **The corrective action is to determine the entry source, take steps so that they cannot enter the building, and remove the rodents and their droppings.**
3. The water heater was not found. **The corrective action is to locate (uncover if necessary) the water heater for further observation.**

In conclusion, without a comprehensive destructive investigation a full determination of all of the issues for Beachcomber Building cannot be determined. An investigative analysis performed by licensed professionals on behalf of the Association is required to determine the structural integrity of the building. A full written report from the licensed professional shall be submitted for Town review and consideration. The report shall also address life safety concerns including, but not limited to, indoor air quality, fire safety, and safely functioning mechanical systems.

Castaway Building Exterior

1. The foundation and crawl space has limited visibility as the grade below is approximately 16" to 24" of crawlspace. The limited observation indicates electrical conductors lying on the ground. Open electrical junction boxes in a deteriorated manner. Plumbing was not observed. **The corrective action is to repair the electrical. Excavate areas to allow for further observations of the area.**
3. The H.V.A.C. system is in disrepair one air handler was exposed to the elements as the door had fallen off. The electrical disconnect had no cover leaving the conductors open to the elements. **The corrective action is to repair and make safe the H.V.A.C. system.**
4. The main wind force resistant system (exterior sheathing) indicates water intrusion and active wood destroying organisms. Active termite evidence was noted. The sheathing has openings and a lack of water resistant coating (paint) allowing water to penetrate into the substrate causing significant deterioration. Many wood shake shingles are missing on the exterior, thus allowing water intrusion into the structure.

The corrective action is to replace and/or repair the sheathing/wood shakes and the underlying framing to support the intended loads.

Castaway Building Interior

- 1. Rodents are evident in the building (feces found). The corrective action is to determine the entry source, take steps so that they cannot enter the building, and remove the rodents and their droppings.**
- 2. Evidence of water intrusion in ceiling and walls. The corrective action is to repair the source of the leaks.**
- 3. The water heater is in disrepair with electrical and plumbing deficiencies. The corrective action is to repair and or replace in a code compliant manner**

In conclusion, without a comprehensive destructive investigation a full determination of all of the issues for Castaway Building cannot be determined. An investigative analysis performed by licensed professionals on behalf of the Association is required to determine the structural integrity of the building. A full written report from the licensed professional shall be submitted for Town review and consideration. The report shall also address life safety concerns including, but not limited to, indoor air quality, fire safety, and safely functioning mechanical systems.

The inspectors performing the inspections exhibited eye, nose, and throat irritation. As the origin of this irritation is due to some unidentified sources, visible feces and nesting materials, the inspectors will now have available dust mask and gloves while performing any other inspections. This issue could very well stem from the quality of the indoor air.



TOWN OF LONGBOAT KEY

FIRE RESCUE DEPARTMENT

FIRE RESCUE DEPARTMENT
5490 Gulf of Mexico Drive
Longboat Key, FL 34228
(941) 316-1944
FAX (941) 316-1946
www.longboatkey.org

GARY GLASS
BETH CALLANS MANAGEMENT CORP.
595 BAY ISLES ROAD, SUITE 200
LONGBOAT KEY, FL 34228

Corrective action
required by :06-01-2011

FIRE PREVENTION INSPECTION REPORT

Generated as of: 03-14-2011

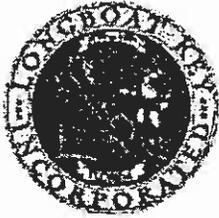
LOCATION: COLONY BEACH & TENNIS CLUB,1
1620 GULF OF MEXICO DR

INSPECTION #: 151110

DATE: 03-11-2011 TOTAL VIOLATIONS: 10 CORRECTED: 0 TYPE: REQST

1. EXIT STAIRS/RAMPS ARE DETERIORATED.
ACTION REQUIRED : STAIRWAYS AND RAMPS ARE IN NEED OR REPAIR.
Reference: NFPA-101, LIFE SAFETY CODE
2. EXIT STAIRS: WASHER, DRYER AND WATER HEATER MUST BE SEPARATED BY MINIMUM 1-HOUR CONSTRUCTION FROM COMBUSTIBLE STAIRS.
ACTION REQUIRED : MAKE NECESSARY REPAIRS OR REMOVE THESE ITEMS FROM BENEATH THE STAIRS. IN MOST CASES, THE DRYERS ARE NOT PROPERLY VENTED AND VENT TO THE UNDERSIDE OF THE STRUCTURE CAUSING A BUILD-UP OF COMBUSTIBLE LINT.
Reference: NFPA-101, LIFE SAFETY CODE
3. EXIT RAMPS: HANDRAILS IN NEED OF REPAIR.
ACTION REQUIRED : MAKE NECESSARY REPAIRS TO HANDRAILS AND DETERIORATED WALKWAYS.
Reference: NFPA-101, LIFE SAFETY CODE
4. EXTINGUISHERS NOT PROPERLY TAGGED, OVERDUE INSPECTION.
ACTION REQUIRED : TAG REQUIRED RE: SERVICE/INSPECTION
Reference: NFPA-10, PORTABLE FIRE EXTINGUISHERS
5. SMOKE ALARMS: BATTERY REPLACEMENT IN ALL SMOKE ALARMS RECOMMENDED. SMOKE ALARMS IN UNITS 202 AND 203, SECOND FLOOR BEDROOM, NOT WORKING PROPERLY AND NOT MOUNTED PROPERLY.

All persons shall be required to correct or remedy the violations or defects within a reasonable time and when not otherwise specified. Town of Longboat Key Fire Prevention Code 94.99 provides for the imposition of a penalty for each and every violation and noncompliance, including punishment by fines or imprisonment.



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595 BAY ISLES ROAD, SUITE 200
LONGBOAT KEY, FL 34228

Corrective action
required by :06-01-2011

FIRE PREVENTION INSPECTION REPORT

Generated as of: 03-14-2011

LOCATION: COLONY BEACH & TENNIS CLUB,1
1620 GULF OF MEXICO DR

INSPECTION #: 151110

DATE: 03-11-2011 **TOTAL VIOLATIONS:** 10 **CORRECTED:** 0 **TYPE:** REQST

ACTION REQUIRED : REPLACE BATTERY OR SMOKE ALARM. SMOKE ALARM IN ALL SECOND FLOOR BEDROOMS NEED TO BE MOUNTED ON OR NEAR THE CEILING. (THESE BEDROOMS ARE ACTUALLY ON THE THIRD FLOOR OF THE STRUCTURE)

NOTE: SMOKE ALARMS ARE CONSIDERED TO HAVE A 10 YEAR SERVICE LIFE.

6. IMPROPER TENANT SEPARATION

ACTION REQUIRED : INSTALL MIN. 1 HR. RATED SEPARATION. MOST UNITS INSPECTED IN THIS BUILDING HAVE HOLES IN THE DRYWALL LOCATED INSIDE THE HOT WATER HEATER / AIR HANDLER UNIT CLOSET WHERE PREVIOUS WORK HAS BEEN DONE.

Reference: NFPA-101, LIFE SAFETY CODE

7. ALL METER ROOM AND STORAGE ROOM DOORS MUST BE MARKED AS SUCH.

ACTION REQUIRED : PLACE SIGN ON EXTERIOR OF DOOR.

8. UNITS 202 AND 203: SMOKE ALARMS MOUNTED IMPROPERLY AND NOT FUNCTIONING PROPERLY.

ACTION REQUIRED : RECOMMEND CHANGING ALL BATTERIES. SMOKE ALARMS HAVE A 10 YEAR SERVICE LIFE. SMOKE ALARMS SHOULD BE MOUNTED ON THE CEILING OR 4"-12" BELOW CEILING. ALL 2 STORY UNITS SHOULD BE CHECKED.

9. UNIT 105 AND MOST OTHER UNITS: IMPROPER TENANT SEPARATION IN AIR HANDLER / HOT WATER HEATER CLOSETS.

ACTION REQUIRED : INSTALL MIN. 1 HR. RATED SEPARATION WHERE DRYWALL HAS BEEN REMOVED FROM INSIDE OF EXTERIOR WALL.

Reference: NFPA-101, LIFE SAFETY CODE

10. MARK ALL METER ROOM, ELECTRICAL ROOM AND STORAGE ROOM DOORS WITH SIGNAGE.

All persons shall be required to correct or remedy the violations or defects within a reasonable time and when not otherwise specified. Town of Longboat Key Fire Prevention Code 94.99 provides for the imposition of a penalty for each and every violation and noncompliance, including punishment by fines or imprisonment.



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BETH CALLANS MANAGEMENT CORP.
595 BAY ISLES ROAD, SUITE 200
LONGBOAT KEY, FL 34228

Corrective action
required by :06-01-2011

FIRE PREVENTION INSPECTION REPORT

Generated as of: 03-14-2011

LOCATION: COLONY BEACH & TENNIS CLUB,1
1620 GULF OF MEXICO DR

INSPECTION #: 151110

DATE: 03-11-2011 TOTAL VIOLATIONS: 10 CORRECTED: 0 TYPE: REQST

ACTION REQUIRED : PLACE APPROPRIATE SIGNS ON EXTERIOR OF DOOR.

A handwritten signature in cursive script, reading "Lou Gagliardi".

Fire Marshal Lou Gagliardi

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TOWN OF LONGBOAT KEY
FIRE RESCUE DEPARTMENT

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Corrective action
required by :06-01-2011

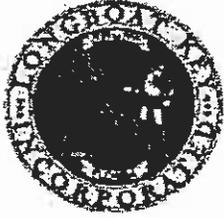
FIRE PREVENTION INSPECTION REPORT

Generated as of: 03-25-2011

LOCATION: COLONY BEACH & TENNIS CLUB,2 **INSPECTION #:** 151120
1620 GULF OF MEXICO DR
DATE: 03-25-2011 **TOTAL VIOLATIONS:** 11 **CORRECTED:** 0 **TYPE:** REQST

1. EXTINGUISHERS NOT PROPERLY TAGGED (EXPIRED).
ACTION REQUIRED : PORTABLE FIRE EXTINGUISHERS HAVE EXPIRED INSPECTION TAGS.
HAVE EXTINGUISHERS INSPECTED AND PROPERLY TAGGED.
Reference: NFPA-10, PORTABLE FIRE EXTINGUISHERS
2. UNITS OR ROOMS IMPROPERLY MARKED, UNIT 111
ACTION REQUIRED : MINIMUM 2 IN. LETTERING REQUIRED
Reference: CHAPTER-94, TOWN FIRE CODE
3. SMOKE ALARMS REQUIRED IN ALL SLEEPING AREAS.
ACTION REQUIRED : INSTALL SMOKE ALARMS IN ALL LIVING AREAS IN ALL UNITS THAT HAVE
A MURPHY BED IN CLOSET.
4. SIGNAGE REQUIRED ON ALL ELECTRICAL / STORAGE ROOM DOORS INDICATING USE OF
ROOM.
ACTION REQUIRED : INSTALL APPROPRIATE SIGNAGE.
5. IMPROPER TENANT SEPARATION IN AIR HANDLER / WATER HEATER CLOSET. DRYWALL
REPAIRS REQUIRED DO TO INSTALLATION OF NON-PERMITTED WATER HEATERS.
ACTION REQUIRED : INSTALL MIN. 1 HR. RATED SEPARATION. UNITS 107, 108, 109, 212
INSPECTED. APPLIES TO ALL UNITS WITH DAMAGED WALLS.
Reference: NFPA-101, LIFE SAFETY CODE
6. ELECTRICAL WIRING NOT ENCLOSED / OR DAMAGED, WATER HEATER, UNIT 212 SHOWS
SIGNS OF ELECTRICAL ARCHING.
ACTION REQUIRED : ENCLOSE/PROTECT ALL WIRING, MAKE NECESSARY REPAIRS.

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Corrective action
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FIRE PREVENTION INSPECTION REPORT

Generated as of: 03-25-2011

LOCATION: COLONY BEACH & TENNIS CLUB,2 **INSPECTION #:** 151120
1620 GULF OF MEXICO DR

DATE: 03-25-2011 **TOTAL VIOLATIONS:** 11 **CORRECTED:** 0 **TYPE:** REQST

Reference: NFPA-70, NAT'L ELECTRIC CODE

7. IMPROPER TENANT SEPARATION, WATER HEATER, WASHER / DRYER UNDER EXIT STAIRS.
ACTION REQUIRED : INSTALL MIN. 1 HR. RATED SEPARATION / ENCLOSURE OR REMOVE APPLIANCES.

Reference: NFPA-101, LIFE SAFETY CODE

8. SMOKE ALARMS NOT FUNCTIONING PROPERLY IN THE FOLLOWING UNITS: 107, 111, 112, 208, 210, 212.

ACTION REQUIRED : REPLACE ALL BATTERIES IN ALL SMOKE ALARMS. SMOKE ALARMS HAVE A SERVICE LIFE OF 10 YEARS. I RECOMMEND REPLACING ALL SMOKE ALARMS.

9. SMOKE ALARMS NOT MOUNTED PROPERLY IN UNITS: 208, 209, 210 SECOND FLOOR BEDROOM.

ACTION REQUIRED : SMOKE ALARMS SHOULD BE MOUNTED WITHIN 4-12" BELOW CEILING OR ON CEILING.

10. EXIT STAIRWAY(S) / RAMPS IN DETERIORATED CONDITION, UNEVEN, ROTTED.

ACTION REQUIRED : MAKE NECESSARY REPAIRS.

Reference: NFPA-101, LIFE SAFETY CODE

11. LIGHT WEIGHT FLOOR / ROOF TRUSS.

ACTION REQUIRED : HAVE LICENSED ARCHITECT OR ENGINEER DETERMINE WHETHER OR NOT ALL VILLAS HAVE LIGHT WEIGHT ROOF / FLOOR TRUSSES IN COMPLIANCE WITH FS 633.027.

MOST DEFICIENCIES NOTED IN THIS REPORT APPLY TO ALL UNITS / VILLAS.

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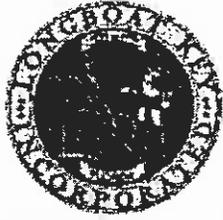
Corrective action
required by :06-01-2011

FIRE PREVENTION INSPECTION REPORT
Generated as of: 03-25-2011

LOCATION: COLONY BEACH & TENNIS CLUB,2
1620 GULF OF MEXICO DR
INSPECTION #: 151120
DATE: 03-25-2011 **TOTAL VIOLATIONS:** 11 **CORRECTED:** 0 **TYPE:** REQST

Fire Marshal

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FIRE PREVENTION INSPECTION REPORT

Generated as of: 04-06-2011

LOCATION: COLONY BEACH & TENNIS CLUB,8
1620 GULF OF MEXICO DR
INSPECTION #: 151180
DATE: 03-30-2011 **TOTAL VIOLATIONS:** 6 **CORRECTED:** 0 **TYPE:** REQST

1. EXIT STAIRWAY (2) REQUIRES 1-HOUR SEPARATION FROM HOT WATER HEATER AND WASHER/DRYER LOCATED UNDERNEATH COMBUSTIBLE STAIRS.

ACTION REQUIRED : REMOVE HOT WATER HEATER AND WASHER/DRYER FROM BENEATH EXIT STAIRS OR PROVIDE 1-HOUR ENCLOSURE.

Reference: NFPA-101, LIFE SAFETY CODE

2. HAVE LICENSED ARCHITECT OR ENGINEER DETERMINE WHETHER OR NOT ALL ROOF TRUSSES IN THIS COMPLEX ARE LIGHT-WEIGHT FRAME CONSTRUCTION IN COMPLIANCE WITH FS 633.027.

ACTION REQUIRED : PROVIDE WRITTEN DOCUMENTATION. PROVIDE REQUIRED SIGNAGE ON ALL STRUCTURE WITH LIGHT-FRAME TRUSSES IN COMPLIANCE WITH FS633.027.

3. EXTINGUISHERS NOT PROPERLY TAGGED

ACTION REQUIRED : TAG REQUIRED RE: SERVICE/INSPECTION

Reference: NFPA-10, PORTABLE FIRE EXTINGUISHERS

4. STORAGE ROOMS / ELECTRICAL ROOMS NOT PROPERLY MARKED.

ACTION REQUIRED : PLACE SIGNAGE ON DOORS AS NEEDED.

5. IMPROPER TENANT SEPARATION

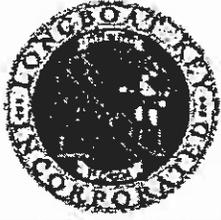
ACTION REQUIRED : INSTALL MIN. 1 HR. RATED SEPARATION REQUIRED IN A/C /WATER HEATER CLOSETS.

Reference: NFPA-101, LIFE SAFETY CODE

6. EXIT STAIRS / RAMPS / HANDRAILS DETERIORATED.

ACTION REQUIRED : MAKE NECESSARY REPAIRS.

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LOCATION: COLONY BEACH & TENNIS CLUB,8
1620 GULF OF MEXICO DR

INSPECTION #: 151180

DATE: 03-30-2011 TOTAL VIOLATIONS: 6 CORRECTED: 0 TYPE: REQST

A handwritten signature in black ink, appearing to read "Lou Gagliardi".

Fire Marshal Lou Gagliardi

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FIRE PREVENTION INSPECTION REPORT

Generated as of: 03-18-2011

LOCATION: COLONY BEACH & TENNIS CLUB,9
1620 GULF OF MEXICO DR
INSPECTION #: 151190
DATE: 03-18-2011 **TOTAL VIOLATIONS:** 10 **CORRECTED:** 0 **TYPE:** REQST

1. EXITS OBSTRUCTED

TREE LIMBS BLOCKING EXIT RAMP, REAR STAIRS.

ACTION REQUIRED : REMOVE ANY EXIT OBSTRUCTIONS, TRIM TREE LIMBS FROM EXIT RAMP.
(THE LIMB WITH THE SIGN WATCH YOUR HEAD NAILED TO IT.

Reference: NFPA-101, LIFE SAFETY CODE

**2. EXITS OBSTRUCTED, WASHER/DRYER/HOT WATER HEATER LOCATED BENEATH
COMBUSTIBLE EXIT STAIRS.**

ACTION REQUIRED : REMOVE ANY EXIT OBSTRUCTIONS: REMOVE APPLIANCES FROM
UNDERNEATH EXIT STAIRS OR SEPARATE WITH 1-HOUR RATED ENCLOSURE.

Reference: NFPA-101, LIFE SAFETY CODE

**3. LIGHT-FRAME TRUSS-TYPE CONSTRUCTION. HAVE A LICENSED ARCHITECT OR ENGINEER
DETERMINE WHETHER OR NOT ROOF SYSTEM IS CONSTRUCTED OF LIGHT-WEIGHT TRUSS-
TYPE CONSTRUCTION IN COMPLIANCE WITH FS 633.027.**

ACTION REQUIRED : PROVIDE WRITTEN DOCUMENTATION FROM DESIGN PROFESSIONAL
STATING TYPE OF ROOF SYSTEM ON THIS STRUCTURE. IF ROOF SYSTEM MEETS THE
DEFINITION OF LIGHT-WEIGHT CONSTRUCTION AS DEFINED IN FS 633.027, PROVIDE SIGNAGE
AS REQUIRED. ****NOTE;** THIS REQUIREMENT APPLIES TO ALL STRUCTURES IN THIS COMPLEX.**

4. SMOKE ALARMS NOT FUNCTIONING PROPERLY IN UNITS 150, 151, 152, 153, 154, 156, 253, 256
ACTION REQUIRED : REPAIR/REPLACE SMOKE ALARMS. REPLACE BATTERIES, I RECOMMEND
10 YEAR BATTERIES. SMOKE ALARMS HAVE A 10 YEAR SERVICE LIFE.

Reference: NFPA-72, FIRE ALARM SYSTEMS-USE & MAINT.

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LOCATION: COLONY BEACH & TENNIS CLUB,9
1620 GULF OF MEXICO DR
INSPECTION #: 151190
DATE: 03-18-2011 **TOTAL VIOLATIONS:** 10 **CORRECTED:** 0 **TYPE:** REQST

5. FLORIDA FIRE PREVENTION CODE, NFPA 101, SECTION 29.3.4.5 STATES: AN APPROVED SINGLE-STATION SMOKE ALARM SHALL BE INSTALLED IN EVERY GUEST ROOM AND EVERY LIVING AREA AND SLEEPING ROOM WITHIN A GUEST SUITE.

ACTION REQUIRED : INSTALL SMOKE ALARMS IN LIVING AREAS THAT CONTAIN MURPHY BEDS IN THE WALL CLOSET. ****NOTE**:** THIS REQUIREMENT APPLIES TO ALL UNITS IN ALL VILLAS.

Reference: NFPA-72, FIRE ALARM SYSTEMS-USE & MAINT.

6. EXTINGUISHERS NOT PROPERLY TAGGED. ALL PORTABLE FIRE EXTINGUISHERS ARE OUT OF DATE.

ACTION REQUIRED : TAG REQUIRED RE: SERVICE/INSPECTION

Reference: NFPA-10, PORTABLE FIRE EXTINGUISHERS

7. IMPROPER TENANT SEPARATION: THE AIR HANDLER / HOT WATER HEATER CLOSET IN UNITS 152, 154, 155, 156 REQUIRE REPAIR TO THE DRY WALL. NOTE: THIS VIOLATION NOTED IN MOST OTHER UNITS IN THIS COMPLEX.

ACTION REQUIRED : INSTALL MIN. 1 HR. RATED SEPARATION

Reference: NFPA-101, LIFE SAFETY CODE

8. ELECTRICAL WIRING NOT ENCLOSED, OUTSIDE AC UNIT #252.

ACTION REQUIRED : ENCLOSE/PROTECT ALL EXPOSED WIRING

Reference: NFPA-70, NAT'L ELECTRIC CODE

9. ELECTRICAL WIRING NOT ENCLOSED: UNIT #152 AIR HANDLER CLOSET.

ACTION REQUIRED : ENCLOSE/PROTECT ALL EXPOSED WIRING. THIS COMMENT APPLIES TO ALL AC CLOSETS IN THIS COMPLEX THAT HAVE EXPOSED WIRING.

Reference: NFPA-70, NAT'L ELECTRIC CODE

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1620 GULF OF MEXICO DR
INSPECTION #: 151190
DATE: 03-18-2011 **TOTAL VIOLATIONS:** 10 **CORRECTED:** 0 **TYPE:** REQST

10. EXITS OBSTRUCTED, UNIT #149 HAS UNEVEN FLOOR BOARDS ON EXIT BALCONY PRESENTING A TRIP HAZARD.

ACTION REQUIRED : REMOVE ANY EXIT OBSTRUCTIONS: MAKE NECESSARY REPAIRS TO ALL STAIRS, BALCONIES, EXIT RAMPS THAT HAVE DETERIORATED WOODEN STRUCTURAL / FLOORING MEMBERS.

Reference: NFPA-101, LIFE SAFETY CODE

MOST OF THE VIOLATIONS / DEFICIENCIES LISTED IN THIS REPORT APPLY TO ALL VILLAS AND UNITS.

Fire Inspector David Kyle

Fire Marshal

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FIRE PREVENTION INSPECTION REPORT

Generated as of: 03-18-2011

LOCATION: COLONY BEACH & TENNIS CLUB,10
1620 GULF OF MEXICO DR

INSPECTION #: 151200

DATE: 03-18-2011 **TOTAL VIOLATIONS:** 8 **CORRECTED:** 0 **TYPE:** REQST

1. EXITS STAIRS OBSTRUCTED. ENCLOSE WASHER/DRYER, HOT WATER HEATER
ACTION REQUIRED : REMOVE ANY EXIT OBSTRUCTIONS: REQUIRE 1-HOUR ENCLOSURE OR REMOVE.

Reference: NFPA-101, LIFE SAFETY CODE

2. FIRE DEPARTMENT CONNECTION FOR HOTEL FIRE SPRINKLER SYSTEM, LOCATED BETWEEN THIS VILLA AND THE HOTEL, IS NOT IN PROPER WORKING ORDER. REMOVE IMPROPER CAP AND REPLACE WITH PROPER CAP.

ACTION REQUIRED : REPAIR FIRE DEPT. CONNECTION

3. ROOF TRUSS SYSTEM. HAVE A LICENSED ARCHITECT OR ENGINEER DETERMINE WHETHER OR NOT THIS STRUCTURE IS IN COMPLIANCE WITH FS 633.027.

ACTION REQUIRED : PROVIDE WRITTEN DOCUMENTATION. PROVIDE SIGNAGE AS REQUIRED.

4. F.D.C. / FIRE HYDRANT NOT ACCESSIBLE WHEN VEHICLE IS PARKED IN SPACE PROVIDED FOR RESTAURANT.

ACTION REQUIRED : ACCESS REQ TO FIRE DEPT CONNECTIONS AND FIRE HYDRANT. REMOVE PARKING SIGN AND PARKING STOP.

5. IMPROPER TENANT SEPARATION, AIR HANDLER / HOT WATER HEATER CLOSET IN UNITS 645, 646.

ACTION REQUIRED : INSTALL MIN. 1 HR. RATED SEPARATION. MAKE REPAIRS TO DRY WALL IN ALL UNIT CLOSETS IN ALL VILLAS THAT ARE IN NEED OF REPAIR.

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LOCATION: COLONY BEACH & TENNIS CLUB,10
1620 GULF OF MEXICO DR

INSPECTION #: 151200

DATE: 03-18-2011 **TOTAL VIOLATIONS:** 8 **CORRECTED:** 0 **TYPE:** REQST

Reference: NFPA-101, LIFE SAFETY CODE

6. SMOKE ALARMS: MOST SMOKE ALARMS IN ALL UNITS, ALL VILLAS, HAVE DEAD BATTERIES. I RECOMMEND 10 YEAR BATTERIES.

UNITS 645, 746, 747, 748 TESTED IN THIS VILLA AND DID NOT FUNCTION PROPERLY. SMOKE ALARMS HAVE A 10 YEAR SERVICE LIFE.

ACTION REQUIRED : REPAIR/REPLACE SMOKE ALARMS AS NECESSARY.

Reference: NFPA-72, FIRE ALARM SYSTEMS-USE & MAINT.

7. FLORIDA FIRE PREVENTION CODE, NFPA 101, SECTION 29.3.4.5 REQUIRES: AN APPROVED SINGLE-STATION SMOKE ALARM SHALL BE INSTALLED IN EVERY GUEST ROOM AND EVERY LIVING AREA AND SLEEPING ROOM WITHIN A GUEST SUITE.

ACTION REQUIRED : INSTALL A SMOKE ALARM IN EACH LIVING AREA CONTAINING A MURPHY BED IN ALL UNITS, ALL VILLAS.

Reference: NFPA-72, FIRE ALARM SYSTEMS-USE & MAINT.

8. EXTINGUISHERS NOT PROPERLY TAGGED. ALL PORTABLE FIRE EXTINGUISHERS ARE OUT OF INSPECTION DATE.

ACTION REQUIRED : TAG REQUIRED RE: SERVICE/INSPECTION

Reference: NFPA-10, PORTABLE FIRE EXTINGUISHERS

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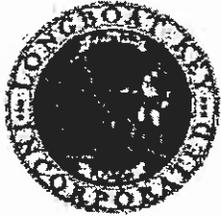
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Fire Marshal Lou Gagliardi

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FIRE PREVENTION INSPECTION REPORT

Generated as of: 04-01-2011

LOCATION: COLONY BEACH & TENNIS CLUB,11 INSPECTION #: 151210
1620 GULF OF MEXICO DR
DATE: 03-30-2011 TOTAL VIOLATIONS: 10 CORRECTED: 0 TYPE: REQST

1. EXITS OBSTRUCTED. WASHER / DRYER/ WATER HEATER BENEATH EXIT STAIRS REQUIRE A ONE-HOUR ENCLOSURE OR MUST BE REMOVED.

ACTION REQUIRED : MAKE NECESSARY REPAIRS OR REMOVE.

Reference: NFPA-101, LIFE SAFETY CODE

2. SMOKE ALARMS ARE REQUIRED IN ALL SLEEPING AREAS. UNITS THAT HAVE A MURPHY BED IN THE LIVING AREA MUST HAVE A SMOKE ALARM INSTALLED. THIS REQUIREMENT APPLIES TO ALL UNITS IN ALL VILLAS.

UNITS: 640, 641, 643, 740, 743, 741, 742,

ACTION REQUIRED : INSTALL SMOKE ALARM. I RECOMMEND SMOKE ALARMS WITH A 10-YEAR BATTERY.

3. SMOKE ALARM NOT FUNCTIONING PROPERLY, UNITS: 643, 644, 741, 742, 743.

ACTION REQUIRED : REPLACE BATTERIES AND / OR SMOKE ALARM. I RECOMMEND SMOKE ALARMS WITH A 10-YEAR BATTERY. SMOKE ALARMS HAVE A SERVICE LIFE OF 10 YEARS. I RECOMMEND THAT ALL SMOKE ALARMS BE REPLACED IN ALL VILLA UNITS.

4. WATER HEATER / AIR HANDLER CLOSET: UNITS 646, 742, 743, 744. ONE-HOUR RATING REQUIRED FOR WALLS THAT HAVE BEEN DAMAGED BY WORKERS INSTALLING EQUIPMENT. MANY UNITS SHOW SIGNS OF ELECTRICAL ARCHING.

ACTION REQUIRED : MAKE NECESSARY REPAIRS.

5. SMOKE ALARMS NOT MOUNTED PROPERLY IN THIRD FLOOR BEDROOMS OF UNITS LOCATED ON SECOND FLOOR. SMOKE ALARMS SHOULD BE MOUNTED ON THE CEILING OR WITHIN 4"-12" OF CEILING ON WALL.

ACTION REQUIRED : PROPERLY INSTALL SMOKE ALARMS.

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1620 GULF OF MEXICO DR
DATE: 03-30-2011 **TOTAL VIOLATIONS:** 10 **CORRECTED:** 0 **TYPE:** REQST

6. EXTINGUISHERS NOT PROPERLY TAGGED, EXPIRED.
ACTION REQUIRED : TAG REQUIRED RE: SERVICE/INSPECTION REQUIRED.
Reference: NFPA-10, PORTABLE FIRE EXTINGUISHERS
7. STORAGE ROOM / ELECTRICAL ROOMS NOT PROPERLY MARKED.
ACTION REQUIRED : PLACE SIGNS ON ALL STORAGE / ELECTRICAL ROOM DOORS
INDICATING USE.
8. EXTERIOR LIGHT POST FELL OVER, LEANING ON EXIT RAMP RAILING.
ACTION REQUIRED : MAKE NECESSARY REPAIRS.
9. EXIT RAMPS, HAND RAILS, BALCONIES DETERIORATED.
ACTION REQUIRED : MAKE NECESSARY REPAIRS.
10. IMPROPER TENANT SEPARATION, CEILINGS IN UNITS 640, 643 HAVE COLLAPSED DUE TO
WATER DAMAGE.
ACTION REQUIRED : MAKE NECESSARY REPAIRS, INSTALL MIN. 1 HR. RATED SEPARATION.
Reference: NFPA-101, LIFE SAFETY CODE

All persons shall be required to correct or remedy the violations or defects within a reasonable time and when not otherwise specified. Town of Longboat Key Fire Prevention Code 94.99 provides for the imposition of a penalty for each and every violation and noncompliance, including punishment by fines or imprisonment.



TOWN OF LONGBOAT KEY

FIRE RESCUE DEPARTMENT

FIRE RESCUE DEPARTMENT

5490 Gulf of Mexico Drive

Longboat Key, FL 34228

(941) 316-1944

FAX (941) 316-1946

www.longboatkey.org

GARY GLASS
BETH CALLANS MANAGEMENT CORP.
595 BAY ISLES ROAD, SUITE 200
LONGBOAT KEY, FL 34228

Corrective action
required by :06-01-2011

FIRE PREVENTION INSPECTION REPORT

Generated as of: 04-01-2011

LOCATION: COLONY BEACH & TENNIS CLUB,11
1620 GULF OF MEXICO DR

INSPECTION #: 151210

DATE: 03-30-2011 TOTAL VIOLATIONS: 10 CORRECTED: 0 TYPE: REQST

Fire Marshal Lou Gagliardi

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Corrective action
required by :06-01-2011

FIRE PREVENTION INSPECTION REPORT

Generated as of: 03-14-2011

LOCATION: COLONY BEACH & TENNIS CLUB,18 **INSPECTION #:** 151280
1620 GULF OF MEXICO DR
DATE: 03-11-2011 **TOTAL VIOLATIONS:** 8 **CORRECTED:** 0 **TYPE:** REQST

1. ELECTRICAL WIRING NOT ENCLOSED, LIGHT FIXTURE, BACK STAIRS HANGING.
ACTION REQUIRED : ENCLOSE/PROTECT ALL EXPOSED WIRING, MAKE NECESSARY REPAIRS.
Reference: NFPA-70,NAT'L ELECTRIC CODE
2. IMPROPER TENANT SEPARATION: WASHER, DRYER, HOT WATER HEATER REQUIRED TO BE SEPARATED FROM COMBUSTIBLE EXIT STAIRS.
IN MOST CASES DRYER IS NOT PROPERLY VENTED. DRYER LINT VENTS TO UNDERSIDE OF STRUCTURE.
ACTION REQUIRED : INSTALL MIN. 1 HR. RATED SEPARATION OR REMOVE APPLIANCES.
Reference: NFPA-101, LIFE SAFETY CODE
3. EXIT STAIRS, RAMPS, HAND RAILS ARE DETERIORATED, UNEVEN AND IN SOME CASES UNSAFE DUE TO TRIP HAZARD.
ACTION REQUIRED : MAKE NECESSARY REPAIRS.
Reference: NFPA-101, LIFE SAFETY CODE
4. IMPROPER TENANT SEPARATION: UNIT #601AND 606, AND MOST OTHER UNITS, HAVE HOLES IN THE DRY WALL IN THE HOT WATER HEATER / AIR HANDLER UNIT CLOSET.
ACTION REQUIRED : INSTALL MIN. 1 HR. RATED SEPARATION. MAKE NECESSARY REPAIRS.
Reference: NFPA-101, LIFE SAFETY CODE
5. EXTINGUISHERS NOT PROPERLY TAGGED, OUT OF DATE.
ACTION REQUIRED : TAG REQUIRED RE: SERVICE/INSPECTION
Reference: NFPA-10, PORTABLE FIRE EXTINGUISHERS

All persons shall be required to correct or remedy the violations or defects within a reasonable time and when not otherwise specified. Town of Longboat Key Fire Prevention Code 94.99 provides for the imposition of a penalty for each and every violation and noncompliance, including punishment by fines or imprisonment.



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Corrective action
required by :06-01-2011

FIRE PREVENTION INSPECTION REPORT

Generated as of: 03-14-2011

LOCATION: COLONY BEACH & TENNIS CLUB, 18
1620 GULF OF MEXICO DR

INSPECTION #: 151280

DATE: 03-11-2011 TOTAL VIOLATIONS: 8 CORRECTED: 0 TYPE: REQST

6. SMOKE ALARMS IN UNITS 702 AND 703 NOT FUNCTIONING PROPERLY AND NOT MOUNTED PROPERLY.

ACTION REQUIRED : SMOKE ALARMS HAVE A SERVICE LIFE OF 10 YEARS. EITHER REPLACE SMOKE ALARMS OR BATTERIES. SMOKE ALARMS SHOULD BE MOUNTED ON THE CEILING OR 4"-12" BELOW CEILING. ALL TWO STORY UNITS SHOULD BE CHECKED.

7. MARK ALL ELECTRICAL ROOMS AND STORAGE ROOMS WITH SIGNAGE.

ACTION REQUIRED : PLACE SIGNS ON EXTERIOR OF ELECTRICAL AND STORAGE ROOM DOORS INDICATING THEIR USE.

8. SECONDARY EGRESS OUT OF BEDROOMS. SOME BEDROOMS HAVE SLIDING GLASS DOORS ONLY (NO WINDOW) THAT DO NOT OPEN PROPERLY. (SEE BUILDING DEPT. REPORT FOR LOCATIONS)

ACTION REQUIRED : MAKE NECESSARY REPAIRS SO THAT SLIDING GLASS DOORS OPEN PROPERLY.

Fire Inspector William Fortner

Fire Marshal

All persons shall be required to correct or remedy the violations or defects within a reasonable time and when not otherwise specified. Town of Longboat Key Fire Prevention Code 94.99 provides for the imposition of a penalty for each and every violation and noncompliance, including punishment by fines or imprisonment.



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Corrective action
required by :06-01-2011

FIRE PREVENTION INSPECTION REPORT

Generated as of: 03-14-2011

LOCATION: COLONY BEACH & TENNIS CLUB, 18
1620 GULF OF MEXICO DR

INSPECTION #: 151280

DATE: 03-11-2011 **TOTAL VIOLATIONS:** 8 **CORRECTED:** 0 **TYPE:** REQST

All persons shall be required to correct or remedy the violations or defects within a reasonable time and when not otherwise specified. Town of Longboat Key Fire Prevention Code 94.99 provides for the imposition of a penalty for each and every violation and noncompliance, including punishment by fines or imprisonment.



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Corrective action
required by :06-01-2011

FIRE PREVENTION INSPECTION REPORT

Generated as of: 03-28-2011

LOCATION: COLONY BEACH & TENNIS CLUB, BEACHCOMI INSPECTION #: 151376
1620 GULF OF MEXICO DR

DATE: 03-25-2011 **TOTAL VIOLATIONS:** 3 **CORRECTED:** 0 **TYPE:** REQST

1. SMOKE ALARM NOT FUNCTIONING IN BEDROOM. SMOKE ALARMS HAVE A 10 YEAR SERVICE LIFE.
ACTION REQUIRED : INSTALL NEW SMOKE ALARM OR INSTALL 10 YEAR BATTERY.
2. SMOKE ALARMS REQUIRED IN ALL SLEEPING AREAS.
ACTION REQUIRED : INSTALL SMOKE ALARM WITH 10 YEAR BATTERY IN LIVING AREA.
3. SECONDARY EGRESS OUT OF BEDROOM REQUIRED. SLIDING GLASS DOOR NOT OPERABLE.
ACTION REQUIRED : MAKE NECESSARY REPAIRS TO SLIDING GLASS DOOR SO THAT IT OPENS PROPERLY.

THIS INSPECTION IS FOR THE BEACHCOMBER.

Fire Marshal Lou Gagliardi

All persons shall be required to correct or remedy the violations or defects within a reasonable time and when not otherwise specified. Town of Longboat Key Fire Prevention Code 94.99 provides for the imposition of a penalty for each and every violation and noncompliance, including punishment by fines or imprisonment.



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Corrective action
required by :06-01-2011

FIRE PREVENTION INSPECTION REPORT

Generated as of: 03-28-2011

LOCATION: COLONY BEACH & TENNIS CLUB, CASTAWAY INSPECTION #: 151380
1620 GULF OF MEXICO DR

DATE: 03-25-2011 **TOTAL VIOLATIONS:** 2 **CORRECTED:** 0 **TYPE:** REQST

1. NO SMOKE ALARMS INSTALLED / MISSING.

ACTION REQUIRED : INSTALL SMOKE ALARMS IN BEDROOM AND LIVING AREAS WITH 10 YEAR BATTERIES.

2. PORCH / STAIRS DETERIORATED.

ACTION REQUIRED : MAKE NECESSARY REPAIRS FOR SAFE EXITING.

THIS INSPECTION IS FOR THE CASTAWAYS.

Fire Marshal

All persons shall be required to correct or remedy the violations or defects within a reasonable time and when not otherwise specified. Town of Longboat Key Fire Prevention Code 94.99 provides for the imposition of a penalty for each and every violation and noncompliance, including punishment by fines or imprisonment.

158.180 - Distribution of 250 tourism units.

(A)

It is the intent of this section to govern the eligibility for and allocation of the 250 tourism units authorized by referendum election held on March 18, 2008. Approval, approval with conditions, or disapproval shall be by vote after public hearing before the town commission, pursuant to the provisions of this section.

It is further the intention of this section that the quality and location of such units shall benefit the public interest of Longboat Key, while being compatible with and not detrimental to the character of the area. The terms "tourism unit" and "tourism use" as used in this section shall be defined by section 158.006 Definitions, as amended, in this Zoning Code.

(B)

Groups of eligibility. The following are eligible to apply for additional tourism units based upon applicable conditions as described under this section:

(1)

Tourism developments.

(a)

Tourism zoned or residentially zoned properties with an existing legal tourism use.

(b)

Two or more contiguous tourism developments or tourism zoned properties may merge to create one larger development lot as defined in section 158.006

(2)

Commercial, office and marina zoned property with a conforming principal use may be eligible for tourism units.

(a)

For commercial and office zoned property, the tourism use shall not exceed that allowed for an accessory use, as defined.

(b)

For marina zoned property, marina must be its principal use, and no more than 33 percent of the buildable land area shall be allowed for total floor area of the tourism use. The total allowable floor area shall include the square footage of common use areas and open terraces, but not garages and nonhabitable basement spaces.

(3)

Tourism units under this section are allowed in residential districts as provided in subsection (B)(1) only and are not permitted in OS-A, OS-P, OS-C, PD, NPD and GPD zoning districts.

(4)

Properties with existing PUD overlays may be eligible based upon the underlying zoning district. The existing PUD overlay shall become null and void upon approval of the ODP amendment application. All property owners within the PUD shall join in the ODP amendment application in order for the application to be processed by the town.

(C)

Review. The standards of the underlying zoning district in which the subject property is located shall remain in effect. In order to grant approval or approval with conditions, the town must find by competent substantial evidence that the project is in the best interest of the health, safety and welfare of the town and its citizens and does not adversely impact or affect the public interest. Projects shall be reviewed, evaluated, ranked, approved, approved with conditions, or disapproved in accordance with the following criteria, as well as the criteria set forth in section (D) below. The criteria listed below are in prioritized order with the most important listed first. Projects that require a departure from the standards of the zoning code, or do not meet zoning constraints, must demonstrate by clear and convincing evidence that the projects are so beneficial to the town as to warrant the granting of the requested departure or allowing the zoning constraints to be exceeded. In reviewing a proposed project, the town shall consider:

(1)

Existing developments. Whether the project:

(a)

Meets current zoning constraints and would not need departures.

(b)

Meets current zoning constraints and would need departures for the additional units.

(c)

Does not meet current zoning constraints and would not need further departures.

(d)

Does not meet current zoning constraints and would need further departures.

(2)

Sufficiency of the land area. The site on which the project is to be located must be of sufficient size to accommodate the mass and scale of the proposed project, as well as to protect against adverse impacts to the adjacent parcels and surrounding area. Two or more contiguous existing tourism developments or tourism zoned properties that are merged shall be considered one lot for this consideration, in which case the underlying zoning district of each respective lot shall govern.

(3)

Number of units.

(a)

Proposed projects that appropriately utilize a greater number of available tourism units.

(b)

Proposed projects that appropriately result in a greater total number of tourism units.

(4)

Open space. Whether the proposed project preserves a larger percentage of open space than required by this Zoning Code.

(5)

Off-street parking. Whether the impacts of off-street parking is minimized through the maximization of understructure parking, the utilization of parking waivers, and the strict application of the minimum parking calculations as per section 158.128 of this Code.

(6)

Setbacks. Whether the proposed project maintains or surpasses the required gulf and pass waterfront yards.

(7)

Building height. With no order of preference, the proposed structures:

(a)

Distance from structures on adjacent properties.

(b)

Distance from setback lines.

(c)

Distance from rights-of-way.

(d)

Relationship to the height of other on-site structures.

(e)

Relationship to the height of off-site structures.

(8)

Traffic circulation and impacts.

(9)

Minimization of potable water usage (e.g., utilization of alternative water sources).

(10)

Minimization of stormwater runoff.

(D)

Site considerations and compatibility review criteria. Projects shall be reviewed according to the criteria listed below which are in prioritized order with the most important listed first:

(1)

Character compatibility. Projects shall be compatible with and not detrimental to the character, including the use, of the area taking into consideration the adjacent property's potential development under the zoning code.

(2)

Consolidation of properties. The potential positive impacts that are likely to occur from the consolidation of smaller development sites resulting in a larger development site.

(3)

Quality of development.

(a)

The proposed architecture enhances both the site and the surroundings.

(b)

The proposed landscaping and tree preservation and plantings.

(c)

The proposed on-site amenities and recreational opportunities serving the development.

(4)

Quality of life.

(a)

Proximity and connection to beach or bay access.

(b)

Proximity and connection to existing commercial.

(c)

Proximity and connection to existing off-site recreational opportunities.

(d)

Pedestrian walkability and bicycle accessibility

(E)

Initial application review period. Since the town cannot anticipate whether requests for the utilization of the tourism units will exceed the 250 units available, upon the adoption of the ordinance enacting this section, a minimum initial 60-day application period shall be implemented to allow for the submission of all completed applications. At any time prior to a recommendation to the town commission on these initial applications, the planning and zoning board may, by majority vote, extend the initial 60-day application period as well as the review period if the board finds that to do so is necessary and proper to insure the orderly and fair evaluation of projects seeking to utilize some or all of the tourism units to be allocated hereunder. Upon expiration of the initial application period, the planning zoning and building director, or designee, shall review, rank and prioritize all applications, and forward the applications, together with recommendations, to the planning and zoning board.

(1)

These applications shall be considered as a group before the planning and zoning board. The planning and zoning board shall provide recommendations to the town commission as to which, if any, projects meet the criteria for approval. If the total number of tourism units requested for projects that meet the criteria as determined by the planning and zoning board exceeds 250 units, then the planning and zoning board shall rank those projects from highest to lowest as part of its recommendation to the town commission.

(2)

These applications forwarded by the planning and zoning board shall be considered as a group by the town commission. The town commission shall determine which projects, if any, meet the criteria of this section. If the total number of tourism units in projects that meet the criteria for approval exceeds 250, then the town commission shall rank those projects from highest to lowest. Projects shall be approved and units shall be committed by the town in accordance with this section starting with the project ranked highest.

(3)

If after the allocation of tourism units to the ranked project(s), there are units remaining but the next ranked project requires more units than are available, then the next ranked project shall be

given the opportunity during the allocation determination of the town commission to make a minor modification to the number of units requested in order to comply with the number of units available. There shall be a finding that the proposed minor modification does not adversely impact the rankings of the pending applications in order for the units to be allocated.

(4)

If the next ranked project is unable to make acceptable minor modifications as described above, then the applicant(s) of the remaining ranked projects shall be given the opportunity to amend their application(s) and the remaining project(s) shall be ranked based on the criteria contained within subsections (C) and (D). Amended application(s) shall be submitted within 60 days from the initial allocation determination of the town commission. The projects approved and allocated units may proceed through the remaining approval processes.

(5)

Ranked projects, for which the requested number of units cannot be committed, shall be kept under consideration until the site plan application period as described in subsection (G) for the committed units has lapsed. If there are available units as a result of subsection (G), these project(s) will be considered for the ranking, allocation, and assignment of any unused units along with any other applications that may be submitted and reviewed during the interim utilizing the process and procedure for ranking and allocation outlined above.

(F)

After the initial application review period. If there are units that remain available for distribution, all applications will be reviewed as they are completed in accordance with the provisions of this Code and the criteria and standards set forth above. The town shall provide no guarantees or assurances of approval and no development permits or land uses based on the utilization of the 250 tourism units shall be granted until the review and determination of the initial applications is completed by the town.

(G)

Application and review process. Applications for eligibility and distribution of the 250 additional tourism units shall follow the procedures for and be approved, approved with conditions, or denied as an outline development plan (ODP) that shall include a binding concept plan. The necessary units to implement the binding concept plan shall be committed by the town upon the plan's approval, contingent upon the requirements of this Code. Upon approval of the ODP and binding concept plan, the applicant shall have no more than six months for the town to receive a complete application for final site plan approval. Failure to submit a complete application within six months, or submitting a complete site plan application within six months that is denied after all appeals are exhausted, shall result in the loss of the tourism units committed to the project, and the units shall become available for other proposed developments within the town.

(1)

Concurrent review and approval of the ODP and final site plan is allowed.

(2)

Concurrent review and approval of applications for voluntary rebuild, in accordance with section 158.140, and applications for 250 tourism units, under this section, is allowed.

(a)

However, in such case the ODP and final site plan review applications must also be reviewed and approved concurrently.

(b)

The final site plan shall replace the need for a binding concept plan as described in subsection (F).

(H)

Site plan expiration. The final site plan for the construction of additional tourism units shall expire 24 months after the date of approval if a complete application for building permit has not been submitted to the town and a building permit issued. Allocated tourism units associated with an expired site plan shall become available for other proposed developments within the town.

(I)

As a condition of approval, the applicant agrees to voluntarily forgo any underlying residential use of the subject property without a future amendment to the ODP.

(J)

Committed tourism units that are not approved as part of the final site plan shall become available for other proposed developments within the town.

(K)

Tourism units that are approved by final site plan, but not approved as part of construction plans, shall require a site plan amendment through public hearing. Units not constructed shall be removed from the allowable density of the subject parcel and become available for other proposed developments within the town. Units constructed but subsequently removed shall revert to the town for future allocation.

(L)

Conflicting Code provisions. Should the provisions eligibility and distribution of the 250 additional tourism units under this section for and the provisions of sections 158.065 through 158.103 conflict, the provisions for eligibility and distribution of the 250 additional tourism units shall prevail.

(Ord. No. 2008-34, § 3, 5-4-09)