



Town of Longboat Key Town Commission

Town Hall
501 Bay Isles Road
Longboat Key, FL 34228
(941) 316-1999
(FAX) 316-1942

WWW.LONGBOATKEY.ORG

- AGENDA -

SPECIAL WORKSHOP MEETING

2:00 PM

April 16, 2010

Pledge of Public Conduct

- We may disagree, but we will be respectful of one another.
- We will direct all comments to issues.
- We will avoid personal attacks.

Call to Order

Notice is hereby given that the Mayor of Longboat Key has called a Special Workshop Meeting on Friday, April 16, 2010 at 2:00 PM at the Temple Beth Israel located at 567 Bay Isles Road, Longboat Key, Florida, for the purpose of discussing the following item:

Proposed Ordinance 2010-16, Amending Chapter 158, Zoning Code of the Town of Longboat Key

At their April 6, 2010 Planning & Zoning (P&Z) Board Meeting the Board recommended approval of proposed Ordinance 2010-16 and forwarded to the Town Commission for consideration. This item Recommended Action: Pending discussion, provide direction to Manager.

Adjournment

No verbatim record by a certified court reporter is made of these proceedings. Accordingly, any person who may seek to appeal any decision involving the matters noticed herein will be responsible for making a verbatim record of the testimony and evidence at these proceedings upon which any appeal is to be based (see Section 286.0105, Fla. Stat.).

In accordance with the Americans with Disabilities Act and Section 286.26, F.S., persons needing a special accommodation to participate in this proceeding should contact the Town Clerk's office at 941-316-1999 forty-eight (48) hours in advance of this proceeding. If you are hearing impaired, please call 941-373-7002.

George Spoll, Mayor; Jim Brown, Vice-Mayor;
Lynn Larson, District 1; Dave Brenner, District 3; Bob Siekmann, District 5
Hal Lenobel, At-Large; Gene Jaleski, At-Large

ORDINANCE 2010-16

AN ORDINANCE AMENDING CHAPTER 158, THE ZONING CODE, OF THE CODE OF ORDINANCES OF THE TOWN OF LONGBOAT KEY, FLORIDA, TO AMEND SECTION 158.009, *DESCRIPTION OF DISTRICTS AND DISTRICT POLICIES*, SUBSECTION (L), SECTION 158.067, *DESCRIPTION OF DISTRICTS AND DISTRICT POLICIES*, SUBSECTION (D)(3)(G), SECTION 158.071, *PROPOSED LAND USES*, SUBSECTION (A)(2) AND SUBSECTION (D), SECTION 158.102, *PERFORMANCE STANDARDS FOR SITE AND DEVELOPMENT*, SUBSECTION (L) AND SUBSECTION (L)(3), AND SECTION 158.132, *TOURISM USES*, SUBSECTION (B); PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL OF ALL ORDINANCES IN CONFLICT HEREWITH; PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, on March 1, 2010, at the regularly scheduled Town Commission meeting, the Longboat Key Club (Club) requested that the Town Commission consider granting the Planning and Zoning Board authority to hold public hearings related to zoning code amendments desired by the Club; and

WHEREAS, the Town Commission granted the Planning and Zoning Board such authority pursuant to Section 158.030 (A)(1) of the Zoning Code; and

WHEREAS, the Club provided the Town with an application and supporting materials for requested amendments to the Town of Longboat Key Zoning Code on March 16, 2010; and

WHEREAS, the Club requests amendments to the zoning code specifically impacting the Planned Development District (PD), Gulf Planned Development District (GPD), Negotiated Planned Development District (NPD), and Planned Unit Developments (PUD) in the Town of Longboat Key; and

WHEREAS, the Town Commission of the Town of Longboat Key, after review of the recommendations of the Planning and Zoning Board, comments made at public hearings, and careful consideration of the issues, finds that the proposed amendments are consistent with the Comprehensive Plan as amended and are in the best interest of the health, safety, and welfare of the citizens of Longboat Key.

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN OF LONGBOAT KEY, FLORIDA, THAT:

SECTION 1. The Whereas clauses above are ratified and approved as true and correct.

SECTION 2. Chapter 158, Section 158.009, *Description of districts and district policies*, subsection (L) is hereby amended as follows:

- (L) Planned Development District (PD), Gulf Planned Development District (GPD), and Negotiated Planned Development District (NPD)—Established for areas which may be developed pursuant to special conditions of a resolution or other legal instruments duly approved by the Town Commission pursuant to this chapter. In the event of any conflict between the specific provisions of this Section 158.009 (L) and the provisions of any other section of the zoning code, the specific provisions of this section shall apply. The density for the respective Planned Development Districts reflect the following density schedule after considering vested rights issues:

<u>Planned Development District Designation</u>	<u>Density</u>
Planned Development (PD)	3.26
Gulf Planned Development (GPD)	5.05
Negotiated Planned Development (NPD)	4.80

~~Such PUDs approved in a planned development district~~ may include a mix of residential, tourism, nonresidential, and commercial land uses as identified in the regulations of this chapter, including but not limited to, community residential homes, and such regulations shall not be interpreted as prohibiting mixed uses in duly approved PUDs. The following standards for regulating residential development in planned unit developments shall be used and is intended to accommodate planned unit developments with or without mixed uses:

- (1) Notwithstanding the terms of any other section of this zoning code related to the calculation of density for residential or tourism uses, ~~the~~ respective densities for the PD and the GPD ~~districts~~ reflect the average overall density per acre of all properties included within such districts, including recreational areas, open space areas, road rights-of-way, wetland areas, and other nonresidential lands. It is understood that under these zoning regulations, the density of ~~development~~ sites within the ~~PUD~~ PD and GPD may vary, such that the clustering of density on one or more parcels within a site may be allowed.

SECTION 3. Chapter 158, Section 158.067, *Description of districts and district policies*, subsection (D)(3)(g) is hereby amended as follows:

- (g) Departures from the code of ordinances ~~which would otherwise be applicable to the planned unit development if the plan were not approved (or if in the PD, GPD or NPD district, departures from the requirement of a zoning district most similar to the use approved for~~

~~the proposed project~~) and a statement of any existing hardship and/or a clear and specific statement of how the code departures are necessary or desirable to accomplish one or more of the stated purposes of the planned unit development as set forth in Section 158.065. For a PUD without an underlying zoning district (PD, GPD or NPD districts), departures shall be evaluated as from the requirement of the zoning district most similar to the use approved for the proposed project in addition to departures from other code requirements.

SECTION 4. Chapter 158, Section 158.071, *Proposed land uses*, subsection (A)(2) is hereby amended as follows:

- (2) Where mixed uses, residential and nonresidential, are proposed, ~~nonresidential~~ commercial development may be permitted to occupy up to five percent of the gross area of the planned unit development, except that commercial uses shall not be permitted in a PUD overlay unless they are permitted uses within the underlying zoning district. Accessory commercial land uses shall not be included in the calculation of the five percent maximum.

SECTION 5. Chapter 158, Section 158.071, *Proposed land uses*, subsection (D) is hereby amended as follows:

- (D) Once development rights, whether residential or non-residential, have been assigned to a parcel within a planned unit development, any subsequent request for new or additional residential or tourism density shall be considered a transfer of density under the governing resolutions and ordinances of the planned unit development which shall require amendment of the outline development plan for the planned unit development in accordance with the procedures of Section 158.067. In no event shall the average overall densities density of a planned unit development exceed the maximum average overall densities density set forth in this Code or the Comprehensive Plan for the planned unit development.

SECTION 6. Chapter 158, Section 158.102, *Performance standards for site and development*, subsection (L) is hereby amended as follows:

- (L) Supplemental Controls for Multifamily Residential or Tourism Uses. In reviewing the proposed site plan for ten or more multifamily or tourism units, the Town shall be guided by the following controls. The supplemental control relating to the maximum length of buildings, as provided for in Subsection (3) of this section, shall be taken as a mandatory requirement which cannot be waived by the Town Commission. The remaining controls in this section shall be

taken as mandatory requirements, except that the Town Commission may waive one or more of these requirements where it ~~deems~~ determines a hardship exists ~~or such waiver is necessary to ensure a more strict adherence to those performance standards set forth herein, which are deemed most critical, notwithstanding any other provisions of this ordinance to the contrary.~~ Notwithstanding any provision of this section to the contrary, for properties located in a planned unit development, the Town Commission may consider and grant a departure, under the standards for a requested departure as outlined in Section 158.067 (D)(3)(g), for one or more of the supplemental controls of this Section 158.102 (L), including subsection (3) for the maximum length of buildings.

In any development order approving a site plan, the Town Commission shall make specific findings of facts constituting a hardship, if a hardship is found to exist, and shall make specific findings of any facts constituting the basis for a waiver of these ~~supplemental controls and shall specifically state the performance standards as set forth herein which are deemed most critical and are being more strictly adhered to by granting the waiver.~~

The provisions of Section 158.029 shall apply in determining whether a waiver shall be granted upon a finding that a hardship exists, except that the Town Commission, rather than the Zoning Board of Adjustment, shall determine whether a hardship exists or not. The facts forming the basis for the grant of a waiver under the provisions of this section shall be specifically set forth in the development order.

SECTION 7. Chapter 158, Section 158.102, *Performance standards for site and development*, subsection (L)(3) is hereby amended as follows:

- (1) Maximum Length. No portion of any individual building shall extend beyond a line drawn from the front lot line 30 degrees either side of a line ~~centered on~~ through the building and perpendicular to the front lot line.

SECTION 8. Chapter 158, Section 158.132, *Tourism uses*, subsection (B) is hereby amended as follows:

- (B) Tourism Use of property for remuneration is allowed within T-3 and T-6 Zoning Districts or as a may be permitted use in a ~~PD~~ planned unit development within the Town of Longboat Key.

SECTION 9. If any section, subsection, sentence, clause or provision of this Ordinance is held invalid, the remainder of the Ordinance shall not be affected.

SECTION 10. All ordinances or parts of ordinances in conflict herewith shall be and the same are hereby repealed.

SECTION 11. This Ordinance shall take effect upon second reading in accordance with Law and the Charter of the Town of Longboat Key.

Passed on the first reading and public hearing this ____ day of _____, 2010.

Adopted on the second reading and public hearing this ____ day of _____, 2010.

George Spoll, Mayor

ATTEST:

Trish Granger, Town Clerk

M E M O R A N D U M

DATE: April 9, 2010

TO: Honorable Mayor and Town Commission

THROUGH: Bruce St. Denis, Town Manager

FROM: BJ Webb, Chairman
Planning and Zoning Board

SUBJECT: ORDINANCE 2010-16, LONGBOAT KEY CLUB'S PROPOSED
ZONING CODE AMENDMENTS

During the special public hearing held on April 6, 2010, the Planning and Zoning Board recommended APPROVAL of Ordinance 2010-16, with amendments, for various zoning code amendments requested by the Longboat Key Club. The specific motion of the P&Z Board is as follows:

MR. SYMANSKI MOVED THE P&Z BOARD RECOMMEND APPROVAL OF ORDINANCE 2010-16 AS AMENDED BY THE ACTION OF THIS BOARD. MR. HACKETT SECONDED THE MOTION. MOTION CARRIED ON ROLL CALL VOTE: HACKETT, AYE; HIXON, AYE; SAIVETZ, AYE; SIEGLER, NO; SYMANSKI, AYE; WEBB, AYE; WILD, AYE; ZUNZ, AYE.

Enclosed, for your review and consideration, please find the following support documentation:

1. Ordinance 2010-16;
2. Staff Report, dated 4-1-10, PZB Director to Planning & Zoning Board;
3. Applicant's Application Package;
4. Memo, dated 4-5-10, Patterson/Patten to P&Z Board;
5. Memo 2, dated 4-5-10, Patterson/Patten to P&Z Board;
6. Letter, dated 4-1-10, Attorney Michael Furen to PZB Director;
3. Draft minutes from the 4-6-10 special P&Z Board meeting on this issue.

If you should have any questions, or desire any additional information, please do not hesitate to contact me.

MS/dmc

M E M O R A N D U M

DATE: April 1, 2010

TO: Planning and Zoning Board Members

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

RE : Longboat Key Club's Proposed Zoning Code Amendments
ORDINANCE 2010-16

In a letter dated February 24, 2010, John Patterson, on behalf of the Key Club Associates, Limited Partnership, and Islandside Development, LLC, requested that the Town Commission initiate the Zoning Code amendment process in order for the Town to address their desired changes. At the March 1, 2010, regularly scheduled Town Commission meeting, the Commission granted the Planning and Zoning Board authority to hold public hearings related to the Zoning Code Amendments requested by the Key Club, pursuant to Section 158.030 (A)(1) of the Zoning Code.

On March 16, 2010, Mr. Patterson submitted the Key Club's Zoning Code Amendment request, including their suggested code language. As is always done when a Zoning Code amendment is requested, a draft ordinance was written as an attempt to capture the applicant's request, while keeping in mind the remainder of the Zoning Code. This draft (Ordinance 2010-16) is not a reflection of staff's opinion, but rather serves as a starting point for discussion and consideration for the Planning and Zoning Board.

Below is a general analysis of the amendments proposed by the Key Club. Each amendment is provided in the following format:

- section of the code to be amended
 - existing code language
 - as proposed by ordinance 2010-16: legislative format (~~strike-through~~/underline)
 - as proposed by ordinance 2010-16: as will appear in the code (clean)
 - staff analysis
-

Chapter 158, Section 158.009, *Description of districts and district policies*, subsection (L):

EXISTING CODE LANGUAGE:

- (L) Planned Development District (PD), Gulf Planned Development District (GPD), and Negotiated Planned Development District (NPD) - Established for areas which may be developed pursuant to special conditions of a resolution or other legal instruments duly approved by the Town Commission pursuant to this chapter. The density for the respective Planned Development Districts reflect the following density schedule after considering vested rights issues:

District Designation	Density
Planned Development (PD)	3.26
Gulf Planned Development (GPD)	5.05
Negotiated Planned Development (NPD)	4.80

Such PUD's may include a mix of land uses as identified in the regulations of this chapter, including community residential homes, and such regulations shall not be interpreted as prohibiting mixed uses in duly approved PUD's. The following standards for regulating residential development in planned unit developments shall be used and is intended to accommodate planned unit developments with or without mixed uses:

- (1) The respective densities for the PD and the GPD Districts reflect the average overall density per acre of all properties included within such districts, including recreational areas, open space areas, road rights-of-way, wetland areas and other nonresidential lands. It is understood that under these zoning regulations, the density of development sites within the PUD may vary.

AS PROPOSED BY ORDINANCE 2010-16 (legislative format):

- (L) Planned Development District (PD), Gulf Planned Development District (GPD), and Negotiated Planned Development District (NPD)—Established for areas which may be developed pursuant to special conditions of a resolution or other legal instruments duly approved by the Town Commission pursuant to this chapter. In the event of any conflict between the provisions of this section 158.009 (L) and the provisions of any other section of the zoning code, the provisions of this section shall apply. The density for the respective Planned Development Districts reflect the following density schedule after considering vested rights issues:

Planned Development District Designation	Density
Planned Development (PD)	3.26
Gulf Planned Development (GPD)	5.05
Negotiated Planned Development (NPD)	4.80

~~Such PUDs approved in a planned development district may include a mix of residential, tourism, nonresidential and commercial land uses as identified in the regulations of this chapter, including but not limited to, community residential homes, and such regulations shall not be interpreted as prohibiting mixed uses in duly approved PUDs. The following standards for regulating residential development in planned unit developments shall be used and is intended to accommodate planned unit developments with or without mixed uses:~~

- (1) Notwithstanding the terms of any other section of this zoning code related to the calculation of density for residential or tourism uses, the respective densities for the PD and the GPD districts reflect the average overall density per acre of all properties included within such districts, including recreational areas, open space areas, road rights-of-way, wetland areas and other nonresidential lands. It is understood that under these zoning regulations, the density of development sites within the PUD PD and GPD may vary, such that the clustering of density on one or more parcels within a site is allowed.

AS PROPOSED BY ORDINANCE 2010-16 (as will appear in the code):

- (L) Planned Development District (PD), Gulf Planned Development District (GPD), and Negotiated Planned Development District (NPD)—Established for areas which may be developed pursuant to special conditions of a resolution or other legal instruments duly approved by the Town Commission pursuant to this chapter. In the event of any conflict between the provisions of this section 158.009 (L) and the provisions of any other section of the zoning code, the provisions of this section shall apply. The density for the respective Planned Development Districts reflect the following density schedule after considering vested rights issues:

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PUDs approved in a planned development district may include a mix of residential, tourism, nonresidential and commercial land uses as identified in the regulations of this chapter, including, but not limited to, community residential homes, and such regulations shall not be interpreted as

prohibiting mixed uses in duly approved PUDs. The following standards for regulating residential development in planned unit developments shall be used and is intended to accommodate planned unit developments with or without mixed uses:

- (1) Notwithstanding the terms of any other section of this zoning code related to the calculation of density for residential or tourism uses, the respective densities for the PD and the GPD districts reflect the average overall density per acre of all properties included within such districts, including recreational areas, open space areas, road rights-of-way, wetland areas and other nonresidential lands. It is understood that under these zoning regulations, the density of sites within the PD and GPD may vary, such that the clustering of density on one or more parcels within a site is allowed.

STAFF ANALYSIS:

By its very nature, Section 158.009 of the Town Zoning Code sets the general foundation for each of the zoning districts established in the Town of Longboat Key. Zoning Code sections applying to each specific zoning district should be consistent with the basic intent for the district as outlined in this section. The first part of the requested amendment for Section 158.009 clarifies what to do if in fact this consistency does not seem to exist.

In staff's opinion, the existing code's reference to a "mix of land uses" includes specific and generalized land uses as may be referred in the remaining portions of the Zoning Code. The proposed amendment to include the words "...residential, tourism, nonresidential and commercial..." merely clarifies this. The intent of planned unit developments is to establish the "zoning" for the Planned Unit Development (PUD), including allowable land uses and the mix of those uses.

The proposed amendments to Section 158.009 (L)(1) are policy clarifications. It was clear in previous versions of the Town's Comprehensive Plan that the clustering of units or density was an allowable development method. The clustering of units (residential and tourism) has been understood as acceptable, however, the Zoning Code is not absolutely clear in this regard. As requested, the Zoning Code would be amended to clearly allow "...the clustering of density on one or more parcels within a site..." As a policy clarification, the Planning and Zoning Board would be providing the Town Commission with a recommendation that specifically pertains to the future direction of the Town.

The remaining proposed changes in this section can be considered housekeeping in nature.

Chapter 158, Section 158.067, Description of districts and district policies, subsection (D)(3)(g):

EXISTING CODE LANGUAGE:

- (g) Departures from the code of ordinances which would otherwise be applicable to the planned unit development if the plan were not approved (or if in the PD, GPD or NPD district, departures from the requirement of a zoning district most similar to the use approved for the proposed project) and a statement of any existing hardship and/or a clear and specific statement of how the code departures are necessary or desirable to accomplish one or more of the stated purposes of the planned unit development as set forth in Section 158.065.

AS PROPOSED BY ORDINANCE 2010-16 (legislative format):

- (g) Departures from the code of ordinances ~~which would otherwise be applicable to the planned unit development if the plan were not approved (or if in the PD, GPD or NPD district, departures from the requirement of a zoning district most similar to the use approved for the proposed project)~~ and a statement of any existing hardship and/or a clear and specific statement of how the code departures are necessary or desirable to accomplish one or more of the stated purposes of the planned unit development as set forth in Section 158.065. For a PUD without an underlying zoning district (PD, GPD or NPD districts), departures shall be evaluated as from the requirement of the zoning district most similar to the use approved for the proposed project in addition to departures from other code requirements.

AS PROPOSED BY ORDINANCE 2010-16 (as will appear in the code):

- (g) Departures from the code of ordinances and a statement of any existing hardship and/or a clear and specific statement of how the code departures are necessary or desirable to accomplish one or more of the stated purposes of the planned unit development as set forth in Section 158.065. For a PUD without an underlying zoning district (PD, GPD or NPD districts), departures shall be evaluated as from the requirement of the zoning district most similar to the use approved for the proposed project in addition to departures from other code requirements.

STAFF ANALYSIS:

In staff's opinion, the requested code amendment does not change the intent of the code, but rather clarifies it and simplifies the text. It has been understood and consistent practice that proposed developments within a Planned Development (PD), Gulf Planned Development (GPD), or Negotiated Planned Development (NPD) district

utilize the zoning district most similar to the proposed project as its base for development regulations. Deviation from that base requires requests for departures. Additionally, proposed inconsistencies from other sections of the code which are not specific to any given zoning district also currently requires a request for a departure. The requested code changes continue to reflect this understanding as it applies to a PUD for a PD, GPD, or NPD zoned parcel.

Chapter 158, Section 158.071, *Proposed land uses*, subsection (A)(2):

EXISTING CODE LANGUAGE:

- (2) Where mixed uses, residential and nonresidential, are proposed, nonresidential development may be permitted to occupy up to five percent of the gross area of the planned unit development, except that commercial uses shall not be permitted in a PUD overlay unless they are permitted uses within the underlying zoning district.

AS PROPOSED BY ORDINANCE 2010-16 (legislative format):

- (2) Where mixed uses, residential and nonresidential, are proposed, ~~nonresidential~~ non-accessory commercial development may be permitted to occupy up to five percent of the gross area of the planned unit development, except that commercial uses shall not be permitted in a PUD overlay unless they are permitted uses within the underlying zoning district.

AS PROPOSED BY ORDINANCE 2010-16 (as will appear in the code):

- (2) Where mixed uses, residential and nonresidential, are proposed, non-accessory commercial development may be permitted to occupy up to five percent of the gross area of the planned unit development, except that commercial uses shall not be permitted in a PUD overlay unless they are permitted uses within the underlying zoning district.

STAFF ANALYSIS:

The 1979 Zoning Code was the last edition of the code that presented language that differs from that which currently exists. The change to the existing code reflected a change in policy which limited the amount of commercial development in a PUD to limiting the amount of nonresidential development in a PUD. The 1979 code in Section 7.54 states:

Proposed land uses shall not adversely affect surrounding development and shall be consistent with the town's development plan. In no case, however, where mixed uses, residential and nonresidential, are proposed,

shall commercial development occupy more than five (5) percent of the gross land area of the planned unit development. Mixed uses are not permitted unless they are allowable within the zoning district.

The proposed amendment essentially returns to the policy reflected in the 1979 Zoning Code limiting the amount of commercial development to five percent within a PUD, and distinguishing between accessory commercial and non-accessory commercial development in that calculation. With this amendment, a commercial restaurant within a residential structure that meets the accessory use criteria in the Zoning Code would not be included in the five percent calculation.

Additionally, the Zoning Code for the Town of Longboat Key does not consider tourism units to be commercial uses. As the underlying zoning, none of the commercial zoning districts allows for a tourism unit or use. Special provisions for allowing a tourism use on a commercial zoned piece of property were made through the adoption of Ordinance 2008-34 specifically for the distribution of the 250 tourism units, as approved by referendum. Without this ordinance tourism units would not be allowed at all on commercially zoned property.

As a policy change, the Planning and Zoning Board would be providing the Town Commission with a recommendation that specifically pertains to the future direction of the Town that may differ from past policy. Should the Board wish to recommend approval for a zoning text change that accomplishes the intent requested by the applicant, staff recommends the following language which staff believes is more clear:

Where mixed uses, residential and nonresidential, are proposed, ~~nonresidential~~ commercial development may be permitted to occupy up to five percent of the gross area of the planned unit development, except that commercial uses shall not be permitted in a PUD overlay unless they are permitted uses within the underlying zoning district. Accessory commercial land uses shall not be included in the calculation of the five percent maximum.

Chapter 158, Section 158.071, *Proposed land uses*, subsection (D):

EXISTING CODE LANGUAGE:

- (D) Once development rights, whether residential or non-residential, have been assigned to a parcel within a planned unit development, any subsequent request for new or additional residential density shall be considered a transfer of density under the governing resolutions and ordinances of the planned unit development. In no event shall the densities exceed the maximum densities set forth in this Code or the Comprehensive Plan.

AS PROPOSED BY ORDINANCE 2010-16 (legislative format):

- (D) Once development rights, whether residential or non-residential, have been assigned to a parcel within a planned unit development, any subsequent request for new or additional residential or tourism density shall be considered a transfer of density under the governing resolutions and ordinances of the planned unit development which shall require amendment of the outline development plan for the planned unit development in accordance with the procedures of section 158.067. In no event shall the average overall densities density of a planned unit development exceed the maximum average overall densities density set forth in this Code or the Comprehensive Plan for the planned unit development.

AS PROPOSED BY ORDINANCE 2010-16 (as will appear in the code):

- (D) Once development rights, whether residential or non-residential, have been assigned to a parcel within a planned unit development, any subsequent request for new or additional residential or tourism density shall be considered a transfer of density under the governing resolutions and ordinances of the planned unit development which shall require amendment of the outline development plan for the planned unit development in accordance with the procedures of section 158.067. In no event shall the average overall density of a planned unit development exceed the maximum average overall density set forth in this Code or the Comprehensive Plan for the planned unit development.

STAFF ANALYSIS:

It is staff's opinion that the proposed code amendments are clarifications to the specific section of the Zoning Code to better reflect the intent of the code amendment of the time as reflected in the legislative history. At the time, Jill Jeglie, the former Planning, Zoning and Building Director, recommended amendments to the code so that it was clear that even if you have unused density within a PUD, a request to amend the existing Outline Development Plan (ODP) to utilize the available units was required. Please find attached the legislative history for Ordinance 02-17.

Section 158.180 (B)(3) does not allow any of the 250 tourism units approved by the voters in the March 18, 2008, referendum to be distributed within the PD, NPD, and GPD zoning districts. Consequently, in order to increase the number of residential or tourism units within a PUD located in the PD, NPD, or GPD zoning district where there is no longer any approved undeveloped density remaining, the land owner/developer would have to request the additional units through the referendum process.

Chapter 158, Section 158.102, *Performance standards for site and development*, subsection (L):

EXISTING CODE LANGUAGE:

- (L) Supplemental Controls for Multifamily Residential or Tourism Uses. In reviewing the proposed site plan for 10 or more multifamily or tourism units, the town shall be guided by the following controls. The supplemental control relating to the maximum length of buildings, as provided for in paragraph (3) of this subsection, shall be taken as a mandatory requirement which cannot be waived by the Planning and Zoning Board. The remaining controls in this section shall be taken as mandatory requirements, except that the Town Commission may waive one or more of these requirements where it deems a hardship exists or such waiver is necessary to ensure a more strict adherence to those performance standards set forth herein, which are deemed most critical, notwithstanding any other provisions of this ordinance to the contrary.

In any development order approving a site plan, the Planning and Zoning Board shall make specific findings of facts constituting a hardship, if a hardship is found to exist, and shall make specific findings of any facts constituting the basis for a waiver of these supplemental controls and shall specifically state the performance standards as set forth herein which are deemed most critical and are being more strictly adhered to by granting the waiver.

The provisions of Section 158.029 shall apply in determining whether a waiver shall be granted upon a finding that a hardship exists, except that the Planning and Zoning Board, rather than the Zoning Board of Adjustment, shall determine whether a hardship exists or not. The facts forming the basis for the grant of a waiver under the provisions of this section shall be specifically set forth in the development order.

AS PROPOSED BY ORDINANCE 2010-16 (legislative format):

- (L) Supplemental Controls for Multifamily Residential or Tourism Uses. In reviewing the proposed site plan for ten or more multifamily or tourism units, the Town shall be guided by the following controls. The supplemental control relating to the maximum length of buildings, as provided for in Subsection (3) of this section, shall be taken as a mandatory requirement which cannot be waived by the Town Commission. The remaining controls in this section shall be taken as mandatory requirements, except that the Town Commission may waive one or more of these requirements where it ~~deems~~ determines a hardship exists or where it determines such waiver is necessary to ensure a more

strict adherence to those performance standards set forth herein, which are deemed most critical, notwithstanding any other provisions of this ordinance to the contrary. Notwithstanding any provision of this section to the contrary, for properties located in a planned unit development, the Town Commission may consider and grant a departure, under the standards for a requested departure as outlined in Section 158.067 (D)(3)(g), for one or more of the supplemental controls of this section 158.102 (L), including subsection (3) for the maximum length of buildings.

In any development order approving a site plan, the Town Commission shall make specific findings of facts constituting a hardship, if a hardship is found to exist, and shall make specific findings of any facts constituting the basis for a waiver of these supplemental controls and shall specifically state the performance standards as set forth herein which are deemed most critical and are being more strictly adhered to by granting the waiver.

The provisions of Section 158.029 shall apply in determining whether a waiver shall be granted upon a finding that a hardship exists, except that the Town Commission, rather than the Zoning Board of Adjustment, shall determine whether a hardship exists or not. The facts forming the basis for the grant of a waiver under the provisions of this section shall be specifically set forth in the development order.

AS PROPOSED BY ORDINANCE 2010-16 (as will appear in the code):

- (L) Supplemental Controls for Multifamily Residential or Tourism Uses. In reviewing the proposed site plan for ten or more multifamily or tourism units, the Town shall be guided by the following controls. The supplemental control relating to the maximum length of buildings, as provided for in Subsection (3) of this section, shall be taken as a mandatory requirement which cannot be waived by the Town Commission. The remaining controls in this section shall be taken as mandatory requirements, except that the Town Commission may waive one or more of these requirements where it determines a hardship exists or where it determines such waiver is necessary to ensure a more strict adherence to those performance standards set forth herein, which are deemed most critical, notwithstanding any other provisions of this ordinance to the contrary. Notwithstanding any provision of this section to the contrary, for properties located in a planned unit development, the Town Commission may consider and grant a departure, under the standards for a requested departure as outlined in Section 158.067 (D)(3)(g), for one or more of the supplemental controls of this section 158.102 (L), including subsection (3) for the maximum length of buildings.

In any development order approving a site plan, the Town Commission shall make specific findings of facts constituting a hardship, if a hardship is found to exist, and shall make specific findings of any facts constituting the basis for a waiver of these supplemental controls and shall specifically state the performance standards as set forth herein which are deemed most critical and are being more strictly adhered to by granting the waiver.

The provisions of Section 158.029 shall apply in determining whether a waiver shall be granted upon a finding that a hardship exists, except that the Town Commission, rather than the Zoning Board of Adjustment, shall determine whether a hardship exists or not. The facts forming the basis for the grant of a waiver under the provisions of this section shall be specifically set forth in the development order.

STAFF ANALYSIS:

The bulk of the proposed Zoning Code amendment changes the criteria by which the deviation from the supplemental control standards found in Section 158.102 (L) can be made for a Planned Unit Development. Currently the criteria for a deviation (waiver) are found in Section 158.029, which are the variance criteria utilized by the Zoning Board of Adjustment in reviewing variance requests. The variance criteria as found in 158.029 are the following:

- (1) Special conditions and circumstances exist which are peculiar to the land, structure, or building involved and which are not applicable to other lands, structures, or buildings in the same zoning district.
- (2) The special conditions and circumstances do not result from the actions of the applicant.
- (3) Granting the variance requested will not confer on the applicant any special privilege that is denied by this chapter to other lands, buildings, or structures in the same zoning district.
- (4) Literal interpretation of the provisions of this chapter would deprive the applicant of rights commonly enjoyed by other properties in the same zoning district under the terms of this chapter and would work unnecessary and undue hardship on the applicant.
- (5) The variance granted is the minimum variance that will make possible the reasonable use of the land, building, or structure.
- (6) The grant of the variance will be in harmony with the general intent and purpose of this chapter, and the variance will not be injurious to the area involved or otherwise detrimental to the public welfare.

Additionally, the proposed amendment allows for flexibility in the supplemental control standard for maximum lengths of buildings found in Section 158.102 (L)(3). Currently, this standard cannot be waived, nor can a departure be granted. As proposed, the maximum lengths of buildings within a PUD can be granted a departure. However, the

standard would still strictly apply for developments with 10 or more residential or tourism units if they were not approved for development through the ODP process.

The supplemental controls found in Section 158.102 (L) were put into place to control the mass and scale of developments beyond the limitations of Section 158.145 or any other section of the code that might apply. Specifically, the maximum length of buildings was controlled to prevent a wall of buildings that would negatively impact the visual corridors on the island. The proposed code amendment would provide flexibility for the Town Commission where flexibility currently does not exist during the ODP process. However, with this increased flexibility, the Town Commission may consider a departure from land development regulations for PUDs, and the standard for a departure will be less stringent than the standard for a waiver. The combined impact of the requested flexibility with the enforcement of other Zoning Code requirements including, but not limited to, setbacks and open space become all the more important.

As a policy change, the Planning and Zoning Board would be providing the Town Commission with a recommendation that specifically pertains to the future direction of the Town that may differ from past policy. The remaining proposed changes in this section can be considered housekeeping in nature.

Chapter 158, Section 158.102, *Performance standards for site and development*, subsection (L)(3):

EXISTING CODE LANGUAGE:

- (3) Maximum length. No portion of any individual building shall extend beyond a line drawn from the front lot line 30 degrees either side of a line centered on the building and perpendicular to the front lot line.

AS PROPOSED BY ORDINANCE 2010-16 (legislative format):

- (3) Maximum Length. No portion of any individual building shall extend beyond a line drawn from the front lot line 30 degrees either side of a line ~~centered on~~ through the building and perpendicular to the front lot line.

AS PROPOSED BY ORDINANCE 2010-16 (as will appear in the code):

- (3) Maximum Length. No portion of any individual building shall extend beyond a line drawn from the front lot line 30 degrees either side of a line through the building and perpendicular to the front lot line.

STAFF ANALYSIS:

Currently, the existing Zoning Code does not provide sufficient detail on where the perpendicular line to the front lot line is to be drawn. The code states that the

perpendicular line should be "centered" on the building, but in many cases a building may be asymmetrical or skewed to the front lot line. Consequently, the correct placement of the perpendicular line can be questioned. As proposed the more general term "through" will eliminate the lack of clarity, and will result in more design flexibility. However, the overall "length" of the building may change depending on the way it is viewed.

Chapter 158, Section 158.132, *Tourism uses*, subsection (B):

EXISTING CODE LANGUAGE:

- (B) Tourism Use of property for remuneration is allowed within T-3 and T-6 Zoning Districts or as a permitted use in a PD within the Town of Longboat Key.

AS PROPOSED BY ORDINANCE 2010-16 (legislative format):

- (B) Tourism Use of property for remuneration is allowed within T-3 and T-6 Zoning Districts or as a may be permitted use in a ~~PD~~ planned unit development within the Town of Longboat Key.

AS PROPOSED BY ORDINANCE 2010-16 (as will appear in the code):

- (B) Tourism Use of property for remuneration is allowed within T-3 and T-6 Zoning Districts or as may be permitted in a planned unit development within the Town of Longboat Key.

STAFF ANALYSIS:

In staff's opinion, the requested code amendment can be considered housekeeping in nature.

LIVINGSTON, PATTERSON, STRICKLAND & SIEGEL, P.A.

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February 24, 2010

The Honorable Lee Rothenberg, Mayor
and Members of Town Commission
Town of Longboat Key
501 Bay Isles Road
Longboat Key FL 34228

Re: Key Club Outline Plan Development Application

Dear Mayor Rothenberg and Commissioners:

Key Club Associates, Limited Partnership, and Islandside Development, LLC ("Key Club") filed an application for an Outline Development Plan amendment for Longboat Key Club & Resort, Islandside, in June of 2009. This is the largest and most complex redevelopment or development proposal on Longboat Key in decades, and is the first of this magnitude to be considered under the Town's current zoning code.

The application has met with challenges by opponents based on a number of interpretations and applications of the Town's zoning code. These challenges, both before the Planning & Zoning Board and this Commission, have involved hours upon hours of legal arguments, and pages upon pages of legal memoranda.

These challenges have, in effect, been a stress test for the Town's zoning code. Areas of the code have been revealed as needing improvement due to conflicting or ambiguous provisions, among other things. We submit that it would be in the best interest of everyone for these areas to be amended now so that final action on the Club's application will rest on a foundation that will not invite protracted legal challenge by any party.

We request that the Town Commission initiate the procedures outlined in Section 158.030 of the Zoning Code by referring the provisions in question to the Planning & Zoning Board for hearings and recommendation of proposed changes to the Town Commission.

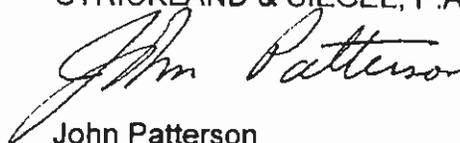
The Honorable Lee Rothenberg
February 24, 2010
Page -2-

Town of Longboat Key Commissioners

We thank you, on behalf of the Key Club and the many supporters of this redevelopment project, for your many hours of time and attention to this application, and hope you will find this request to be constructive and deserving of appropriate action.

Very truly yours,

LIVINGSTON, PATTERSON
STRICKLAND & SIEGEL, P.A.

A handwritten signature in black ink that reads "John Patterson". The signature is written in a cursive style with a large, stylized initial "J".

John Patterson

JP/gp

cc: Mr. Bruce St. Denis
Ms. Monica Simpson
David P. Persson, Esq.
Nancy E. Stroud, Esq.

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**LEGISLATIVE HISTORY FOR
SECTION 158.071(D)**

7.53 *Residential Density.* Planned unit developments shall have densities no greater than that permitted for a PUD within the district in which it is located as noted below:

<i>Districts</i>	<i>Maximum PUD Density</i>
R-1B	2 dwelling units/acre
R-1	3 dwelling units/acre
R-1S	4 dwelling units/acre
R-2	6 dwelling units/acre
R-3	8 dwelling units/acre
RC	11 dwelling units/acre
PD	4 dwelling units/acre
GPD	6 dwelling units/acre

In any event a planned unit development shall be consistent with the development plan for the town and the zoning district in which it is located in respect to design compatibility and height regulations. (Ord. No. 76-26, § 19, 7-21-76; Ord. No. 78-19, § 51, 1-23-79)

7.54 *Land Use.* Proposed land uses shall not adversely affect surrounding development and shall be consistent with the town's development plan. In no case, however, where mixed uses, residential and nonresidential, are proposed, shall commercial development occupy more than five (5) percent of the gross area of the planned unit development. Mixed uses are not permitted unless they are an allowable use within the zoning district. (Ord. No. 78-19, § 52, 1-23-79)

7.60 Design standards for reviewing planned unit developments.

The town commission shall approve the planned unit development only if it finds that the planned unit development satisfies all of the requirements as set forth in section 6.70, "Site plan review" and the following standards. (Ord. No. 78-19, § 53, 1-23-79)

7.61 General Standards.

- (a) The planned unit development shall be consistent in all respects with the regulations governing planned unit developments as set forth within this ordinance.
- (b) The planned unit development plan shall be consistent in all respects with the regulations governing planned unit developments as set forth within this ordinance.
- (c) The planned unit development shall provide for an effective and unified treatment of the development possibilities on the project site making appropriate provision for the preservation of scenic features and amenities of the site and the surrounding areas.

ORDINANCE 02-17

AN ORDINANCE AMENDING CHAPTER 158: ZONING CODE OF THE CODE OF ORDINANCES OF THE TOWN OF LONGBOAT KEY, FLORIDA, AMENDING SECTION 158.071, PROPOSED LAND USES, AMENDING SECTION 158.071(B) RELATING TO APPLICATIONS FOR NEW PLANNED UNIT DEVELOPMENTS OR LANDS TO BE ADDED TO EXISTING PLANNED UNIT DEVELOPMENTS; BY ADDING A NEW SUBSECTION (D) THAT PROVIDES CLARIFICATION OF THE TRANSFER OF DENSITIES WITHIN PLANNED UNIT DEVELOPMENTS; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL OF ALL ORDINANCES IN CONFLICT HEREWITH; PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the residential densities are set forth within the Town's Comprehensive Plans, the Town's Zoning Code and resolutions and ordinances adopted by the Town for the individual Planned Unit Developments;

WHEREAS, it is necessary and desirable to clarify densities and intensities of Planned Unit Developments that have been developed; and

WHEREAS, the Planning and Zoning Board finds that the subject Zoning Code amendment is consistent with the Town of Longboat Key Comprehensive Plan;

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN OF LONGBOAT KEY, FLORIDA, THAT:

Section 1. Section 158.071, Proposed land uses., Subsection (B) is hereby amended to read as follows:

(B) In cases where land is proposed for a planned unit development, or to be included within an existing planned unit development. and where the existing zoning districts comprising the land area of the proposed planned unit development are both residential and nonresidential, the following will apply:

Section 2. Section 158.071, Proposed land uses, is hereby modified to add Subsection (D):

(D) Once development rights, whether residential or non-residential, have been assigned to a parcel within a planned unit development, any subsequent request for new or additional residential density shall be considered a transfer of density under the governing resolutions and ordinances of the planned unit development. In no event shall the densities exceed the maximum densities set forth in this Code or the Comprehensive Plan.

Section 2. If any section, subsection, sentence, clause or provision of this Ordinance is held invalid, the remainder of the Ordinance shall not be affected.

Section 3. All ordinances or parts of ordinances in conflict herewith shall be and the same are hereby repealed.

Section 4. This Ordinance shall take effect upon second reading in accordance with Law and the Charter of the Town of Longboat Key.

Passed on the first reading and public hearing this 2nd day of December 2002

Adopted on the second reading and public hearing this 6th day of January 2003.

ATTEST:

Donna H. Spencer
Donna H. Spencer, Town Clerk

John R. Redgrave
John R. Redgrave, Mayor

TOWN OF LONGBOAT KEY
PLANNING AND ZONING BOARD
MINUTES OF SPECIAL MEETING

OCTOBER 29, 2002

The special meeting of the Planning and Zoning Board was called to order at 9:00 a.m.

Members Present: Chairman Lee, Vice-Chairman Rickard, Secretary Rothenberg, Members Diamant, Drake, Drohlich, Karsh, Metz, Webster

Also Present: David Persson, Town Attorney; Jill Jeglie, Planning, Zoning & Building Director; Monica Daigle, Planner; Donna Chipman, Administrative Assistant I

AGENDA ITEM #1

**PUBLIC HEARING: Ordinance 02-17, Amendment to Chapter 158
Section 158.071, Proposed Land Uses**

Ms. Jeglie stated that during the 6-18-02 P&Z Board meeting, the Board reviewed a proposal for a Planned Unit Development (PUD) amendment, and during that meeting, there was a question as to what constituted a transfer of density. She said the agenda materials for this meeting included a report from the Town Attorney's office concerning the PUDs, GPDs and available density. She noted that part of that research showed that it was very clear that in the Land Intensity Schedules in both those districts, there was a requirement that there be no transfer of density. Ms. Jeglie stated that proposed Ordinance 02-17 provided clarification of densities and intensities, and what was a transfer within a PUD. She pointed out that once development rights were assigned, whether it be residential or non-residential, and the development was substantially constructed, any subsequent request for additional residential density, shall be considered a transfer of density under the ordinance. Ms. Jeglie commented that the ordinance had been workshopped by the Town Commission at their 10-17-02 workshop.

Mr. Rothenberg asked if the purpose of the ordinance was to 'enshrine' the concept that there was no transfer of density from one parcel to another. Ms. Jeglie responded that the ordinance defined what a transfer of density was; the PD and GPD documents stated there shall be no transfer of density. She said

they were not changing the original documents and their intent, but only defining what a transfer would be. Mr. Rothenberg stated then the ordinance was not intended to state there would not be a transfer of density. Ms. Jeglie stated the ordinance did not state that, but only defined what was a transfer of density. Mr. Rickard commented that the prohibition of transfer was listed in several other areas of the Code.

Mr. Rothenberg stated he was in favor of the ordinance, but felt the Board should amend the ordinance to clearly prohibit the transfer of density. Ms. Jeglie stated that would be a policy decision for the Board; however, the language currently existed in the documents since their inception. She said the ordinance was to codify what a transfer was in all PUDs, because not all PUDs had a prohibition of transfer. Mr. Rothenberg commented that if not all the documents included the prohibition, was that not a reason to prohibit it. Ms. Jeglie responded that her intention was to clarify what a transfer was, but if the Board wished to take a stronger stance, then staff could amend the ordinance.

Mr. Rothenberg had several revisions that he wished to suggest. In the first line, the ordinance stated, "once development rights, whether residential or non-residential..."; he would suggest the words 'non-residential' be clarified to be more specific. Also, in the second line was the word "substantially", and in a legal document, he felt "uneasy" about using the word because he was not sure of its definition; what was considered substantial. Further, in the third line, it stated, "...shall be considered a transfer of density"; why not say it "is" a transfer of density". Ms. Jeglie stated the ordinance was stating whether it was residential or non-residential; if someone was asking for density in an area that has been developed, then it was considered a transfer of density. She said subsequently they would need to review the PD/GPD/NPD documents, and if it stated they could not have a transfer of density, then it would be difficult unless the documents were amended. The ordinance was only codifying what the Board had requested concerning transfers. Mr. Rothenberg stated that he felt the wording could be "tightened up", and he would feel more comfortable if the ordinance clearly prohibited the transfer of density.

Mr. Persson stated the ordinance was not to prohibit the transfer of density. He said about a year ago questions were raised as to how the PUDs could redevelop and when a referendum would be required. He explained that the densities authorized in the 1984 Comprehensive Plan, which was what the referendum was tied to, were established in the Town Charter. He commented the first issue was to determine how many units were approved, which staff had done. He said another issue was how the Town would handle a request for redevelopment or development within the PUD. There was a 1999 opinion from Marty Black, previous Planning, Zoning & Building Director, who determined that the underlying density for the PD district was 3.26 dwelling units per acre. He said since that time, Ms. Jeglie had researched the issue by reviewing the Land

Intensity Schedules and the approvals within the PUD. She had determined that the P&Z Board and Town Commission had assigned the densities as the projects were developed, and in the Land Intensity Schedule, there were several cases where zero density was assigned. He said Ms. Jeglie had reached a different conclusion than Mr. Black, and when there were two different interpretations, the suggestion would be to prepare an ordinance, which codifies one of the decisions. He noted that Ordinance 02-17 would codify Ms. Jeglie's interpretation.

Mr. Rothenberg asked Mr. Persson to comment on the sentence, which stated, "In no event shall the densities exceed the maximum set forth in the Town Code or Comprehensive Plan". He felt the statement was redundant, and did it 'open the door' to unintended consequences. Mr. Persson replied it was redundant; it was a reminder that the Town could not violate the Comprehensive Plan or Town Charter.

Mr. Diamant stated once the property was built, the surplus units would be considered a transfer of density. Mr. Persson used Lighthouse Point as an example. He said it originally had a large residential density assigned to it, but it was amended down, through a request from the developer, to single family residences. The outline development plan and land intensity schedule were amended, and as a result, the developer could not go back and construct the additional units, because it would be considered a transfer. He said no one had a right to go back and use something that had been amended without approval from the Town.

Mr. Lee felt the ordinance defined what a transfer of density was, but left, as is, all the regulations and ordinances and what they currently stated concerning transfers of densities. Mr. Persson replied correct.

Shane Eagan, 444 Gulf of Mexico Drive, stated he was president of the Shannon Resort & Club Group, which was the manager of Key Club Associates, and also representing Key Club Associates as the principal. He said most of his questions had been answered during the presentation, but asked what was the necessity of adopting the proposed ordinance at this time. Mr. Lee stated there were two inconsistent opinions from Town staff, and the Board was trying to resolve the inconsistency through adoption of Ordinance 02-17. Mr. Eagan questioned who made the determination to codify staff's interpretation. Mr. Lee replied the P&Z Board. Mr. Eagan asked why two ordinances, representing both opinions, were not submitted for review. Mr. Lee stated that the Board had received both opinions, and it had been recommended that the Board resolve the inconsistency through the ordinance. He said the ordinance adopted Ms. Jeglie's opinion, but the Shannon Group's legal rights would remain the same.

Mr. Eagan also questioned the ambiguity of the definition of "substantially constructed". Mr. Lee explained that the word "substantial" was an ordinary, common expression in legal drafting, and when legislating, they used general words and allow them to be applied in specific cases, on a case-by-case basis.

Mr. Eagan stated that approximately a year ago, in an effort to work with the Town, they had met with Town staff to review a proposal to substantially improve Longboat Key Club facilities. He wished to state for the record that they viewed Ordinance 02-17 to be a response to their 'good faith' discussions with staff, and a prohibition of their ability to exercise their property rights.

No one else wished to be heard, and the hearing was closed.

MR. DROHLICH MOVED THE P&Z BOARD RECOMMEND APPROVAL OF ORDINANCE 02-17. MR. KARSH SECONDED THE MOTION.

Mr. Rothenberg stated he did not oppose the intent of the ordinance, but felt the Board should refer the ordinance back to staff to "tighten up" the wording to remove any possible ambiguities, redundancies or anything not necessary; change the wording to make the intent clear. Mr. Lee asked if Mr. Rothenberg was concerned with the word "substantial", or did he feel Mr. Eagan's rights would be compromised. Mr. Rothenberg replied no; he felt Mr. Eagan's rights were protected by other ordinances, but he felt non-residential might be clarified, and a better word may be found for 'substantially'. He said the words "shall be considered a transfer" could be changed. Mr. Lee stated he believed it was the Board's intent that no one's legal rights should be changed, in any respect, by the ordinance.

Mrs. Webster asked how Mr. Rothenberg would change the word "substantially" to make it clear. Mr. Rothenberg stated he was not sure he could answer because he was not an attorney, but one way would be to remove the word 'substantial', although it would still leave it open to interpretation. He said another way would be to say, "substantially completed". Mr. Lee stated that it was fundamental in law that when you interpret any legal document, that if the word 'substantially' was not included, you would read the document as if it was in there.

MOTION CARRIED ON ROLL CALL VOTE: DIAMANT, AYE; DRAKE, NO; DROHLICH, AYE; KARSH, AYE; LEE, AYE; METZ, AYE; RICKARD, AYE; ROTHENBERG, NO; WEBSTER, NO.

Mr. Metz left the meeting at this time.

Regular Workshop (Cont.)

9-19-02, Page 3

There was consensus for appointments to the Citizens Relations Committee be forwarded to the 11-04-02 Regular Meeting.

9. Request to Hold Wedding on the Beach - Stacey Haag at Broadway Street Public Beach Access, November 16, 2002

There was consensus to forward the request to hold a wedding on the beach to the 11-04-02 Consent Agenda.

10. Proposed Ordinance 02-17, Limiting Density Transfers in Planned Developments

Attorney Persson discussed density within the Bay Isles Planned Unit Development (PUD); historically land intensity schedules appeared to be negotiated and assigned; recommended density change requests be submitted after property development.

There was consensus to forward the proposed Ordinance 02-17 to the 11-04-02 Regular Meeting for first reading.

11. Water Planning Alliance

Manager St. Denis said Island water supplies and the Water Planning Alliance coincided; the Water Planning Alliance planned to conduct a Regional System Planning and Engineering Study; funding would be assessed by four counties, based on population; recommended the resolution be forwarded to the 11-04-02 Regular Meeting.

There was consensus to forward the proposed Resolution to the 11-04-02 Regular Meeting.

Town Commission Comments

12. City of Sarasota and Sister Cities Meeting

Mayor Redgrave attended the 100th Anniversary of the City of Sarasota; Sister Cities International participated in the event; hosted by the City of Sarasota.

13. No Wake Zone (North End of Longboat Key)

Commissioner Whatmough inquired about the status of no-wake zone signage; Manager St. Denis said the report would be rescheduled because Police Chief Kintz was unable to attend the workshop.

14. State Revolving Fund Finance Charges

Commissioner Whatmough inquired about finance charges within the State Revolving Fund, Water Facilities and Capital Finance Report (Section 5); Laura Andrews, Camp, Dresser, McKee Project Director reported that finance charges included capitalized interests, debt service fees, and a two-percent service fees; charges were paid on a perpetual basis.

15. Southwest Florida Water Management District (SWFWMD) Report

Commissioner Legler attended the 9-19-02 SWFWMD Meeting; water availability, distribution and storage costs were discussed.

Regular Meeting (Cont.)

12-02-2002, Page 7

No one else wished to be heard and the public hearing was closed.

It was moved by Legler, seconded by Kerwin, to pass Ordinance 02-09 on first reading and public hearing. Motion carried 4-3 on roll call vote: Legler, aye; Kerwin, aye; Redgrave, nay; Johnson, aye; Lenobel, aye; Patterson, nay; Whatmough, nay.

Ordinance 02-09 was forwarded for second reading and public hearing at the 1-6-03 Regular Meeting.

→ 7. Ordinance 02-17, Clarifying Densities and Intensities in Planned Developments
Ordinance 02-17 was placed on first reading and public hearing by title only.

It was moved by Kerwin, seconded by Johnson, to pass Ordinance 02-17 on first reading and public hearing.

Pursuant to published notice, the public hearing was opened. No one wished to be heard and the public hearing was closed.

Attorney Persson discussed requirements of Ordinance 02-17; advised the lack of additional density within an existing PUD would require applicants to submit a land intensity schedule amendment request; advised Ordinance 02-17 incorporated additional requirements.

Mayor Redgrave reported a request to be heard subsequent to closing the public hearing was submitted; asked if the Commission wanted to allow the request to be heard.

There was consensus to allow the request to be heard and reopen the public hearing.

Pursuant to published notice, the public hearing was reopened.

Matt Walsh, 1090 Bogey Lane, asked why Ordinance 02-17 needed to be adopted; Attorney Persson advised that Ordinance 02-17 would clarify requirements and guidelines for application submission.

No one else wished to be heard and the public hearing was closed.

Motion carried unanimously on roll call vote: Kerwin, aye; Johnson, aye; Lenobel, aye; Redgrave, aye; Legler, aye; Patterson, aye; Whatmough, aye.

Ordinance 02-17 was forwarded for second reading and public hearing at the 1-06-03 Regular Meeting.

Regular Meeting (Cont.)

01-06-2003, Page 10

→ **3. Ordinance 02-17, Clarifying Densities and Intensities in Planned Developments**
Ordinance 02-17 was placed on second reading and public hearing by title only.

It was moved by Legler, seconded by Johnson, to adopt Ord. 02-17 on second reading and public hearing.

Pursuant to published notice, the public hearing was opened.

Attorney Persson advised if Ord. 02-17 were adopted a referendum would not be required.

No one else wished to be heard, and the public hearing was closed.

Motion carried unanimously on roll call vote: Legler, aye; Johnson, aye; Redgrave, aye; Lenobel, aye; Kerwin, aye; Whatmough, aye; Patterson, aye.

4. Ordinance 02-18, Mixed Use Zoning Overlay District
Ordinance 02-18 was placed on second reading and public hearing by title only.

It was moved by Lenobel, seconded by Patterson, to adopt Ord. 02-18 on second reading and public hearing.

Pursuant to published notice, the public hearing was opened.

Alan L. Moore, 800 Broadway Street, stated conversations were held with a number of Longboat Key business owners and they wished for him to express their excitement on the approval of this Ordinance.

Michael Lendrihas, 691 Tarawitt Drive, stated the Commission should be careful since this created additional residential use on Longboat Key.

No one else wished to be heard, and the public hearing was closed.

Commissioner Whatmough expressed concern with heights of mixed-use structures and the location of the structure within the property. He explained a six-unit condominium could be built on an acre of land without development of the commercial portion of the property. He noted this could affect density, water use, and transportation issues. He questioned whether Ord. 02-18 met the needs of Longboat Key, if property would be devalued, or whether existing structures would be complemented. He urged the Commission to "step back" and examine this issue slowly.

Commissioner Kerwin pointed out Ord. 02-18 should be amended to allow small parcels three options: 1) stay commercially zoned; 2) change to Mixed-Use as set forth in Ord. 02-18; 3) rezone to residential with a lower density. Attorney Persson advised an amendment could be drafted; however, he questioned the deadline date for the ballot question.

LIVINGSTON, PATTERSON, STRICKLAND & SIEGEL, P.A.

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March 16, 2010

Planning, Zoning & Building Department
Town of Longboat Key
ATTENTION: MS. MONICA SIMPSON, DIRECTOR
501 Bay Isles Road
Longboat Key FL 34228

LBK

MAR 16 2010

PLANNING
& ZONING

Re: Zoning Code Amendments

Dear Monica:

By letter dated February 24, 2010, Key Club Associates, Limited Partnership, and Islandside Development, LLC ("Key Club") requested that the Town Commission initiate the procedures outlined in Section 158.030(A)(1) of the Zoning Code with respect to various sections of the Code involved in Key Club's application for an Outline Development Plan amendment. On March 1, 2010, upon motion being made by Commissioner Brown and duly seconded, the Town Commission voted to initiate code changes pursuant to Section 158.030(A)(1) limited to the code sections identified at the hearing, which included Sections 158.009, 158.071, 158.102(L), and 158.132. The motion that was carried also made it clear that other sections could be considered by the Planning & Zoning Board, as well as the Town Commission, if they were related to the code sections identified.

In order to facilitate these proceedings, the Key Club submits the enclosed materials and Memorandum from me to you dated March 3, 2010, in furtherance of its request to the Town Commission.

A check for \$3,000.00 made payable to the Town of Longboat Key for the deposit is enclosed with this letter.

Very truly yours,

LIVINGSTON, PATTERSON,
STRICKLAND & SIEGEL, P.A.



John Patterson

JP/gp

Enclosure

cc: Key Club Associates, Limited Partnership w/enc.
Islandside Development, LLC w/enc.
David P. Persson, Esq. w/enc.
Nancy E. Stroud, Esq. w/enc.

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MEMORANDUM

FROM: John Patterson

TO: Monica Simpson, Director of Planning, Zoning and Code Enforcement, Town of Longboat Key

RE: Amendments to the Town of Longboat Key Zoning Code

DATE: March 16, 2010

During public hearings on proposed amendments to the Outline Development Plan (“ODP”) for the Longboat Key Club & Resort, certain ambiguities and conflicts among various provisions of the Town of Longboat Key’s Zoning Code became apparent. On March 1, 2010, the Town of Longboat Key Commission initiated the process of amending the Zoning Code by authorizing the Town Planning & Zoning Board to conduct public hearings on code amendments to address these ambiguities and internal conflicts. To assist the Town in evaluating the proposed amendments, the following information is provided.

1. The sections of the Town Zoning Code proposed to be amended are suggested in the draft ordinance attached hereto as Exhibit “A”.
2. The proposed amendment language is indicated on Exhibit “A”. Additions to the Zoning Code are indicated with underlining; deletions are indicated with ~~strikethrough~~.
3. The Zoning Code should be amended to eliminate the ambiguities and internal code conflicts discussed below. The hearings on the Longboat Key Club & Resort ODP application subjected the Zoning Code to an intense level of scrutiny and as a result, ambiguous and conflicting provisions have been identified. Clarification of the code will assist the Town staff in evaluating applications and provide greater certainty to land owners as to the application of the code to their properties. Greater clarity in the code will also reduce controversy during public hearings regarding the intent and proper application of various code sections.

4. The existing code is not invalid or inappropriate, but contains provisions that can be viewed as ambiguous or in conflict with other code provisions. Although the Zoning Code may be interpreted in a manner which eliminates these problems, it is advisable to amend the code to provide greater clarity, rather than rely on interpretations to resolve the ambiguities and conflicts. It is well established in Florida law that "Zoning regulations are in derogation of private rights of ownership and should be interpreted in favor of the property owner and the words used should be given their broadest meaning absent a clear intent to the contrary." *Hoffman v. Brevard County Board of Commissioners*, 390 So.2d 445 (Fla. 5th DCA 1980) and *Rinker Materials Corp. v. City of North Miami*, 286 So.2d 552 (Fla. 1973).

5. The proposed Zoning Code amendments are all consistent with and implement goals, objectives and policies of the Town's Comprehensive Plan. None of the proposed amendments are inconsistent with the Comprehensive Plan. In general, all of the proposed amendments of the Zoning Code as set forth below are consistent with the following goals, objectives and policies of the Comprehensive Plan:

FUTURE LAND USE ELEMENT

GOAL 1

To preserve and enhance the character of the Town of Longboat Key by the following: 1) ensuring that the location, density, intensity and character of land uses are responsive to the social and economic needs of the community and are consistent with the support capabilities of the natural and manmade systems; and, 2) maintaining an environment that is conducive to the health, safety, welfare, and property values of the community.

OBJECTIVE 1.1

The Town will manage land development through the preparation, adoption implementation, and enforcement of land development regulations.

Policy 1.1.1

The Town has adopted land development regulations, which address the location and extent of land uses, in accordance with the Future Land Use Map and the policies and descriptions of types, sizes, densities and intensities of land uses contained in this element.

Policy 1.1.2

The Town will utilize its land development regulations to implement the adopted Comprehensive Plan, which at a minimum will:

- 2) **Regulate the use of land and surface waters**

Policy 1.1.4

As required or as necessary, the Town will review and update its land development regulations implementing this Comprehensive Plan, which will be based on and consistent with the standards for land use densities and intensities, as indicated on Table 1.

The proposed Zoning Code amendments amend the existing Zoning Code to eliminate ambiguities and conflicts. This purpose is consistent with the above directives

to the Town to adopt and update land development regulations to manage lands within the Town. The manner in which the individual Zoning Code amendments are consistent with other provisions of the Comprehensive Plan are discussed below.

6. The reasons for the proposed Zoning Code amendments are as follows:

A. Section 1 of Exhibit "A" proposes amendments to section 158.009 (L) of the Zoning Code. This section describes the nature of the planned unit development ("PUD") districts and policies which apply in these districts. This section specifically states that "PUDs may include a mix of land uses". This language does not limit the types of uses allowed in a PUD. During the ODP hearings, it was argued that various sections of the Code, including sections 158.127(C), 158.006 ("Accessory Use") and 158.132(B) either prohibit or restrict uses in a PUD such that the proposed tourism units, spa, restaurant, fitness center and meeting center are not allowed in the Gulf Planned Development ("GPD") district. This is an incorrect interpretation of the Code. Under section 158.065, the purpose of a PUD is to encourage flexibility in the design and development of land in order to promote its most appropriate use. In the past, PUDs have been approved in the Town to allow residential, hotel, restaurant, office and resort recreational uses in the Islandside GPD and to allow residential, restaurant, retail, marina and resort recreational uses in the Bay Isles Planned Development ("PD") district. The proposed amendment clarifies the intent of the PUD to allow "residential, tourism, nonresidential and commercial land uses" in PUDs, notwithstanding any other provision of the Code which could be construed differently.

Section 158.009(L) also includes specific language as to how density within a PUD is to be determined. This section allows density to be calculated based on "the average overall density per acre of all properties included within such districts, including recreational areas, open space areas, road rights-of-way, wetland areas and other nonresidential lands." (underlining added). During the ODP hearings, it was argued that several sections of the Zoning Code either override this specific language of 158.009(L) or impose additional restrictions on the calculation of density in PUDs. For example, it was argued that the section 158.006 definitions of "Density, Maximum Gross Residential" and "Gross Land Area" exclude noncontiguous areas and nonresidential land from density calculations in PUDs, unless such areas are "contiguous areas under unity of title which are stipulated for use as ... recreational lands for the primary use of on site residents." There is no such limitation in section 158.009(L) for PUDs. It was argued that under sections 158.143 and 158.144, "recreational lands" could not be included in the calculation of PUD density, despite the specific language of section 158.009(L) allowing "recreational lands" to be included in the calculation of PUD density. It was also argued that under section 158.137(B), the square footage of commercial uses should be converted to equivalent residential density and subtracted from the allowable density in a PUD. Section 158.137(B) has never been applied to over-ride the specific density policies for PUDs found in section 158.009(L). To clarify that the density policies of section 158.009(L) supersede any other code provisions which could be construed to the contrary, the proposed Zoning Code amendment adds the phrase "Notwithstanding the terms of any other section of this zoning code related to the calculation of density for

residential or tourism uses” to the section of 158.009(L) related to the calculation of density in PUDs.

It was also argued in the ODP hearings that the clustering of density on a parcel within a PUD is not allowed by the Zoning Code. No provision of the Zoning Code prohibits clustering within a PUD. To the contrary, section 158.065 encourages “flexibility in design” and “diversification in the location of structures” in a PUD. One of the primary reasons developers request a PUD is to allow the clustering of development in appropriate locations within a PUD. The proposed code amendment clarifies this provision by specifically stating that “It is understood that under these zoning regulations, the density of development sites within the PUD may vary, such that the clustering of density on one or more parcels within a site is allowed.” The proposed amendment of section 158.009(L) is consistent with staff’s interpretation and application of the section.

Comprehensive Plan Consistency. In addition to consistency with the Goal, Objective and policies of the Future Land Use Element set forth in paragraph 5 above, the proposed amendment of section 158.009 is consistent with the following Future Land Use Element policies and the excerpts from Table 1:

Policy 1.1.2

The Town will utilize its land development regulations to implement the adopted Comprehensive Plan, which at a minimum will:

- 3) **Ensure the compatibility of adjacent land uses**

Table 1

Land Use Densities and Intensities in the Town of Longboat Key

<u>Symbol</u>	<u>Category</u>	<u>Density</u>
	<u>Densities</u>	
PD	Planned Development	3.26 du/ac
GPD	Gulf Planned Development	5.05 du/ac
NPD	Negotiated Planned Development	4.80 du/ac

Policy 1.1.9

The Town will use overlay zone districts and other innovative land use controls in planning for redevelopment.

The Comprehensive Plan establishes the densities allowed in the PD, GPD and NPD Future Land Use categories. The proposed amendment does not change these densities. The PD, GPD and NPD districts are planned unit development districts which are a form of innovative land use control. The Comprehensive Plan leaves the details of uses allowed in these Future Land Use categories as well as the district standards to be determined in the Town’s land development regulations (i.e., Zoning Code).¹ The current

¹ Table 5 of the Future Land Use Element of the Data and Analysis section of the Comprehensive Plan identifies all Future Land Use categories and includes the notation “Descriptions are based on 158.009 of the Town of Longboat Key Zoning Code.” Thus, the reader is directed to look to the Zoning Code for a description of the uses allowed in each category.

Zoning Code does not limit the uses allowed in these districts. The mixed uses stated in the amendment are consistent with the uses historically approved in the Town's GPD and PD districts. The clustering of units on parcels within a planned unit development is a typical PUD technique to allow flexibility and creativity in the location of buildings. This amendment recognizes long standing practices of the Town consistent with the Comprehensive Plan. Under the Town's Zoning Code, approval of a PUD requires approval of an ODP application by the Town Commission. Policy 1.1.2 requires the Town to utilize its land development regulations "to ensure the compatibility of adjacent land uses." During the ODP approval process, the Commission evaluates whether proposed uses are internally compatible, compatible with surrounding uses and consistent with other provisions of the Comprehensive Plan and Zoning Code. This process determines and limits appropriate uses in a PUD.

B. Section 2 of Exhibit "A" proposes an amendment to section 158.067 (D)(3)(g) of the Zoning Code. This section authorizes the Commission to grant departures from the code of ordinances for a planned unit development and establishes standards for the departures. However, the section is unclear as to which Zoning Code provisions may be the subject of a departure in the case of a PD, GPD or NPD. The proposed amendment clarifies the intent of the section, as follows: "For a PUD without an underlying zoning district (PD, GPD or NPD districts), departures shall be evaluated as from the requirements of the zoning district most similar to the use approved for the proposed project in addition to departures from other code requirements." This clarification is consistent with the intent of the section to allow departures from "the code of ordinances".

Comprehensive Plan Consistency. This proposed amendment is consistent with the provisions of the Future Land Use Element discussed in paragraphs 5 and 6A above. This amendment will have no impact on the density or uses allowed in the PD, GPD or NPD Future Land Use categories or zoning districts. It merely clarifies existing language in the Zoning Code which was difficult to understand.

C. Section 3 of Exhibit "A" proposes an amendment to section 158.071 (A)(2) of the Zoning Code. In the 1976 Town Code, this section was codified as section 7.54 and provided as follows:

s. 7.54. Land Use. Proposed land uses shall not adversely affect surrounding development and shall be consistent with the town's comprehensive plan. In no case, however, where mixed uses, residential and nonresidential, are proposed, shall commercial development occupy more than five (5) per cent of the gross area of the planned unit development. [underlining added]

Section 7.54 was later codified as section 158.071(A)(2) and amended to provide as follows:

s. 158.071 (A)(2). Where mixed uses, residential and nonresidential, are proposed, nonresidential development may be permitted to occupy up to five percent of the gross area of the planned unit development, except that commercial uses shall not be permitted in a PUD overlay unless they are permitted uses within the underlying zoning district. [underlining added]

Essentially, the 5% limitation on “commercial development” in a mixed use PUD was changed to a 5% limitation on “nonresidential development”. During the hearings on Key Club’s ODP application, it was argued that this provision made the existing Inn on the Beach a nonconforming use in the GPD, since the Inn on the Beach alone exceeds 5% of the gross area of the GPD. It was also argued that this provision should prevent approval of additional hotel and resort uses in the GPD. The proposed amendment replaces the ambiguous term “nonresidential” with a more precise term, “non-accessory commercial.” Under the amendment, “non-accessory commercial” development is permitted to occupy up to 5% of the gross area of a planned unit development. Under the existing Zoning Code, hotels and tourism uses are not permitted in the Town’s commercial districts. Instead, section 158.132(B) allows hotel and tourism uses only in the T-3 and T-6 Zoning Districts or as a permitted use in a planned development. Therefore, hotel and tourism units are not treated as “commercial” uses under the existing Zoning Code. The proposed code amendment only restricts “non-accessory commercial” uses, so it does not apply to hotels and hotel related uses. This interpretation is consistent with the original approval of the Islandside GPD which did not treat the Inn on the Beach or the related resort recreational uses and buildings as commercial uses.

Comprehensive Plan Consistency. The statements regarding Comprehensive Plan consistency made in paragraphs 5 and 6A also apply to the proposed amendment of section 158.071(A)(2). This amendment will not change the density or uses allowed in the GPD, PD or NPD Future Land Use categories and is not inconsistent with any provision of the Comprehensive Plan. The intent of section 158.071 is not to prohibit resort uses in a planned development. The intent is to ensure that in residential PUDs, free standing commercial uses are kept to a minimum so as not to disrupt the residential character of the development. In considering an application for a PUD, the Town Commission has the authority in the ODP process to determine whether a site is appropriate for a resort or whether it should be primarily residential. The proposed amendment is consistent with this authority. For these reasons, the proposed amendment to section 158.071(A)(2) is also consistent with Future Land Use Goal 1 which seeks to ensure “that the location, density, intensity and character of land uses are responsive to the social and economic needs of the community” and that “an environment that is conducive to the health, safety, welfare, and property values of the community” is maintained. This is accomplished through the ODP process and section 158.071 is an innovative land use controls which is utilized by the Commission to determine compatibility consistent with Policy 1.1.9. The proposed amendment is also consistent with Policy 1.1.2 because section 158.071 provides a technique to “ensure the compatibility of adjacent land uses.”

D. Section 4 of Exhibit “A” proposes an amendment to section 158.071(D) of the Zoning Code. During the hearings on the ODP amendment, it was argued that once a Land Intensity Schedule had been adopted for a Planned Unit Development and the Land Intensity Schedule allocates units to various sites within the PUD, thereafter density may not be transferred from one site to another. This argument was based on section 158.071(D) and a note on the Land Intensity Schedule for the Longboat Key Club GPD which prohibits “the transfer of Units from any one said parcel to another.” This

argument was rejected in memoranda from Nancy E. Stroud, Special Counsel to the Town, to the Director of Planning, Zoning & Building, dated March 8, 2004, April 13, 2004 and October 9, 2009. Ms. Stroud's October 9, 2004 memorandum explains these provisions as follows:

Thus, if any one parcel does not build out to the density for that parcel as permitted under the Land Intensity Schedule, a developer cannot simply use at its own discretion those approved but unbuilt densities in another parcel. Instead, the developer must obtain approval from the Town Commission of a change of density for that parcel, by amending the Land Intensity Schedule through the ODP process."

The memorandum dated August 23, 2006 from David Persson, Town Attorney, to Brenda Patten, confirms Ms. Stroud's conclusion. Mr. Persson states: "The developer must obtain approval of any change of density by amending the land intensity schedule within the ODP process through public hearings before the planning & Zoning Board and the Town Commission." The proposed amendment to section 158.071(D) on Exhibit "A" codifies the intent that a transfer of density is not prohibited, but requires amendment of the outline development plan for the PUD in accordance with the procedures established in the Zoning Code.

Comprehensive Plan Consistency. The Comprehensive Plan does not address the transfer of density among parcels within a PUD, so the proposed amendment is not inconsistent with any provision of the Comprehensive Plan. Instead, the Comprehensive Plan directs the Town, through Future Land Use Objective 1.1 and Policies 1.1.2 and 1.1.4, to adopt and update land development regulations to implement the Future Land Use categories created in the plan. Table 1 in the Future Land Use chapter establishes the densities allowed within the PD, GPD and NPD categories. The proposed amendment will not exceed these densities because the amendment does not allow the average overall density of a planned unit development to exceed the maximum average overall density established in the Comprehensive Plan for the PUD. Thus, if units are clustered on parcels in a PUD, the overall density of the PUD cannot exceed the density limits of Table 1 for the PUD. This approach, also known as clustering, is a typical innovative technique for allocating densities within a PUD and has been historically applied by the Town in PUDs, including the Longboat Key Club & Resort GPD and the Bay Isles PD.

E. Sections 5 of Exhibit "A" proposes amendments to section 158.102 (L) of the Zoning Code. This section establishes supplemental controls for multifamily residential or tourism uses generally related to setbacks, distance between buildings, maximum length of buildings separation, length of building and distance between buildings, driveways and parking lots. This section specifically states that for all controls except maximum length of buildings, the Town Commission may waive one or more of the controls "where it deems a hardship exists or such waiver is necessary to ensure a more strict adherence to those performance standards set forth herein." [underlining added]. This section later states that the provisions of Section 158.029 [related to variance criteria

to establish a hardship] “shall apply in determining whether a waiver shall be granted upon a finding that a hardship exists.”

This section may be interpreted as establishing only a hardship standard for a waiver, or it may be interpreted to alternately allow a waiver where “such waiver is necessary to ensure a more strict adherence to those performance standards set forth herein.” Under this latter interpretation, if the hardship approach is taken by an applicant, then the hardship standards of section 158.029 apply. If the hardship approach is not taken by an applicant, the applicant must establish how the granting of a waiver will “ensure a more strict adherence to those performance standards set forth herein.” This interpretation of allowing alternate standards for review of a supplemental control waiver is consistent with the “alternate standards” approach taken in sections 158.067(B)(1)(o) and (D)(3)(g) regarding departures. Under section 158.067(B)(1)(o), the standards for a review of a departure are: “a clear and specific statement of any hardship which might exist making the departure from the code necessary or a clear and specific statement of how the departures are necessary or desirable to accomplish one or more of the stated purposes of the planned unit development as set forth in section 158.065.” (underlining added). It could also be argued that the departure criteria of section 158.067 also apply to the supplemental controls of section 158.102(L), so that a “departure” under sections 158.067(B)(1)(o) or (D)(3)(g) from the supplemental controls is available to an applicant as another alternative to a “waiver” under section 158.102(L). There is therefore an inherent inconsistency between the provisions of 158.102(L) and the provisions of sections 158.067(B)(1)(o) and 158.067(D)(3)(g)

The confusion regarding the standard which applies to a waiver or departure under section 158.102(L) is resolved with the proposed amendment. The amendment specifically allows the Town Commission to grant a departure (rather than a waiver) under the standards of section 158.067 for a PUD for one or more of the supplemental control standards, including the maximum length of a building. With this change, the provisions of sections 158.067 and 158.102(L) regarding departures for planned unit developments are now consistent. This consistency will make it easier for an applicant to understand and easier for the Town to administer. For non-PUD developments, section 158.102(L) retains waiver standards based on hardship.

The proposed amendment also allows departures in the case of a PUD from the supplemental control for maximum length of building found in section 158.102(L)(3). It is inconsistent with existing sections 158.067(B)(1)(o) and (D)(3)(g) to prohibit the Commission from considering departures for the length of a building in a PUD since these sections allow departures from “the code of ordinances” without limitation. Also, allowing a departure from the maximum length of building in an appropriate situation should be allowed since the purpose of a PUD is to “encourage flexibility in the design and development of land.”

Comprehensive Plan Consistency. The statements regarding Comprehensive Plan consistency made above in paragraphs 5, 6A and 6C also apply to the proposed amendment of sections 158.102(L) and 158.102(L)(3). This amendment will not change

the density or uses allowed in the GPD, PD or NPD Future Land Use categories and is not inconsistent with any provision of the Comprehensive Plan. The proposed amendments to section 158.102(L) simply allow the Town Commission to grant departures from the code of ordinances where appropriate to further the section 158.065 purposes of a PUD, which include encouraging flexibility in the design and development of land in order to promote its most appropriate use. Under the Town's Zoning Code, approval of a PUD requires approval of an ODP application by the Town Commission. Future Land Use Policy 1.1.2 requires the Town to utilize its land development regulations "to ensure compatibility of adjacent land uses." During the ODP approval process, the Commission evaluates whether proposed uses are internally compatible, compatible with surrounding uses and consistent with other provisions of the Comprehensive Plan and Zoning Code. The supplemental controls of section 158.102(L) are additional standards the Town applies in this process. Future Land Use Policy 1.1.9 encourages these types of innovative land use controls. Since departures are evaluated on a case by case basis, the Commission may consider the unique circumstances of each application in determining whether to grant a departure. The Commission will still be guided by Goal 1 which seeks

To preserve and enhance the character of the Town of Longboat Key by the following: 1) ensuring that the location, density, intensity and character of land uses are responsive to the social and economic needs of the community and are consistent with the support capabilities of the natural and manmade systems; and, 2) maintaining an environment that is conducive to the health, safety, welfare, and property values of the community.

All the policies and objectives of the Future Land Use Element will apply in determining whether a departure is warranted under section 158.102(L) on a case by case basis. Therefore, allowing departures for PUDs under section 158.102(L) is consistent with the Comprehensive Plan.

F. Sections 6 of Exhibit "A" proposes an amendment to section 158.102(L)(3) of the Zoning Code. This section establishes a supplemental control for measuring the length of a building. Section 158.102(L)(3) is ambiguous as to whether "a line centered on the building" means the line separating the two angles measuring building length must be in the center (midpoint) of the angles and touching the building, or whether the line must touch the mathematical midpoint of the building. For a nonlinear building with 2 wings of uneven length, the mathematical center of the building is debatable. Is the center the sum of both wings divided by 2, or the midpoint of the length of the building viewed from the street? This confusion is remedied by the code amendment which centers the angles on a line running "through the building," perpendicular to the street.

Comprehensive Plan Consistency. The comprehensive plan consistency analysis set forth in paragraphs 5 and 6E above also applies to the amendment of section 158.102(L)(3). The amendment of section 158.102(L)(3) is simply clarifying a measurement and is not a substantive change to the Zoning Code.

G. Section 7 of Exhibit "A" proposes an amendment to section 158.132(B) of the Zoning Code related to districts in which tourism uses are allowed. This section provides: "Tourism Use of property for remuneration is allowed within T-3 and T-6 Zoning Districts or as a permitted use in a PD within the Town of Longboat Key." During the Longboat Key Club ODP hearings, it was argued that the use of the term "PD" referred only to the Planned Development district, and not to planned developments in general. Therefore, it was argued, tourism uses are allowed only in the PD district and not in the GPD or NPD district. Applying simple rules of construction, had this been the intent, the section would have read "Tourism Use ... is allowed within T-3, T-6 and PD Zoning Districts." Use of the phrase "in a PD within the Town" logically refers to all planned developments created under section 158.009(L), including the PD, GPD and NPD districts. There is no logical basis to include one PUD and not the others, particularly when section 158.125 lists the same uses for all the PUD districts (except government buildings which are shown only in the PD District). Such an interpretation is also inconsistent with the policy stated in section 158.009(L) allowing a "mix of land uses" in all PUDs. At the time this section was adopted, Town Commissioners commonly referred to all planned developments interchangeably as PUDs and PDs. This is evidenced by the language of Ordinance 95-07 which created section 158.132(B). The 8th Whereas clause in this adopting ordinance provides as follows:

WHEREAS, Tourism Use for remuneration is inconsistent with the purposes and objectives of the Town's Comprehensive Plan and its Zoning Code except in Zoning Districts T-3 and T-6 or where allowed in a Planned Development; and...

It is clear in the adopting ordinance that the Town used "a Planned Development" to refer to any of the Town's planned unit developments. The phrase "a Planned Development" in the Whereas clause was shortened to "a PD" in section 158.132(B). The proposed code amendment clarifies this intent.

Comprehensive Plan Consistency. The statements regarding Comprehensive Plan consistency made above in paragraphs 5 and 6A also apply to the proposed amendment of section 158.132(B). The Future Land Use Element does not list the allowable uses or standards of development in the PD, GPD or NPD categories. Instead, Objective 1.1 and Policies 1.1.1 state that the Town's land development regulations will "address the location and extent of land uses" in accordance with the Future Land Use map and the policies and descriptions in the Comprehensive Plan. Table 1 of the Future Land Use Element of the Comprehensive Plan establishes densities for the PD, GPD or NPD Future Land Use categories. The proposed amendment will not affect these allowable densities. Neither Table 1 nor any other provision of the Comprehensive Plan prohibits tourism uses in the PD, GPD or NPD categories. Table 5 of the Data and Analysis section for the Future Land Use Element of the Comprehensive Plan identifies all Future Land Use categories, including PD, GPD and NPD, and includes the notation "Descriptions are based on 158.009 of the Town of Longboat Key Zoning Code." Section 158.009(L) provides that PUDs may include a "mix of land uses". There is no limit on what this mix may contain. No provision of the Comprehensive Plan requires uses in the PD, GPD or

NPD categories to be treated differently. Section 158.125 lists the same allowable uses in these districts, except that government buildings and services are listed for the PD district, but not the GPD or NPD districts. When all of these Comprehensive Plan and Zoning Code provisions are read collectively, there is no basis for allowing tourism use in the PD district, while prohibiting tourism use in the GPD and NPD districts. Such an interpretation has no basis in either the Comprehensive Plan or the Zoning Code. The proposed amendment clarifies the meaning of a notation (“a PD”) in section 158.132 in a manner that ensures consistency with the Comprehensive Plan and internal consistency in the Zoning Code.

EXHIBIT "A"

Section 1. Chapter 158, Section 158.009, *Description of districts and district policies*, subsection (L) is hereby amended as follows:

- (L) Planned Development District (PD), Gulf Planned Development District (GPD), and Negotiated Planned Development District (NPD)—Established for areas which may be developed pursuant to special conditions of a resolution or other legal instruments duly approved by the Town Commission pursuant to this chapter. In the event of any conflict between the provisions of this section 158.009 (L) and the provisions of any other section of the zoning code, the provisions of this section shall apply. The density for the respective Planned Development Districts reflects the following density schedule after considering vested rights issues:

District Designation	Density
Planned Development (PD)	3.26
Gulf Planned Development (GPD)	5.05
Negotiated Planned Development (NPD)	4.80

Such PUDs may include a mix of residential, tourism, nonresidential and commercial land uses as identified in the regulations of this chapter, including community residential homes, and such regulations shall not be interpreted as prohibiting mixed uses in duly approved PUDs. The following standards for regulating residential development in planned unit developments shall be used and is intended to accommodate planned unit developments with or without mixed uses:

- (1) Notwithstanding the terms of any other section of this zoning code related to the calculation of density for residential or tourism uses, the respective densities for the PD and the GPD Districts reflect the average overall density per acre of all properties included within such districts, including recreational areas, open space areas, road rights-of-way, wetland areas and other nonresidential lands. It is understood that under these zoning regulations, the density of development sites within the PUD may vary, such that the clustering of density on one or more parcels within a site is allowed.

Section 2. Chapter 158, Section 158.067, *Description of districts and district policies*, subsection (D)(3)(g) is hereby amended as follows:

- (g) Departures from the code of ordinances ~~which would otherwise be applicable to the planned unit development if the plan were not approved~~

~~(or if in the PD, GPD or NPD district, departures from the requirement of a zoning district most similar to the use approved for the proposed project) and a statement of any existing hardship and/or a clear and specific statement of how the code departures are necessary or desirable to accomplish one or more of the stated purposes of the planned unit development as set forth in Section 158.065. For a PUD without an underlying zoning district (PD, GPD or NPD districts), departures shall be evaluated as from the requirements of the zoning district most similar to the use approved for the proposed project in addition to departures from other code requirements.~~

Section 3. Chapter 158, Section 158.071, *Proposed land uses*, subsection (A)(2) is hereby amended as follows:

- (2) Where mixed uses, residential and nonresidential, are proposed, ~~nonresidential~~ non-accessory commercial development may be permitted to occupy up to five percent of the gross area of the planned unit development, except that commercial uses shall not be permitted in a PUD overlay unless they are permitted uses within the underlying zoning district.

Section 4. Chapter 158, Section 158.071, *Proposed land uses*, subsection (D) is hereby amended as follows:

- (D) Once development rights, whether residential or non-residential, have been assigned to a parcel within a planned unit development, any subsequent request for new or additional residential density shall be considered a transfer of density under the governing resolutions and ordinances of the planned unit development which shall require amendment of the outline development plan for the planned unit development in accordance with the procedures of section 158.067. In no event shall the average overall densities density of a planned unit development exceed the maximum average overall densities density set forth in this Code or the Comprehensive Plan for the planned unit development.

Section 5. Chapter 158, Section 158.102, *Performance standards for site and development*, subsection (L) is hereby amended as follows:

- (L) Supplemental Controls for Multifamily Residential or Tourism Uses. In reviewing the proposed site plan for ten or more multifamily or tourism units, the Town shall be guided by the following controls. The supplemental control relating to the maximum length of buildings, as provided for in Subsection (3) of this section, shall be taken as a mandatory requirement which cannot be waived by the Town Commission. The remaining controls in this section shall be taken as

mandatory requirements, except that the Town Commission may waive one or more of these requirements where it ~~deems~~ determines a hardship exists or where it determines such waiver is necessary to ensure a more strict adherence to those performance standards set forth herein, which are deemed most critical, notwithstanding any other provisions of this ordinance to the contrary. Notwithstanding any provision of this section to the contrary, for properties located in a planned unit development, the Town Commission may consider and grant a departure, under the standards for a requested departure as outlined in Section 158.067 (D)(3)(g), for one or more of the supplemental controls of this section 158.102 (L), including subsection (3) for the maximum length of buildings.

In any development order approving a site plan, the Town Commission shall make specific findings of facts constituting a hardship, if a hardship is found to exist, and shall make specific findings of any facts constituting the basis for a waiver of these supplemental controls and shall specifically state the performance standards as set forth herein which are deemed most critical and are being more strictly adhered to by granting the waiver.

The provisions of Section 158.029 shall apply in determining whether a waiver shall be granted upon a finding that a hardship exists, except that the Town Commission, rather than the Zoning Board of Adjustment, shall determine whether a hardship exists or not. The facts forming the basis for the grant of a waiver under the provisions of this section shall be specifically set forth in the development order.

Section 6. Chapter 158, Section 158.102, *Performance standards for site and development*, subsection (L)(3) is hereby amended as follows:

- (3) Maximum Length. No portion of any individual building shall extend beyond a line drawn from the front lot line 30 degrees either side of a line ~~centered on~~ through the building and perpendicular to the front lot line.

Section 7. Chapter 158, Section 158.132, *Tourism Uses*, subsection (B) is hereby amended as follows:

- (B) Tourism Use of property for remuneration is allowed within T-3 and T-6 Zoning Districts or as a permitted use in a PD planned unit development within the Town of Longboat Key.

ICARD MERRILL

ATTORNEYS & COUNSELORS

Michael J. Furen

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April 1, 2010

icardmerrill.com

VIA HAND DELIVERY

LBK
APR - 1 2010
PLANNING
& ZONING

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

Re: Significant Amendments to Town's Zoning Code Proposed by Longboat Key Club

Dear Ms. Simpson:

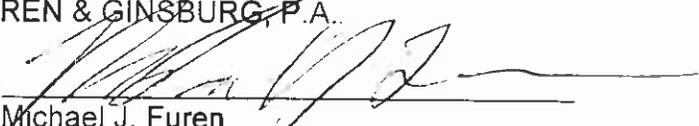
We are enclosing twenty-eight (28) copies of the following for immediate distribution to the members of the Town's Planning and Zoning Board and other Town representatives as you deem appropriate:

1. This letter;
2. Memo from Martin P. Black, AICP, ICMA-CM to the Town of Longboat Key Planning and Zoning Board dated March 31, 2010; and
3. Memo from Robert K. Lincoln and Michael J. Furen to the Town of Longboat Key Planning and Zoning Board dated April 1, 2010.

Please call me if you have any questions or comments.

Sincerely,

ICARD, MERRILL, CULLIS, TIMM,
FUREN & GINSBURG, P.A.

By: 

Michael J. Furen
Attorneys for Islandside Property Owners
Coalition, LLC

MJF/lmb
Enclosures

cc: David Persson, Esq. (with enclosures)
Nancy Stroud, Esq. (with enclosures)

U:\bray\L\AMBIANCE-KEY\SIMPSON LTR 04-01-10 wpd

Icard, Merrill, Cullis, Timm, Furen & Ginsburg, P.A. - Established 1953
Offices in Sarasota, Manatee and Charlotte Counties

Memo

LEK
APR - 1 2010
PLANNING
& ZONING

To: Town of Longboat Key Planning and Zoning Board
From: Martin P. Black, AICP, ICMA-CM *Martin P. Black*
CC: Michael Furen, Icard Merrill
Robert Lincoln, Icard Merrill
Date: 3/31/2010
Re: Key Club Zoning Code Amendments – Longboat Key

Background

At the conclusion of public hearings on the proposed Outline Development Plan amendments submitted by Key Club Associates, Limited Partnership and Islandside Development, LLC ("Key Club"), the Key Club requested and the Longboat Key Town Commission consented to the initiation of amendments to the Town of Longboat Key Zoning Code relating to Sections 158.009, 158.067, 158.071, 158.102(L) and 158.132.

The claimed basis for these proposed amendments is included in the March 16, 2010 letter from John Patterson, Livingston, Patterson, Strickland & Siegel, P.A. to Monica Simpson, Longboat Key Planning, Zoning and Building Department Director. The alleged Town Commission authority to initiate the proposed code amendments is pursuant to Section 158.030 (A) (1) of the Town Zoning Code. Ms. Simpson has proposed some formatting adjustments to the proposed language as a result of the Town staff's preliminary review and prior to the formal staff comments/recommendations.

The Key Club indicates in their supporting materials that the amendments are proposed clarifications to "eliminate ambiguities and conflicts" within the existing Zoning Code that became apparent during the public hearings on their proposed amendments to the Outline Development Plan. The proposed code amendments appear to be directed specifically toward several code compliance and comprehensive plan consistency issues raised by opponents and Town staff during the course of the review to date.

The following reflect my professional analysis of issues, consequences and implications of the proposed amendments that have not been identified by the Key Club's supporting narrative or the legislative intent statements contained within the draft ordinance.

Section 163.3202, Florida Statutes provides that local governments shall adopt or amend and enforce local land development regulations that are consistent with and implement the adopted comprehensive plan. In part, these requirements provide that **local land development regulations shall contain specific and detailed provisions** necessary to implement the comprehensive plan and “Regulate the use of land and water for those land use categories included in the land use element and ensure the compatibility of adjacent uses and provide for open space.” Please note that Section 163.3213, Florida Statutes provides the opportunity for substantially affected persons to initiate actions to challenge local government actions in developing land development regulations to assure that the land development regulations implement and are consistent with the local comprehensive plan.

Consistency with the comprehensive plan is defined by Section 163.3194 (2) (a), Florida Statutes as follows:

“...land development regulations shall be consistent with the comprehensive plan if the land uses, densities or intensities, and other aspects of development permitted by such order or regulation are compatible with and further the objectives, policies, land uses, and densities or intensities in the comprehensive plan and if it meets all other criteria enumerated by the local government...”

Outstanding Implementation and Consistency Issues

The following analysis identifies areas of comprehensive plan consistency issues and both Town-wide and planned unit development district future development ramifications associated with the proposed amendments.

A. Proposed Amendment #1: The proposed amendments to Section 158.009 (L) include several provisions as highlighted below.

- (L) *Planned Development District (PD), Gulf Planned Development District (GPD), and Negotiated Planned Development District (NPD)—Established for areas which may be developed pursuant to special conditions of a resolution or other legal instruments duly approved by the Town Commission pursuant to this chapter. In the event of any conflict between the provisions of this section 158.009 (L) and the provisions of any other section of the zoning code, the provisions of this section shall apply. The density for the respective Planned Development Districts reflect the following density schedule after considering vested rights issues:*

<i>Planned Development District Designation</i>	<i>Density</i>
<i>Planned Development (PD)</i>	<i>3.26</i>
<i>Gulf Planned Development (GPD)</i>	<i>5.05</i>
<i>Negotiated Planned Development (NPD)</i>	<i>4.80</i>

Such PUDs approved in a planned development district may include a mix of residential, tourism, nonresidential and commercial land uses as identified in the regulations of this chapter, including, but not limited to, community residential homes, and such regulations shall not be interpreted as prohibiting mixed uses in duly approved PUDs. The following standards for regulating residential development in planned unit developments shall be used and is intended to accommodate planned unit developments with or without mixed uses:

(1) Notwithstanding the terms of any other section of this zoning code related to the calculation of density for residential or tourism uses, the respective densities for the PD and the GPD districts reflect the average overall density per acre of all properties included within such districts, including recreational areas, open space areas, road rights-of-way, wetland areas and other nonresidential lands. It is understood that under these zoning regulations, the density of development sites within the PUD PD and GPD may vary, such that the clustering of density on one or more parcels within a site is allowed.

1. The proposed amendments to Section 158.009 (L) do not address the issue of comprehensive plan consistency as raised during the Outline Development Plan public hearings. No reference to a specific provision of the Comprehensive Plan has been identified that specifies that the clustering of development is permitted on individual development sites (Comprehensive Plan policies that enabled these regulatory provisions were removed during previous amendments to the Comprehensive Plan).
2. The supporting narrative indicates that the proposed changes are intended to overcome certain limitations to development that would otherwise apply and are contained within Section 158.006, Definitions of the Zoning Code. Neither the narrative or legislative intent statements included in the ordinance clarify how nor what alternative definitions are appropriate to ensure clear application of the underlying standards of the Zoning Code.

In my professional opinion, the proposed changes have the effect of eliminating the application of existing code definitions for “gross land area” and “maximum gross residential density”, as well as their application to all existing and future Planned Development (PD), Gulf Planned Development (GPD) and Negotiated Planned Development (NPD) districts within the Town. This approach creates further uncertainty of development density and intensity permitted in these districts and renders the proposed changes inconsistent with provisions of the Comprehensive Plan.

3. In particular, the adopted Comprehensive Plan Future Land Use Element provides:

“Policy 1.1.1 The Town has adopted land development regulations, which address the location and extent of land uses, in accordance with the Future Land Use Map and the policies and descriptions of types, sizes, densities and intensities of land uses contained in this element.

Policy 1.1.4 As required or as necessary, the Town will review and update its land development regulations implementing this Comprehensive Plan, which will be based on and consistent with the standards for land use densities and intensities, as indicated on Table 1.”

Table 1, Land Use Densities and Intensities of the adopted Comprehensive Plan includes a specific note that: “Calculations of density are based on Chapter 158.137 of the Town of Longboat Key Zoning Code, **2005** [emphasis added].” By proposing amendments to modify definitional provisions that exist as of the 2005 Zoning Code related to the method for calculating density, it is my professional opinion that the proposed amendments are inconsistent with the adopted Comprehensive Plan.

1. The proposed amendments to Section 158.067 (D)(3)(g) establish a different administrative review process and application of standards by removing the clause "which would otherwise be applicable to the planned unit development", thereby expanding the potential range of standards and criteria for which a petitioner may seek a departure within any PD, GPD or NPD districts to include any provisions of the code. These amendments will provide a significant increase in the ability for all such properties, including Bay Isles and other planned development properties on the Key, to seek future changes to facilitate additional development within those properties.

C. Proposed Amendment #3: The proposed amendments to Section 158.071 (A)(2) include several provisions as highlighted below:

Where mixed uses, residential and nonresidential, are proposed, ~~nonresidential~~ non-accessory commercial development may be permitted to occupy up to five percent of the gross area of the planned unit development, except that commercial uses shall not be permitted in a PUD overlay unless they are permitted uses within the underlying zoning district.

1. The proposed amendments to Section 158.071 (A)(2) have been proposed to mitigate the Key Club's acknowledgement that the property as it exists today is nonconforming with respect to compliance with the five (5) percent limit on nonresidential development. The proposed changes are inconsistent with the following provisions of the adopted Comprehensive Plan Future Land Use Element which require "strict" application of the Town's Zoning Code:

"Policy 1.1.6. Buildings, lots, structures, or uses which were lawful at the effective date of the applicable zoning regulation, but were prohibited, regulated, or restricted under the terms of zoning regulations promulgated thereafter, shall be permitted to continue until they are voluntarily removed, determined to be unsafe, or abandoned. ***The non-conformities shall not be enlarged, expanded, intensified or extended except in conformance with the goals, objectives and policies of this comprehensive plan and a strict application of the Town's land development regulations.[emphasis added]***"

2. The proposed language has the effect to permit a potentially unlimited amount of additional nonresidential development and redevelopment within all existing and future planned developments on the Key, including Bay Isles and the Key Club by removing the five percent gross area limitation and when applied in concert with the expansion of uses and intensity proposed by the amendments to Section 158.009 (L) identified above.

D. Proposed Amendment #4: The proposed amendments to Section 158.102 (L) include several provisions as highlighted below:

Supplemental Controls for Multifamily Residential or Tourism Uses. In reviewing the proposed site plan for ten or more multifamily or tourism units, the Town shall be guided by the following controls. The supplemental control relating to the maximum length of buildings, as provided for in Subsection (3) of this section, shall be taken as a mandatory requirement which cannot be waived by the Town Commission. The remaining controls in this section shall be taken as mandatory requirements, except that the Town Commission may waive one or more of these requirements where it ~~deems~~ determines a hardship exists or where it determines such waiver is necessary to ensure a more strict adherence to those performance standards set forth herein, which are deemed most critical, notwithstanding any other provisions of this ordinance to the contrary. Notwithstanding any provision of this section to the contrary, for properties located in a planned unit development, the Town Commission may consider and grant a departure, under the standards for a requested departure as outlined in Section

158.067 (D)(3)(g), for one or more of the supplemental controls of this section 158.102 (L), including subsection (3) for the maximum length of buildings.

1. The proposed amendments to Section 158.102 (L) establish a different administrative review process and application of standards by removing the clause that establishes 'hardship' requirements and granting what appears to be very broad discretion to the Town Commission for granting departures to supplemental controls. Such change represents a significant change to current and historical Town policy and will have potential implications for all multi-family and tourism uses and buildings in the Town, and not just within the planned development districts.

E. Proposed Amendment #5: The proposed amendments to Section 158.102 (L)(3) include several provisions as highlighted below:

Maximum Length. No portion of any individual building shall extend beyond a line drawn from the front lot line 30 degrees either side of a line ~~centered on~~ through the building and perpendicular to the front lot line.

1. In my professional opinion, the proposed amendments to Section 158.102 (L)(3) render the maximum building length standard meaningless since the measurement of the 30 degree angle line may be drawn to any of a theoretical infinite number of points through the building. Compared to recent Town amendments reflected in Ordinance 2008-28 that modified these same standards, these provisions do not require at least minimal compliance with the applicable yard setbacks in the event that a departure to the building length provisions is sought.

Policy 1.1.7 of the Future Land Use Element of the Town Comprehensive Plan provides that "...emphasis will be placed upon the protection of the visual and aesthetic character of neighborhoods, including open space". In my professional opinion, minimizing the function of the maximum building length would be inconsistent with Policies 1.1.1 ["The Town has adopted land development regulations, which address the location and extent of land uses, in accordance with the Future Land Use Map and the policies and descriptions of types, sizes, densities and intensities of land uses contained in this element."] and 1.1.2 ["The Town will utilize its land development regulations to implement the adopted Comprehensive Plan, which as a minimum will: 1) Regulate the subdivision of land; 2) Regulate the use of land and surface waters; 3) Ensure the compatibility of adjacent land uses; 4) Protect the Conservation Lands designated in the Conservation and Coastal Management Element; 5) Manage areas subject to seasonal and periodic flooding and provide for appropriate stormwater management; 6) Regulate signage; 7) Regulate onsite traffic circulation, and parking demands; 8) Provide buffering and open space requirements; 9) Provide for water conservation principles in landscaping regulations, and; 10) Ensure that development orders and permits will not result in a reduction of the level of services for the affected public facilities below the level of service standards adopted in this Comprehensive Plan] of the Future Land Use Element and Policy 1.4.6 [The Town will protect the visual and aesthetic quality of neighborhoods through design standards.] of the Housing Element of the adopted Comprehensive Plan.

F. Proposed Amendment #6: The proposed amendments to Section 158.132 (B) include several provisions as highlighted below:

Tourism Use of property for remuneration is allowed within T-3 and T-6 Zoning Districts or as a may be permitted use in a PD planned unit development within the Town of Longboat Key.

1. In my professional opinion, if the proposed amendments to Section 158.132 (B) are approved, they have the effect of confirming the Town intent to allow for the distribution of all or some of the two hundred and fifty (250) tourism uses recently approved through amendment of the Town Charter and as set forth in Section 158.180 (Ordinance 2008-34) within any PD, GPD or NPD district. By specifically allowing tourism uses as a permitted use within a planned unit development and in light of the proposed language that provides a 'blanket' override of any conflicts with all other provisions of the Zoning Code, it appears the proposed amendments create the ability to seek use of these tourism units within any PD, GPD or NPD that currently exists or may be created in the future.
2. It also appears that the amendment as proposed creates the opportunity for conversion of residential units in existing planned development districts (PD, NPD, and GPD), that include Bay Isles and the Key Club.
3. The proposed amendment creates an internal inconsistency within the Town's code and the statement of purpose for Section 132, Tourism Uses. Specifically subsection (A) (4) as follows:

"Expressly prohibit Tourism Use of property for remuneration, where the property is not located within the T-3 or T-6 Zoning Districts of the Town of Longboat Key;"

G. Unresolved Comprehensive Plan and Land Development Regulation Issue: While the Town is apparently pursuing amendments to further the Key Club's petition, compliance with the Town's waterfront yard setbacks as required by Policy 3.2.5 of the Conservation and Coastal Management Element of the adopted 2007 Comprehensive Plan is not currently scheduled for review. Policy 3.2.5 specifically provides:

"The Town will require all future building setbacks, fronting the Town's north and south passes, to be equal to or greater than those setbacks required for construction along the Gulf of Mexico."

Section 158.127 (B) (1) requires swimming pools to be located a minimum of 100 feet from the mean high water line. Section 158.150 (D) (2) requires a waterfront yard of at least 150 feet in depth and precludes a variance from these provisions. Note that the Town's regulations regarding shoreline construction specifically provide that its regulations apply to the water bodies and its associated lagoons, bayous or all tidal-influenced waterways (reference Section 151.03 (A) (2), Shoreline Construction General Provisions). Absent alternative language in the zoning regulations and consistent with the provisions of Section 158.003, the more restrictive provision of the Shoreline Construction Chapter should apply.

Note that the 2007 adopted Comprehensive Plan imposed a requirement through Policy 1.1.8 of the Future Land Use Element to produce a water body classification system to assist with the implementation of its land development regulations. While there was no timeframe specified in the policy for completion of the classification system, it is important to understand the legislative history of this policy. During the adoption of the 2007 Comprehensive Plan and discussions of canal, bay, pass and other water bodies, Town staff and consultant's for the Town advised the Planning and Zoning Board that the **"...Town did not have a classification system which defined those water bodies for implementation of the various land development regulations."**

The Town appears to be in violation of state statutory provisions that require amendments to the land development regulations necessary to implement the adopted Comprehensive Plan be implemented within one year of the comprehensive plan approval.

Memo

To: Town of Longboat Key Planning and Zoning Board
From: Robert Lincoln, Michael Furen
Date: April 1, 2010
Re: Inconsistency of Key Club's Proposed LDC Amendments with Town Comprehensive Plan and Other Legal Standards

LBK
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& ZONING

Introduction

This memo provides a legal analysis of Key Club's proposed amendments to the Town's Land Development Code (LDC) and identifies the legal objections of the Islandside Property Owner's Coalition (IPOC) to those changes. This memo is meant to be read in conjunction with the Memorandum from Martin Black, AICP, ICMA-CM, which provides a detailed professional analysis and also identifies policy and implementation issues and concerns with the proposed amendments.

At the outset, it is clear that the proposed changes to the LDC are not merely "clarifications" as claimed by Key Club. The proposed amendments reflect a major change in Town policy and not only dramatically alter the uses, density and densities permitted in the GPD, PD and NPD, but also alter historic provisions governing planned development overlay reviews for any district and supplemental controls for certain multi-family and tourism developments.

Scope of the Planning and Zoning Board Review

While Key Club has made specific proposals for amendments to the LDC, the Planning and Zoning Board (PZB) is not bound by those proposals. The Town Commission's motion provided the PZB with authority to consider changes to various provisions of the Code without any reference or limitation to code language brought forward by Key Club. The PZB is under no obligation to refer Key Club's proposals to the Town Commission, and may craft entirely different language or could simply recommend no changes at all.

Consistency with the Town's Comprehensive Plan

A. Applicable Standards

Section 163.3201, Fla. Stat. sets out the legislative intent for the relationship of comprehensive plans to land development regulations:

It is the intent of this act that adopted comprehensive plans or elements thereof shall be implemented, in part, by the adoption and enforcement of appropriate local regulations on the development of lands and waters within an area. It is the intent of this act that the adoption and enforcement by a governing body of regulations

for the development of land or the adoption and enforcement by a governing body of a land development code for an area shall be based on, be related to, and be a means of implementation for an adopted comprehensive plan as required by this act.

Section 163.3194(2)(a) provides that

land development regulation shall be consistent with the comprehensive plan if the land uses, densities or intensities, and other aspects of development permitted by such order or regulation are compatible with and further the objectives, policies, land uses, and densities or intensities in the comprehensive plan and if it meets all other criteria enumerated by the local government

If a land development regulation is inconsistent with the Plan, the Town could be sanctioned through an administrative process. Furthermore, the approval of development orders (such as rezonings, ODP approvals, site plan approvals or building permits) pursuant to a land development regulation that is inconsistent with the Plan is much more likely to result in challenges than those development orders for being inconsistent with the Plan.

B. Relevant Provisions of the Town's Comprehensive Plan

The intent and purpose of the Town in adopting the Plan is to

Improve physical environment for the community as a setting for human and natural resource activities;

Protect the public health, safety and welfare;

Insure that long-range considerations are included in the determination of short range actions; [emphasis supplied]

Promote political cooperation by bringing professional and technical knowledge to bear on government decisions concerning the physical development of the Town; and,

To ensure appropriate protection of public interest with consideration of private property rights as determined by the Town Commission and state law.

Goal 1 of the Future Land Use Element is

"To preserve and enhance the character of the Town of Longboat Key by the following: 1) ensuring that the location, density, intensity and character of land uses are responsive to the social and economic needs of the community and are consistent with the support capabilities of the natural and manmade systems; and 2) maintaining an environment that is conducive to the health, safety, welfare, and property values of the community."

Policy 1.1.1 of the Future Land Use Element of the Town Comprehensive Plan provides:

"The Town has adopted land development regulations, which address the location and extent of land uses, in accordance with the Future Land Use Map and the

policies and descriptions of types, sizes, densities and intensities of land uses contain in this element."

Policy 1.1.2 of the Future Land Use Element of the Town Comprehensive Plan provides in relevant part:

"The Town will utilize its land development regulations to implement the adopted Comprehensive Plan, which as a minimum will: ...

- 3) Ensure the compatibility of adjacent land uses; ...
- 8) Provide buffering and open space requirements;"

Policy 1.1.4 of the Future Land Use Element of the Town Comprehensive Plan provides:

"As required or as necessary, the Town will review and update its land development regulations implementing this Comprehensive Plan, which will be based on and consistent with the standards for land use densities and intensities, as indicated on Table 1."

Table 1 of the Future Land Use Element describes the GPD land use category as having a density of 5.05 dwelling units per acre. It is not described (as the two "T" categories are) as having commercial uses or being a commercial district.

Policy 1.1.7 of the Future Land Use Element of the Town Comprehensive Plan provides:

"In development planning efforts, emphasis will be placed upon the protection of the visual and aesthetic character of neighborhoods, including open space." [emphasis supplied]

Policy 1.4.6 of the Housing Element of the Town Comprehensive Plan provides:

"The Town will protect the visual and aesthetic quality of neighborhoods through design standards." [emphasis supplied]

C. Analysis of Proposed Changes to Land Development Code

Key Club's first proposed change is to § 158.009(L) of the LDC, and expands the uses permitted in the GPD, PD, and NPD and provides explicit authorization for clustering density. Contrary to Key Club's assertions, the "mix of uses" permitted in these districts by the LDC today (as identified by the regulations in the LDC) is limited to residential uses, group homes, wireless personal communication towers, and uses that are accessory to those uses.

The proposed amendment to § 158.009(L) is facially inconsistent with the Town's Comprehensive Plan (the "Plan"), and particularly with FLUE Policy 1.1.1 and Table 1, because it would permit any and all commercial uses, commercial tourism uses, and any other non-residential use (including industrial, governmental and other uses), in the GPD, PD and NPD land use categories. Nothing in the Comprehensive Plan permits any non-residential uses other than accessory uses in those categories. The amendment is not only a major change to the Code, it makes the provision inconsistent with FLUE Goal, 1, Policy 1.1.1, 1.1.4 and Table 1, and does not further FLUE Policy 1.1.7 or Housing Policy 1.4.6..

The proposed amendment to § 158.009(L) is directly and facially inconsistent with the Plan because it allows individual parcels to have density that exceed 5.05 dwelling units per acre. Nothing in the Plan indicates or permits the densities within the GPD, PD or NPD to be based on all lands included in those land use categories. The amendment is not only a major change to the Code, it makes the provision inconsistent with FLUE Goal 1, Policy 1.1.1, 1.1.4 and Table 1.

The proposed amendment to § 158.071(D)(3)(g) is inconsistent with the Plan because it expands the ability to request departures from *any* provisions of the Town Code, which would include provisions of the Comprehensive Plan (as adopted into the Code in §160.01), without regard to whether the departures are consistent with the Comprehensive Plan. The proposal therefore is not compatible with and does not further FLUE Goal 1, Table 1, and Policies 1.1.1, 1.1.4 and 1.1.7 and Housing Policy 1.4.6.

The proposed amendment to § 158.071(A)(2) is inconsistent with the Plan because it would allow commercial and other uses that are not accessory to the residential uses in a planned development to comprise 5% of the land area. Furthermore, by restricting only "non-accessory commercial" uses, the proposed amendment would allow an unlimited amount of commercial tourism, industrial or other non-residential uses within the GPD, PD and NPD. Nothing in the Plan permits commercial, office, industrial, etc. uses in the GPD, PD or NPD. The proposal therefore is not compatible with and does not further FLUE Goal 1, Table 1, and Policies 1.1.1, 1.1.4 and 1.1.7.

The proposed amendment to § 158.071(D) is inconsistent with the Plan because it would allow the clustering of density so as to allow parcels to exceed 5.05 units per acre in the GPD and the otherwise permitted densities in the PD and NPD. Nothing in the Plan permits clustering of density to exceed those limits. The proposal therefore is not compatible with and does not further FLUE Goal 1, Table 1, and Policies 1.1.1, 1.1.4 and 1.1.7.

The proposed amendments to § 158.102(L) regarding departures are inconsistent with the Plan FLUE Policy 1.1.2's requirement that the LDC ensure the compatibility of adjacent land uses. The proposed amendment would allow regulations adopted to regulate the compatibility of multi-family and tourism uses to be altered without a hardship and without any other meaningful, objective criteria. The proposal therefore is not compatible with and does not further FLUE Goal 1, Table 1, and Policies 1.1.1, 1.1.4 and 1.1.7, as well as Housing Element Policy 1.4.6.

The proposed amendments to § 158.132(B) are inconsistent with the Plan because they would allow commercial tourism uses within the GPD, PD and NPD. Nothing in the Plan permits such uses, which are acknowledged to be commercial uses in both Plan Table 1 and in the LDC. The proposal therefore is not compatible with and does not further FLUE Goal 1, Table 1, and Policies 1.1.1, 1.1.4 and 1.1.7.

Consistency with the Referendum Requirements of the Charter

The proposed amendments to Section 158.009(L) and 158.071(D) require voter approval pursuant to the Town Charter because it would allow an increase in the density of parcels within the GPD, PD and NPD that are greater than those permitted under the 1984 Comprehensive Plan.

Unconstitutional Indefinite Standards

Under longstanding Florida law, ordinances that delegate quasi-judicial powers to adopted or elected boards cannot grant them unbridled discretion and therefore must provide definite standards that govern decisions. Such standards must be complete in and of themselves and must be sufficient to allow the consistent and uniform application of the ordinance to different applicants and facts.

Here, the criteria for granting a departure are already rife with subjective and indefinite standards, and the proposed amendments to §158.102(L) would replace the somewhat more definite hardship standard currently provided in the Code with a more subjective, vague and ambiguous departure standard. The amendment therefore increases the constitutional difficulties of the ordinance rather than reduces them.

The proposed language for § 158.102(L)(3) is so totally ambiguous as to have no definite meaning or effect and no hope for the consistent and uniform application demanded by Florida law. Is the reference line "through the building" located anywhere along the street frontage? How does this language apply to a building that is neither parallel to the street nor symmetrical?

Similarly, the language proposed for §§ 158.009(L) and 158.071(A)(2) create serious issues with respect to the uses permitted. Under these amendments there are no limitations on the types of "non-residential uses" permitted in the GPD, PD and NPD, and no limitation on the amount of non-residential uses other than "non-accessory commercial uses". On its face, the language of these two provisions would allow any percentage of the GPD to redevelop with an industrial use – perhaps the nuclear power plant that Ms. Patten believes is permitted by the Plan.

Conclusion

These are badly drafted, poorly thought-out amendments to the Code that are intended for one purpose: **to shield the specific development plan offered by the Key Club from later legal challenges.** Changing the LDC in numerous ways for the benefit of a single landowner is inconsistent with the intent and purpose of the Plan. The amendments are inconsistent with the intent, purpose and the Goals, Objectives and Policies of the Plan and Florida law, and will have significant negative and ongoing consequences for the Town. The PZB should recommend no changes or should submit Key Club's proposal to the Town Commission with a negative recommendation.

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STRICKLAND & SIEGEL, P.A.**
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MEMORANDUM

FROM: John Patterson and Brenda Patten
TO: Town of Longboat Key Planning and Zoning Board
RE: Proposed Code Amendments -- Key Club
DATE: April 5, 2010



INTRODUCTION

This Memorandum responds to the Memo dated April 1, 2010 from Robert Lincoln and Michael Furen to this board. Their Memo addresses what they perceive to be inconsistencies between the proposed code amendments and the Town's comprehensive plan and other legal standards.

Mr. Lincoln and Mr. Furen candidly admit at the outset of their Memo that their analysis is based on an assumption that the proposed changes to the code are not clarifications, but rather reflect "a major change in Town policy." Members of this board may recall the prior hearings on the Longboat Key Club & Resort's proposed ODP amendment and the lengthy, convoluted and unconvincing code and comprehensive plan arguments advocated by Mr. Lincoln. He disagreed with Monica Simpson. He argued with her. He questioned her interpretations of the code which allowed the ODP application to proceed. He failed to change Ms. Simpson's analysis or interpretations, which were supported by special counsel Nancy Stroud.

What we are now seeing is just another re-run of that show.

Mr. Lincoln and Mr. Furen now bring forth again the same tired and convoluted interpretations of the code to support their argument that the Town does not have the ability to grant the Club's application for an Outline Development Plan amendment. They were wrong before, and they are wrong now. Accordingly, their assertions of inconsistency with the Town's comprehensive plan again fail.

ANALYSIS

Mr. Lincoln and Mr. Furen also argue, at page 4 of their Memo, that and the proposed Zoning Code changes would require voter approval because they allow an increase in density for parcels within the GPD, PD and NPD that are greater than those permitted under the 1984 comprehensive plan. That is not true for a number of reasons. First, the proposed Zoning Code amendments will have no effect on density whatsoever. It is interesting that other than making the bald statement that an increase in density will result, no reason for this statement is given. Second, density in the GPD and PD is fixed by the charter. The density is 5.05 units per acre in the GPD. Neither the ODP amendment nor the Zoning Code amendment change this allowed density.

Lastly, it is contended that changing the standard for a waiver under section 158.102(L)(3) creates constitutional difficulties because the standard for departures is "subjective, vague and ambiguous." This is a new position for them. The fact that no case has been cited to support their argument is telling. We disagree with them. The Zoning Code already establishes a standard for PUD departures in section 158.067(D)(3)(g). The amendment simply makes the PUD departure standard uniform throughout the code, as it was intended to be. We submit that the standards for a PUD departure under section 158.067(D)(3)(g) are in fact more definite and understandable than the present provision for a waiver under section 158. 102 (L)(3) which contain multiple standards for a waiver. Furthermore, there is no reason to have two standards in the code for granting a waiver or departure.

As to section 158.102(L)(3) dealing with "building length," what Mr. Lincoln and Mr. Furen see as totally ambiguous should, to any other person, be totally clear. Under the current code standard of "a line centered on the building", no one can explain where to place the angle of measurement if the building is asymmetrical or not squarely facing the front lot line. The proposed reference line "through the building" accomplishes the purpose of keeping the building within a 30 degree angle and will work with any building configuration.

Lastly, the proposed Zoning Code amendments make no change with respect to the kinds of uses permitted in a planned unit development. The speculations of IPOC's attorneys to the contrary are based on their own erroneous interpretations of the code.

CONCLUSION

Mr. Lincoln and Mr. Furen refer to the proposed amendments as "badly drafted, poorly thought out." Such comments, as well as rhetoric such as "a major change in Town policy" and "dramatically alter the uses" reflect a growing desperation in their efforts to derail the Club's application for an outline development plan amendment to allow a first-class redevelopment of the Club's property that will be good for the residents of Longboat Key and good for the Town. They are not persuasive.

The lengthy proceedings on the ODP amendment, which have been unprecedented in their scrutiny and analysis of the Zoning Code, have revealed provisions that are in need of change to be clear and consistent, and to reflect the Town's historical application of these provisions to

planned unit developments. The proposed changes have been thoroughly reviewed by staff. They should be recommended to the Town Commission as proposed.

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MEMORANDUM

FROM: John Patterson and Brenda Patten
TO: Town of Longboat Key Planning and Zoning Board
RE: Proposed Code Amendments -- Key Club
DATE: April 5, 2010

LBK
APR - 6 2010
PLANNING
& ZONING

This Memorandum replies to that of Martin P. Black dated 3/31/2010. The same paragraph references are used in this Memorandum for ease in review and comparison of the two documents.

As a general comment, much of Mr. Black's analysis stems from his own legal interpretations of the Zoning Code and the Comprehensive Plan. During the hearings on the Longboat Key Club & Resort's Outline Development Plan ("ODP") amendment application, Mr. Black's interpretations were not supported or followed by staff, staff's special counsel or this Board. Mr. Black continues to raise the same issues and interpretations. Many of the proposed Zoning Code clarifications were drafted to reinforce the Town's historical interpretation of these provisions in direct response to Mr. Black's interpretations. He ignores that, so when a clarification is sought he maintains a change is sought.

A. Proposed amendment #1 -- Section 158.009 (L)

As stated in the staff analysis, the proposed amendment simply clarifies the existing code. Under the current code and the proposed clarification, any type of mixed uses deemed appropriate by the Town Commission and the clustering of units on individual parcels are allowed within a planned unit development ("PUD"). Therefore, there is no inconsistency between the proposed amendment and the comprehensive plan or any of the future land-use elements. Mr. Black is also absolutely incorrect that the proposed clarifications will allow some of the 250 tourism units recently approved by referendum to be distributed in the PD, GPD or

NPD districts. Section 158.180(B)(3) specifically states that these 250 units may not be allowed in the PD, NPD or GPD districts.

B. Proposed amendment #2 -- section 158.067 (D)(3)(g)

As stated in the staff analysis, the requested code amendment does not change the intent of the code but simply clarifies and simplifies the existing text.

C. Proposed amendment #3 -- section 158.071 (A)(2)

Mr. Black argues that this code amendment is inconsistent with the Comprehensive Plan and will have the effect of allowing an unlimited amount of nonresidential development and redevelopment in all planned developments, including Bay Isles. This is a misrepresentation of the Zoning Code. Under section 158.067((D)(3)(g), a departure is currently allowed from the 5% nonresidential cap in a PUD. Once a departure is granted, those uses are not "non-conforming", but are, in fact, legal and permitted through the departure. The departure process is not inconsistent with the Comprehensive Plan.

The present Code and the Code amendment both continue to allow departures from the 5% cap in a GPD and a PD. A departure was sought from the 5% limitation in the GPD in Key Club's ODP application. This board recommended approval of the departure. The proposed amendment does not open the doors for future nonresidential or commercial development beyond what can already be granted under the Code. Any increase in nonresidential or commercial development in any of the PUD districts, including Bay Isles, will require an application for an outline development plan amendment and a rigorous review for consistency with the Planned District standards, neighborhood compatibility and the Comprehensive Plan. The Town Commission will consider Key Club's request for a departure from the 5% cap under these rigorous standards. The granting, conditioning or denial will be based on the public interest and the criteria specified in the code.

NOTE: MR. BLACK DOES NOT ADDRESS THE AMENDMENT TO SECTION 158.071(D). THE STAFF REPORT DOES. IN MY OPINION THE STAFF REPORT IS CORRECT IN ITS ANALYSIS.

D. Proposed amendment #4 -- Section 158.102 (L)

The present section, as it is now written, contains two bases for a waiver from a supplemental control. One is hardship, and the other is where a waiver is "necessary to ensure a more strict adherence to those performance standards set forth herein, which are deemed most critical, notwithstanding any other provisions of this ordinance to the contrary."

A waiver under this subsection has been treated in other instances on Longboat Key as a departure and the departure analysis of section 158.067 was utilized for the analysis. Furthermore, this section itself is subject to a departure under section 158.067. The proposed amendment simply makes the departure standards for a PUD uniform throughout the code, as it was intended to be. With the amendment, the departure standard from a supplemental control is

the same standard required for PUD's under section 158.067(D)(3)(g). The proposed change simply clarifies the standard of review and ensures consistency throughout the code. No substantive change will be effected by the clarification. However, the clarity and consistency of the code will be improved.

E. Proposed amendment #4 -- Section 158. 102 (L)(3)

This section deals with building length. Presently, the code is ambiguous. This is recognized in the staff report. If it is ambiguous, the benefit goes to the property owner. The proposed change simply clarifies the code. Mr. Black's comments regarding conflict with the comprehensive plan are inapplicable.

F. Proposed amendment #6 -- Section 158. 132(B) this change is a housekeeping clarification and does not change the code. This is recognized in the staff report.

G. Unresolved comprehensive plan and land development regulations issues.

Mr. Black's comments deal with the town's waterfront yard setback requirements. He assumes that Key Clubs property is on the pass. It is not. It is on a lagoon. This lagoon has existed historically and is recognized by the Town as a lagoon, not a pass. Prior permitting by the Town for the Chart House restaurant development was consistent with classification of this water body as a lagoon..

TOWN OF LONGBOAT KEY
PLANNING AND ZONING BOARD
MINUTES OF SPECIAL MEETING

APRIL 6, 2010

The regular meeting of the Planning and Zoning Board was called to order at 9:00 am at the Temple Beth Israel, 567 Bay Isles Road.

Members Present: Chair BJ Webb, Vice-Chairman Allen Hixon, Secretary John Wild, Members Phineas Alpers, Walter Hackett, Brad Saivetz, Morton Siegler, George Symanski, Patricia Zunz

Also Present: David Persson, Town Attorney; Nancy Stroud, Special Counsel; Monica Simpson, Planning, Zoning & Building Director; Steve Schield, Planner; Ric Hartman, Planner; Jo Ann Mixon, Deputy Town Clerk; Donna Chipman, Office Manager

AGENDA ITEM #1
ADMINISTRATION OF OATH

Deputy Town Clerk Mixon swore new member Brad Saivetz.

AGENDA ITEM #2
ORDINANCE 2010-16, AMENDMENTS TO CHAPTER 158, ZONING CODE

Pursuant to published notice, the public hearing was opened.

Chair Webb provided an introduction noting that the Board would be addressing each requested code amendment individually. She asked if there was consensus from the Board to limit public input to three minutes per person per topic. **There was consensus to limit public input to three minutes per person per topic.** She asked if there was consensus to limit attorneys representing clients to five minutes. **There was consensus to limit public speaking for attorneys representing clients to five minutes per topic.**

Monica Simpson, Planning, Zoning & Building Director, reviewed the agenda materials noting that in a letter, dated February 24, 2010, Attorney John Patterson, on behalf of the Key Club Associates, LP, and the Islandside Development LLC, requested that the Town Commission initiate zoning code amendments. During their March 1, 2010, regular meeting, the Town Commission granted permission for the P&Z Board to hold public hearings related to the code amendments requested by the Key Club. She mentioned that draft Ordinance 2010-16 would produce a result that was consistent with what the applicant desired and addressed all the requests made by the Key Club. She noted that the applicant had reviewed the draft ordinance and agreed it was

consistent with what they were applying for. Ms. Simpson mentioned there were seven individual code amendments that were proposed.

Amendment 1. Chapter 158, Section 158.009, Description of Districts and District Policies, subsection (L):

Ms. Simpson noted that this revision was to add text that stated, *"in the event of any conflict between the provisions of this section 158.009(L) and the provisions of any other section of the Zoning Code, the provisions of this section shall apply."* She commented that the code, much like the Comprehensive Plan, had to be consistent. Section 158.009 laid the basic groundwork for each individual zoning district that was established on Longboat Key. Staff believed what was implied by the requested amendment was if, for some reason, in other sections of the Zoning Code one found regulations that might be contrary to the intent of this zoning district, then the intent of the zoning district found in Section 158.009 would apply.

Ms. Simpson commented there was other requested zoning code amendments that clarified what land uses could be expected in a Planned Development (PD), Negotiated Planned Development (NPD), or Gulf Planned Development (GPD) zoning district. She pointed out that the code stated that such puds may include a mix of land uses. In order to specify, or bring more clarity to what a mix of land uses might be, the applicant was proposing the words, "residential, tourism, non-residential, and commercial," be added to that. This was consistent with what was found in Section 158.125 of the Zoning Code, which listed all the permitted land uses for the various districts. Ms. Simpson noted that GPD, NPD and PD districts must have an Outline Development Plan (ODP) adopted and approved before development could happen. She explained that through the ODP process, the Town had a great deal of discretion, but the code required compatibility, consistency and required the Town look comprehensively at how the development was formed. This section of the code was not meant to restrict to a very strict list of land uses, but was to provide flexibility in developing the puds.

Ms. Simpson commented that the last section of the code being requested for amendment was language dealing specifically with the calculation of density and the clustering of units. Staff's analysis indicated it was clear, in past comprehensive plans, the clustering of density was allowed; the current comprehensive plan might not be as clear, so this zoning code amendment was to bring more clarity to the code as to what was allowed and how density should be treated.

Mr. Siegler asked for an explanation of 'clustering.' Ms. Simpson noted that, in this case, or when discussing development of PD, GPD or NPD, there were several different individual developments and parcels within that PD district, and

clustering would be if they were to consolidate, or bring together, units from several different parcels and build all on one piece of land leaving open space on the remaining portions of land. Mr. Siegler asked if it was allowed at the discretion of the applicant, rather than the Board, would that put them in a situation where there might be clustering in an undesirable area. Ms. Simpson responded it was never fully the discretion of the developer, because the PD, GPD and NPD districts had to have an ODP approved, and subsequently, a site plan approved. She pointed out that the P&Z Board, and eventually the Town Commission would have the final authority on how development occurred on the island. Mr. Siegler believed the language should state "allowed subject to approval by." Ms. Simpson commented that if the Board wished, it could be changed to make clearer.

Mr. Wild asked if the three categories (PD, GPD, and NPD) were the only categories in the code, or was the Town missing a category. Ms. Simpson pointed out that Section 158.009(L) only addressed the PD, GPD and NPD districts. She noted that subsection (1), of 158.009(L), addressed the clustering of density. Mr. Hackett asked if in the overall density per acre, including recreation, open space, road rights-of-way, wetland, and non-residential, when equating to clustering of density on one or more parcels, would the clustering provide an increase. Ms. Simpson replied no; the acreage remains the same regardless of where they placed the units.

Mr. Siegler referred to page 2 of 5 of the draft ordinance where it listed the density, and commented that he believed it should state, "3.26 dwelling units per acre" as opposed to only a number. Ms. Simpson responded that Mr. Siegler was referring to a section of the code as it currently existed and was not being proposed for amendment. She referred to that section of the ordinance noting that Mr. Siegler's suggestion, that the density should be noted as dwelling units per acre rather than a numeric allowance, if it was the direction of the Board, staff could make that amendment.

Mr. Saivetz commented that he interpreted density as the maximum allowable density, and asked if there was any latitude given to the original developer as to what he wished to make the PD or GPD look like when deciding not to use the maximum density, and develop the project in accordance with that. He asked what protections were provided to those who move into the development understanding there was 'x' amount of density that showed on the original ODP. Ms. Simpson explained that was the reason the Town had the ODP process in place, which included a noticed public hearing. She noted that zoning could be changed, and what the residents might have reliance on, always had the potential of being requested for a change.

John Patterson, attorney representing the Key Club Associates, LP and Islandside Development LLC, agreed with staff that the proposed changes were

'housekeeping' and were to clarify what was found by the Board to be the interpretation of the code. He commented that Mr. Siegler's suggestion was to clarify the item even further, and he had no objection to that.

Michael Furen, attorney representing the Islandside Property Owners' Coalition (IPOC), did not believe the amendments were properly initiated by the Town Commission; the Town Commission had no amendments before them when they authorized the processing, but only had code sections. He also noted that the amendments before the Board were advertised only and not noticed to those residents within a 500 foot radius of the site. He questioned if the Board believed these were policy clarifications, as they viewed the overall impact differently and believed the amendments, in total, were a major change in the policy direction that had existed on the island for 30 years. He reviewed a memorandum from Attorney John Patterson to the Town Attorney, David Persson, dated March 5, 2010, and noted that at least 3-4 times, Mr. Patterson referred to "proposed code changes." He commented that Mr. Patterson had also indicated that they would not use these amendments, but would process the present application under the existing code. He reviewed the introduction from the Town's Comprehensive Plan noting that one of the goals was to "insure that long-range considerations are included in the determination of short range actions." He continued with discussing amendments to subsection 158.153(L) commenting that the first provision addressed conflicts between the provisions of that section and the provisions of other sections of the zoning code. He believed it was a "bad provision." Mr. Furen discussed: the second provision, which addressed puds and a mix of land uses; the final provision, which he believed was a major policy change that he viewed as inconsistent with the Town's Comprehensive Plan; and the present language (density of development sites within the PUD may vary), noting that parcel Rec-1 and the north parcel were not development sites.

David Persson, Town Attorney, addressed Mr. Furen's comments related to notice provisions explaining that this hearing was different than a quasi-judicial proceeding as it was considered legislative. He noted the difference in the hearings and pointed out that he believed the matter was properly before the Board. Concerning the certified notice, he agreed with Mr. Furen and his client that the ordinance had island-wide implications, which made it legislative, and as a result, the 500 foot notification was not appropriate.

Marty Black, 2601 Cattleman Road, Kimley-Horn & Associates, representing IPOC, discussed that in the materials received from the applicant in support of the petition, the narrative indicates that one of the basis for the request was there were sections of the definition in the zoning code, as applied and written, that limit and restrict the development potential and density restrictions by the very definition of what was allowed under 'maximum gross density-residential' and the types of acreage that were included in the provisions. He commented if there was a conflict on how acreage was calculated, the new language would allow an

applicant to override even the basic definitional provisions. He believed this change had the affect of attempting to modify that provision of the Comprehensive Plan that specified how density shall be calculated by, in effect, voiding that provision of the zoning code. He discussed the additional language that specified the mix of uses, noting the Comprehensive Plan did not provide a range of intensity of uses.

Stephen Cooper, 4430 Exeter Drive, believed there would be implications behind each amendment and voiced his opposition to the ordinance.

Arthur Coren, 545 Sanctuary Drive, discussed retaining the existing codes and voiced his opposition to the amendments.

Mike Seery, 535 Sanctuary Drive, reminded the Board that the residents depend on the codes to preserve their property rights in the pud and voiced his opposition to the amendments.

Merrill Zinder, 435 L'Ambiance Drive, voiced his opposition to the amendments and believed the Board should retain the current codes.

Larry Grossman, 763 St. Judes Drive, discussed the intent of planning and mixed use zones, and believed the request was changing a PUD into a mixed-use zone.

Steve Queior, president of the Greater Sarasota Chamber of Commerce, suggested that allowing flexibility in the codes to accommodate significant investment was key, and voiced his support for the amendments.

Robert Clark, 435 L'Ambiance Drive, voiced his opposition to the amendments.

Ira Singer, 1050 Longboat Club Road, commented that Ms. Simpson noted that the provision was meant as a broad intent to provide flexibility; however, he believed when you review the proposed changes, the intent could be contradictive with the code. He voiced concern with changing the codes for the developer.

Jeff McKee, 537 Hornblower Lane, voiced his support of the amendments.

Rick Crawford, 100 Sands Point Road, voiced his support of the amendments.

Patrick Mellett, 3440 Bayou Sound, believed the request was to provide clarity in the code and voiced his support of the amendments.

The Board recessed from 10:25 am – 10:41 am

Chair Webb reiterated that the Board was addressing each amendment individually. She noted that the Board was only acting on the code amendments and not the Outline Development Plan (ODP) request that was before the Town Commission. She requested comments be limited to the code amendments.

Mr. Wild asked if there were items within the seven amendments that would provide an improvement on the island. He believed there might be items, that by themselves, merit changing, but that overall, there might be others that did not merit changing. However, he commented that if a member voted against the overall code changes, as proposed, they might lose an opportunity to make refinements that might be beneficial for all projects on the key. Attorney Persson responded there were some that were clarifications, and would apply island-wide, and had been the Town policy for some time, but there were others that did not fit into that category. He suggested the Board vote on each amendment, and then at the end of the meeting, review and discuss the results.

Ms. Simpson explained that a planned unit development was different from the PD, GPD, and NPD, or it could be a part of one of those districts. The PD, GPD and NPD were the underlying zoning districts for those pieces of property on which that zoning category sat. She pointed out that a PUD could be placed anywhere on the island as long as it met the zoning code criteria. She discussed a PUD overlay, which could only be approved through an ODP process, and would establish the zoning for that PUD. Discussion ensued on the differences between PDs, PUDs, GPDs, development plans, and overlay districts.

Mr. Alpers asked when the GPD was proposed was there a certain percentage of the overall land that was designated as open and residential. Ms. Simpson responded that initially, when the Town set the zoning, it set density and some other guidelines, but that was where the rest of the Zoning Code came into play recognizing what was the underlying zoning of all properties. Attorney Persson explained the GPD was different, because the development started prior to the plan, and then the plan incorporated development. He noted the overall thought of the documents was to create open space within the district for the golf course and to move that residential density primarily to the gulf front. He commented that, as a result, there was an overall plan that created "pods of potential development" along the Gulf of Mexico, which was developed over the years. Discussion ensued on puds and how they were included in the process.

Attorney Persson suggested that Section 158.009(L) (1) (page 2 of 5 of the draft ordinance) be modified to read, "*such that the clustering of density on one or more parcels within a site may be allowed,*" deleting the word 'is' to be clear it was permissive. Referring to the second suggested change, he did not believe the Board should make that change because density was a defined term in the code, and he did not believe there was a need to add 'units per acre' after the word 'density' in the schedule. He also addressed Mr. Furen's, Mr. Black's, and

Mr. Singer's comments by suggesting a modification that stated, "In the event of a conflict between the **specific** provisions of this Section 158.009(L), and the provisions of any other sections of the Zoning Code, the **specific** provisions of this section shall apply."

Mr. Saivetz requested more clarity noting that in the GPD there was a clustering of single-family homes located on Lighthouse Point, and in the original plan it was intended for an intensive set of condominiums, but the result was 11-12 homes. He asked if it was his understanding that if one of the homeowners in that cluster decided to construct a six-story home on the property, they would now have a reason to come to the Town Commission and request that. Attorney Persson explained that whether the homeowner had reason, or not, was not an issue, but whether they had the ability to request was the question. He pointed out that the way the provisions were drafted currently in the approval documents, any property owner had the right to petition the Town to ask for change to the ODP. Mr. Symanski asked if there was anything in the amendment that would change that response. Attorney Persson replied no; he was of the opinion that this was a 'housekeeping' matter and not a significant departure from current policy.

MR. SYMANSKI MADE A MOTION TO RECOMMEND APPROVAL OF THE AMENDMENT TO SECTION 158.009, WITH THE AMENDMENTS STATED BY ATTORNEY PERSSON TO SECTIONS 158.009(L) AND (L)(1). MR. ALPERS SECONDED THE MOTION. MOTION CARRIED ON ROLL CALL VOTE: ALPERS, AYE; HACKETT, AYE; HIXON, AYE; SAIVETZ, AYE; SIEGLER, AYE; SYMANSKI, AYE; WEBB, AYE; WILD, AYE; ZUNZ, AYE.

Amendment 2. Chapter 158, Section 158.067, Description of Districts and District Policies, subsection (D)(3)(g):

Ms. Simpson discussed Section 158.067 noting the changes being proposed were a matter of clarifying what had been, not only procedural and practice within the Town, but a general understanding of how the code was to be interpreted, understood, and applied.

Mr. Symanski asked if the language, "shall be evaluated as from the requirement of the zoning district," was used elsewhere in the code. He also referred to the language, "most similar to the use approved for the proposed project," and asked if the use was approved at this point, or were they proposing the use. Ms. Simpson responded it should be 'use proposed.'

Mr. Patterson noted they were in agreement with staff's analysis.

Mr. Furen disagreed this was a proposed clarification and believed it was a weakening and removal of strong limitations on the ability of the Town to grant

departures from its code. He discussed Comprehensive Plan Policies 1.2.2, 1.1.4 and 1.1.7 of the Future Land Use Element; and, Policies 1.1 and 4.6 of the Housing Element. He noted they believed the amendment was a major expansion of the departure capability and further weakened the provisions of the Zoning Code, and provided "unbridled discretion" to the Town and denied property owners, who relied on the code provisions, their protection. He requested that the Board not recommend approval of the amendment.

James Greer, 2014 Harbourside Drive, discussed the history and development of Islandside and Harbourside and voiced his support of the amendments.

Mr. Grossman commented that he believed the PUD was a process and did not understand why there would not be an underlying zone. He voiced concerned with the departures, and opposed this amendment.

Mr. Black commented that by broadening the ability for departures to all provisions of the code, it set up the possibility to even depart from minimum acreage requirements for the other pud districts, not just the PD, GPD, and NPD; they would be expanding the capability to depart from even the underlying components that established base thresholds of when those districts, and when those overlays, were appropriate.

Ms. Simpson explained that Mr. Furen was correct that the code change would still allow for any section of the code to be requested for departures, but that ability currently existed. She pointed out that it was an ability to request a departure, and was not a mandate for the Town to approve or automatically grant; it did have to be consistent with the Comprehensive Plan. She noted it was not a variance, but a departure, and what was proposed did not change the status quo, but allowed a departure to be requested from the code of ordinances.

Discussion ensued on modifications to the proposed language.

MR. SIEGLER MADE A MOTION TO RECOMMEND APPROVAL OF THIS AMENDMENT AS MODIFIED. MR. SYMANSKI SECONDED THE MOTION. MOTION CARRIED ON ROLL CALL VOTE: ALPERS, AYE; HACKETT, AYE; HIXON, AYE; SAIVETZ, AYE; SIEGLER, AYE; SYMANSKI, AYE; WEBB, AYE; WILD, AYE; ZUNZ, AYE.

Amendment 3. Chapter 158, Section 158.071, Proposed Land Uses, subsection (A)(2):

Ms. Simpson discussed that this amendment currently read that where mixed uses, residential, and non-residential were proposed, non-residential development may be permitted to occupy up to five percent of the gross land area of the PUD. She explained that the 1979 Zoning Code was the last edition

of the code that presented language that differed from what currently existed, which used the term 'non-residential.' The change to the existing code reflected a change in policy, which limited the amount of commercial development in a PUD to limiting the amount of non-residential development in a PUD. She pointed out that the proposed amendment essentially returned to the policy reflected in the 1979 code, limiting the amount of commercial development to five percent, and distinguishing between accessory commercial and non-accessory commercial development in that calculation. She noted that the Zoning Code for the Town did not consider tourism units to be commercial uses. She explained that special provisions had been made in the Town to allow for tourism uses on a commercially-zoned parcel through Ordinance 2008-34; however, the provisions were specifically for the distribution of the 250 tourism units that were approved by the voters in the referendum of March 2008. Ms. Simpson noted that without this ordinance, tourism units would not be allowed at all on commercially-zoned property; this was a policy change being requested.

Mr. Symanski asked if hotels would not be considered commercial. Ms. Simpson replied correct. She provided an example using Inn on the Beach noting it would be classified as tourism development, and therefore, would not be included in the five percent commercial calculation; nor would the restaurant if it met the accessory commercial criteria of less than 30 percent and other items in the code. There was discussion on accessory uses, tourism units, the five percent limitation for commercial, and if there were any limits on how much accessory commercial a project could have.

Mr. Siegler questioned the reason for the change. Ms. Simpson responded it was a policy change that was before the Board, and it would provide much more latitude for the type of development that could happen on the island. She had reviewed the amendments with town-wide implications, and not site specific. Mr. Wild asked how the amendment would apply to the Whitney Beach Shopping Center on the north end. Ms. Simpson explained that Section 158.071 would only be applicable to that parcel if they chose to implement a PUD overlay. Mr. Savietz asked if this amendment would allow a minor hotel in Bay Isles. Ms. Simpson replied that someone could apply for a tourism development in Bay Isles. Mr. Saivetz asked if someone, without this amendment, could apply for tourism development in Bay Isles. Ms. Simpson replied yes; making application versus having the Town approve it were two clear distinctions that would be made.

Mr. Patterson asked if, after hearing the comments from the Board and staff, there could be a break for lunch to allow them time to review the language and provide possible modifications.

Mr. Alpers left the meeting at 12:00 pm.

The Board recessed for lunch from 11:55 – 1:00 pm

Chair Webb discussed a possible continuance of this hearing to Thursday, April 8, 2010. She noted that former Mayor Jim Brown's wife had passed away and her service was scheduled for 11:00 am on Thursday, and due to the interest of several board members and staff wishing to attend, it was decided to reconvene, if needed, to 1:00 pm on April 8, 2010, until 5:00 pm. The hearing would again be held at Temple Beth Israel.

Mr. Patterson provided a history of the code language. He noted there was a question of whether this was a legal impediment for moving forward with the Key Club's application, whether this was passed or not, and he responded no. They believed it was an issue that should be reviewed and that was the reason they proposed it. He pointed out that if the Town approved the change, it still meant a developer, for any change to a pud, would have to follow the same process of applying for a change in the ODP and meet the criteria. Mr. Symanski commented that Mr. Patterson had stated this was not needed, and asked if 'tourism' was non-residential. Ms. Simpson noted that tourism was non-residential. Mr. Symanski asked how a hotel could be constructed if over the five percent. Mr. Patterson replied they could ask for a departure from the five percent.

Mr. Furen again referred to Policy 1.1.4, Table 1, of the Town's Comprehensive Plan. He pointed out that it reflected that the GPD was 5.05 dwelling units per acre and argued that the plan represents that tourism uses were commercial. He discussed the definition of 'commercial use,' and noted that the five percent cap on non-residential was part of the regulations governing the PUD, and believed it was a critical component of the Town Code that limited the intensity, mass and scale of development within the PUD. Mr. Furen pointed out that the code section had served the Town for a number of years and urged the Board to deny the change.

John Mitchell; 415 L'Ambiance Drive, voiced concern with what he believed were attempts to change, what he believed was commercial, into something that was not commercial.

Marty Black reviewed Policy 1.1.6 of the Future Land Use Element noting that the provision required the Town to strictly apply and enforce the Land Development Regulations (LDRs). He believed if the Board moved forward with the change, then they would be inconsistent with the provisions of the Comprehensive Plan.

Richard Webber, 2120 Harbourside Drive, president of Bay Isles Association, noted he was speaking on behalf of Bay Isles. He asked if the changes, if

approved, would set a precedent for the entire island. Attorney Persson explained that it would create a standard for the PD, GPD and NPD districts. Mr. Webber asked if it allowed a change in the density for each area. Attorney Persson replied no. Mr. Webber asked if it would allow reassignment of density units. Attorney Persson pointed out that it depended upon whether the units were initially allocated to the parcel; if they were allowed a certain number of units, and built less, then there was density available in the PUD that could be assigned within that district.

Bob White, 435 Longboat Club Road, president of IPOC, noted this was most dramatic of the changes being requested as the Town was being asked to accommodate a developer by changing the current code back to the original code from years ago. He discussed the comments concerning flexibility for the PUD questioning where the protections were for property owners that purchased within a PUD if it was constantly subject to change.

Tom Asposporous, 5570 Gulf of Mexico Drive, president of the Longboat Key/Lido Key/St. Armand's Key Chamber of Commerce, spoke in support of the amendment.

Attorney Persson responded to Mr. Webber's comments noting that Section 158.071 applied to all PUDs, but there was an exception to that; it applied to an overlay district, but did not apply if there was no commercial use in the underlying district.

Terry Gans, 3030 Grand Bay Boulevard, discussed that the codes could be changed as they were not "written in stone." He voiced his support for the amendment.

Mr. Grossman discussed that he could not find a definition of 'departures' in the Town's Zoning Code, and continued with discussing mixed use zones, accessory uses, and Mr. Symanski's comments concerning the accessory uses exceeding the five percent commercial restriction.

Robert Clark, 435 Longboat Club Road, opposed the amendment, because he believed it was not a clarification, but a change in policy.

Chair Webb asked if the Town defined 'departure.' Ms. Simpson explained there was not a distinct definition in Section 158.006, Definitions, in the Town Zoning Code, but in the drafting of legislation for the code dealing with other sections, such as the implementation of the 250 tourism units and the voluntary rebuild ordinances, staff was very clear to either use, or steer away from, the term 'departure,' specifically dealing with intent. However, because both of those processes utilized the ODP process, staff might have used those where applicable. She pointed out that the code does speak very clearly to the fact that

when a departure was requested, the Town Commission had to look at the intent of the PUD before granting that departure, which was different from the waiver and hardship criteria that were found in the code for variances.

Mr. Wild noted that Mr. Furen had referred to the Comprehensive Plan several times and asked if this amendment applied island-wide. He asked if staff saw any potential negatives that impacted the north end, such as height of structures. Ms. Simpson responded that the amendment was a change in policy, and it did not speak to height of structures or intensity of development with regard to bulk and mass, but it did speak to the amount of a particular type of use that could be built within a development. Mr. Wild commented that he wished to ensure that the changes did not have a negative impact on the ability to redevelop some of the land that needed to be redeveloped. Ms. Simpson corrected her previous statement, noting that the amount of non-residential, non-commercial development might potentially increase. She commented that, as written, the limitation would be five percent on commercial.

Mr. Saivetz voiced concern with the question of commercial tourism, and he believed the 2008 referendum was very specific regarding tourism units and where they could be located. Ms. Simpson explained that the PD, NPD and GPD districts were specifically left out with the understanding they already had units with which to work, and they were not eligible for the 250 tourism units because there was a desire to place those units in other areas where there were not available units for people to ask for.

MR. WILD MADE A MOTION TO RECOMMEND APPROVAL OF THIS AMENDMENT AS RECOMMENDED. MR. HIXON SECONDED THE MOTION.

Mr. Saivetz commented that the applicant had noted they did not need the amendment for their proposal, and suggested that the amendment could be approved without the non-commercial item. Mr. Siegler discussed the Comprehensive Plan and its reference to the island and "its unique character" and that it was "an affluent retirement community." He did not see a reason to change the code such that the Town would allow a future group to make changes as they saw fit. Mr. Hixon explained that the Board was discussing a PUD that would apply anywhere on Longboat Key, and the purpose of a PUD was to allow designers, without limitations and regulatory restrictions, the ability to create the most positive land use proposal possible. He encouraged the Board to approve the amendment. Mr. Symanski commented that the applicant had noted they did not need it, because the Town Commission could grant a departure. The amendment would clarify the code so there was not a weakness. He supported the amendment.

MOTION CARRIED ON ROLL CALL VOTE: HACKETT, AYE; HIXON, AYE; SAIVETZ, NO; SIEGLER, NO; SYMANSKI, AYE; WEBB, AYE; WILD, AYE; ZUNZ, AYE.

Amendment 4. Chapter 158, Section 158.071, Proposed Land Uses, subsection (D):

Ms. Simpson explained that this proposed amendment was to provide clarification to the specific section of the Zoning Code to better reflect the legislative history and intent of the ordinance (2000-17) when adopted. She explained that former Planning, Zoning & Building Director, Jill Jeglie, recommended amendments to the code so that it would be clear that even if there was unused density within a PUD, the applicant must request to amend the ODP prior to utilizing and developing the unused units. Mr. Patterson agreed with the suggested modification.

MR. WILD MADE A MOTION TO RECOMMEND APPROVAL OF THE AMENDMENT AS PRESENTED BY STAFF. MR. HIXON SECONDED THE MOTION. MOTION CARRIED ON ROLL CALL VOTE: HACKETT, AYE; HIXON, AYE; SAIVETZ, AYE; SIEGLER, AYE; SYMANSKI, AYE; WEBB, AYE; WILD, AYE; ZUNZ, AYE.

Amendment 5. Chapter 158, Section 158.102, Performance standards for site and development, subsection (L):

Ms. Simpson discussed that this section addressed specific performance standards for site and development that were supplemental controls that only applied to developments of multi-family or tourism of 10 units or more. Section 158.102(L)(3) dictated the maximum length of buildings that were allowed within a development and could not be waived by the Town Commission, either by departure, hardship or waiver. The remaining supplemental controls could be waived by code and were not departures; they were either hardships or waivers as deemed in the code. She noted that the applicant was proposing to remove the restriction to 158.102(L)(3) so that a waiver or hardship could be granted for the maximum length of a building, but only if located within a PUD.

Mr. Symanski addressed the language regarding 'various standards', noting that the standards belonged with variances and not this type of use. Ms. Simpson responded that currently, staff dealt with departures, waivers, and variances with three to four different sets of criteria. Staff would like to have clear standards, but understanding, from the applicant's view, that this was supposed to be a flexible process. Nancy Stroud, Special Counsel, pointed out this was a difficult standard, if properly applied, and because it only applied to tourism and multi-family units, it was meant to be a very strict standard when it was adopted. She commented that the applicant was stating that it did not make sense, in a PUD,

to only allow that very strict standard, which was why the departure language was included for PUDs. Mr. Symanski asked if this amendment simply allowed the Town Commission to look at a building that was longer and prohibited otherwise. Ms. Simpson noted that it would take it to a departure standard, rather than a waiver /hardship standard in most cases. Ms. Stroud commented that departures were not in the definition section of the code, but was in the standards of the code.

Mr. Wild questioned what was the current length and if it was a "true rectangular shaped building." Ms. Simpson reviewed Section 158.102(L)(3), Maximum Length of Building, noting there needed to be clarity in this section of the code. Discussion ensued on the issue of what was considered 'centered on the building.' She pointed out the applicant was proposing wording that stated, "through the building," but noted that the 30 degree angle would remain the same. Mr. Siegler reviewed his proposed language change to address a building where the center was not easily defined. The suggested language stated, "no portion of any individual building shall extend beyond a line drawn from the front line 30 degrees either side of the line drawn perpendicular to the front lot line and located at the mid-point of a line connecting the extreme right and left ends of the structure as viewed from that property line." Ms. Simpson responded that the language was basically the same as she would have to apply the code on a consistent basis, but the applicant was proposing that the line could be located anywhere through that building so long as the width of the building remained constant. Mr. Hixon commented that another way this was often handled was relative to the percent of open space, because they were trying to avoid a mass of buildings. Discussion ensued on the interpretation of 'center of building'. Ms. Simpson believed there was consensus to follow the method discussed, but there was a need to draft language.

The Board recessed from 2:31 – 2:40 pm

Mr. Patterson reviewed the theory of the language noting there needed to be some type of change to the code. Dave Leach, engineer with the Longboat Key Club, commented there was not a concise definition for building length and reviewed an illustration showing how the proposed language would work relative to Mr. Siegler's proposed revision. Mr. Hixon believed the Board was concerned with how that would impact visually what was seen as one moved down the road and through the particular projects. Ms. Stroud discussed issues involving supplemental controls, departures, and waiver language. She noted that the applicant had raised the issue that there were two waivers allowed under the existing code, and she agreed that the code read that there was a waiver that required hardship, but one could also ask for a waiver where the waiver was "necessary to ensure a more strict adherence to those performance standards set forth herein, which are deemed most critical, notwithstanding any other provisions of the ordinance to the contrary." She noted that staff had reviewed

the second waiver and believed it was ambiguous. She suggested that language be removed.

MR. WILD MADE A MOTION TO STRIKE THE LANGUAGE SUGGESTED BY SPECIAL COUNSEL STROUD. MR. SIEGLER SECONDED THE MOTION. MOTION CARRIED ON ROLL CALL VOTE: HACKETT, AYE; HIXON, AYE; SAIVETZ, AYE; SIEGLER, AYE; SYMANSKI, AYE; WEBB, AYE; WILD, AYE; ZUNZ, AYE.

Amendment 6. Chapter 158, Section 158.102, Performance standards for site and development, subsection (L)(3):

Ms. Simpson reviewed the suggested change proposed by Mr. Siegler. Mr. Hixon commented that it did not indicate the overall length, connecting the extreme right and left ends of the structure, where measured parallel to the road frontage. Mr. Siegler responded if the axis of the building was not parallel with the lot line, it would not matter. He commented that the applicant stated it did not have to be centered on the building, but he was stating it had to be consistent with the existing regulations and his illustration did that. Mr. Wild questioned which proposal (Longboat Key Club or Mr. Siegler's) would generally apply to the entire island and was one that staff was comfortable with. Ms. Simpson commented by itself it did not matter; if they took every other consideration out (setbacks, separation between buildings, etc.), it would achieve the same for that one individual building. However, when reviewing the ordinance, it allowed the applicant to request a departure from this section of the code, which provided more flexibility. She needed language that was clear that she could implement and enforce.

MR. SAIVETZ MADE A MOTION TO ACCEPT THE LANGUAGE PROPOSED BY MR. SIEGLER. MOTION DIED FOR LACK OF SECOND.

MR. WILD MADE A MOTION TO RECOMMEND APPROVAL OF THE AMENDMENT TO SECTION 158.102(L)(3) AS ORIGINALLY PRESENTED BY STAFF. MR. HIXON SECONDED THE MOTION. MOTION CARRIED ON ROLL CALL VOTE: HACKETT, AYE; HIXON, AYE; SAIVETZ, NO; SIEGLER, NO; SYMANSKI, AYE; WEBB, AYE; WILD, AYE; ZUNZ, AYE.

Amendment 7. Chapter 158, Section 158.132, Tourism Uses, subsection (B):

Ms. Simpson explained that this item was considered a 'housekeeping' issue. Mr. Siegler asked if the language could include, "as may be permitted by this code." Ms. Stroud responded she did not believe that language was necessary.

MR. HIXON MADE A MOTION TO RECOMMEND APPROVAL OF THE AMENDMENT TO SECTION 158.132(B). MR. HACKETT SECONDED THE MOTION. MOTION CARRIED ON ROLL CALL VOTE: HACKETT, AYE; HIXON, AYE; SAIVETZ, AYE; SIEGLER, AYE; SYMANSKI, AYE; WEBB, AYE; WILD, AYE; ZUNZ, AYE.

No one else wished to be heard, and the hearing was closed.

MR. SYMANSKI MOVED THE P&Z BOARD RECOMMEND APPROVAL OF ORDINANCE 2010-16 AS AMENDED BY THE ACTION OF THIS BOARD. MR. HACKETT SECONDED THE MOTION. MOTION CARRIED ON ROLL CALL VOTE: HACKETT, AYE; HIXON, AYE; SAIVETZ, AYE; SIEGLER, NO; SYMANSKI, AYE; WEBB, AYE; WILD, AYE; ZUNZ, AYE.

AGENDA ITEM #3
ADJOURNMENT

The meeting was adjourned at 3:20 pm.

John Wild, Secretary
Planning and Zoning Board

DRAFT

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April 7, 2010

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

The Honorable George Spoll, Mayor
and Members of Town Commission
Town of Longboat Key
501 Bay Isles Road
Longboat Key, Florida 34228

RE: Fees and Costs for Zoning Change Requested by Longboat Key Club

Dear Mayor Spoll and Commissioners:

As you may recall at your March regular meeting, the Longboat Key Club requested that the Town Commission authorize the process outlined in Section 158.030(A)(1) of the Zoning Code to allow the Planning & Zoning Board to conduct hearings and recommendations on proposed changes to the Zoning Code.

Town policy requires the Applicant to pay fees and costs. Pursuant to the resolution currently in effect, the application fee is \$900.00, a deposit is required of \$3,000.00 and the Applicant is required to pay staff time and advertising costs associated with the request. Key Club has paid the requisite fee and deposit but has informed me that it will not pay more than \$10,000.00. There is no provision in the Town regulations for this limitation.

Advertising costs are estimated to be in excess of \$4,000.00. Pursuant to Town Resolution, staff time is charged at the rate of \$115.00 per hour and the Applicant is also responsible for the attorney's fees associated with the request (Ms. Stroud's fees, not mine).

While it is probable that the fees and costs will be below \$10,000.00, it is not certain. In the event that fees and costs exceed \$10,000.00, it appears to me that the

Town is required to stop processing the application, absent direction from the Commission to the contrary.

Therefore, I am requesting direction from you at your workshop in April.

In the meantime, if I can answer any questions, please contact me.

Respectfully,



David P. Persson

DPP/dgb

cc: Bruce St. Denis
Monica Simpson
John Patterson
Nancy Stroud
Michael Furen