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Reply to: *Lakewood Ranch*

MEMORANDUM

TO: ZONING BOARD OF ADJUSTMENT

FROM: MAGGIE D. MOONEY-PORTALE, TOWN ATTORNEY

CC: ALAINA RAY, PLANNING & ZONING DIRECTOR

DATE: FEBRUARY 5, 2015

RE: FEBRUARY 12, 2015 MEETING
AGENDA ITEM # 1
REQUESTED APPEAL FROM GENE JALESKI DATED
DECEMBER 10, 2014

I. BACKGROUND

On December 10, 2014, Mr. Jaleski hand delivered a written request to appeal certain issues relating to the Mar Vista Restaurant's land use approvals to the Zoning Board of Adjustment ("ZBA"). Specifically, Mr. Jaleski has alleged that for the past 20-25 years, he has not received the legal notice he should have received relating to the Town Commission's ("Commission") and the Planning and Zoning Board's ("PZB") consideration and approval of

various land use matters relating to the restaurant. He asserts that he has a right to challenge the Commission and PZB land use approvals based upon legal theories he asserts are applicable pursuant to Florida Statutes 166.041(7) and the case of *Webb v. Town Council of Town of Hilliard*, 766 So.2d 1241 (Fla. 1st DCA 2000). On December 13, 2014, Mr. Jaleski sent a second letter to the Town reaffirming his December 10, 2014 request to appeal prior land use actions by the Town based upon allegations of improper notice. In response to Mr. Jaleski's request to appeal, I prepared and directed a letter dated December 22, 2014, to Ms. Alaina Ray, the Town's Planning and Zoning Director, with a copy to Mr. Jaleski that provided my legal opinion that the ZBA does not have jurisdiction to consider the issues raised in Mr. Jaleski's correspondences. In response to that correspondence, Mr. Jaleski transmitted two (2) other letters back to the Town dated January 6, 2015.¹ One of those letters states that the ZBA needs to make a determination on the ZBA's jurisdiction after considering the Town Attorney's recommendation on jurisdiction. Upon further evaluation of Section 158.026(F)(5) of the Town Code and in consideration of Mr. Jaleski's request, a supplemental letter dated January 9, 2015 was issued by my office to Ms. Ray (copy to Mr. Jaleski), restating my opinion that the ZBA does not have jurisdiction to consider the issues raised in his December 10, 2014 correspondence and requesting that this item be added to the ZBA's February meeting agenda for a jurisdiction determination on Mr. Jaleski's request. Copies of the above described correspondences referenced above are attached for the ZBA's consideration.

II. TOWN CODE

Art. II Section 20 of the Town Charter establishes that the ZBA shall serve as a permanent board of the Town and that the ZBA's duties shall be established by Town Code. Section 158.026 of the Town Code sets forth the composition and duties of the ZBA, and in subsection (F)(1)-(4) enumerates the ZBA's specific powers:

(F) The board of adjustment shall have the following powers and duties:

(1) To hear and decide appeals where it is alleged there is error in any order, requirement, decision, or determination made by an administrative official in the enforcement of this chapter.

(2) To hear and decide special exceptions to the terms of this chapter on which the board is required to pass as required in this section.

¹ The first correspondence by Mr. Jaleski raises two (2) new issues/complaints for "appeal" to the ZBA and assert due process violations that arouse out of the PZB quasi-judicial hearing on December 18, 2014. The two (2) new issues/complaints will be addressed as separate agenda item and discussed in a separate memorandum.

(3) To hear and decide waivers from the daylight plane regulations of this Code pursuant to the procedures established for appeals as set forth in F.S 158.027. In determining whether to grant a waiver, the zoning board of adjustment shall review the waiver application including both site and schematic design drawings and shall consider: (a) impacts to view of neighbors and neighborhood; (b) uniqueness of the configuration of the lot upon which the structure is proposed; and (c) special circumstances or conditions affecting the property, such that the strict application of the daylight plane requirements would inordinately burden the property owner and would deprive the property owner of a reasonable design for the building as it relates to its environs. If the zoning board of adjustment determines that a waiver is appropriate it may increase the angle for the daylight plane, with or without conditions. Such waiver, if approved, shall apply to the building only and shall not terminate upon the destruction of the building.

(4) To authorize upon appeal in specific cases and where not otherwise prohibited by the terms of this chapter a variance from the terms of this chapter as will not be contrary to the public interest, owing to special conditions, a literal enforcement of the provisions of this chapter will result in unnecessary and undue hardship. As used in this chapter a variance can be authorized only for height, area and size of structure or size of yards and open spaces; but in no event may a variance be granted by the board of adjustment that would allow an increase in density.

III. TOWN ATTORNEY ANALYSIS OF TOWN CODE

A summary of my analysis of Mr. Jaleski's request that resulted in my conclusion that the ZBA does not have jurisdiction pursuant to Section 158.026(F)(1)-(4) of the Town Code is set forth below.

(1) Mr. Jaleski's Request is Not An Appeal of a Decision By an Administrative Official Enforcing the Zoning Code.

Mr. Jaleski's request is not an appeal of an order, requirement, decision or determination by a Town "administrative official" as defined by the Town Code. The Town Code specifies in Section 158.006 that the "*Planning and zoning official*" is the Town official designated by the town manager as the individual responsible for the administration and enforcement of the Town's zoning regulations. Mr. Jaleski's December 10, 2014 request does not seek to appeal any sort of order, requirement, decision or determination by the Town's Planning and Zoning Director or any other Town official. Rather, his request seeks to appeal an unspecified number of past quasi-judicial decisions rendered by the Commission and/or the PZB and the adequacy of notice provided during those proceedings. His request seeks to have the ZBA make a legal

determination on various legal theories on "notice" that he asserts are applicable under Florida Statutes and Florida caselaw.

The Commission and PZB acted on the Mar Vista Restaurant applications in quasi-judicial public hearings proceedings; such proceedings and decisions rendered by these boards are not administrative determinations. The ZBA does not have authority under the Town Code to review the decisions of either the Commission or the PZB boards.

The ZBA does not have authority to review decisions made over 20 years ago. The Town Code provides that any appeals of administrative decisions are required to occur within 30 days of rendition of the written decision. See, Sec. 158.027(B), Town Code. Mr. Jaleski has not asserted that administrative action was taken within the 30 day period prior to the correspondence dated December 10, 2014. Consequently, the ZBA cannot consider appeals that are not timely under the Town Code.

Finally, to the extent Mr. Jaleski is advancing legal theories and arguments premised upon Florida caselaw and Florida Statutes, this type of legal determination is beyond the jurisdiction of the ZBA. Mr. Jaleski has been advised on numerous occasions that if he wants to have a legal determination on these theories that he should consider engaging the services of an attorney who can advise him on what, if any, judicial (court) remedies he has available to him.

Accordingly, for all of the foregoing reasons, I cannot conclude that his request falls within the ZBA's jurisdiction to consider appeals of administrative decisions.

(2) Mr. Jaleski's Request is Not Seeking a Special Exception Use.

Mr. Jaleski's correspondence does not request a special exception use that is within the ZBA's purview under the Town Code. Specifically, he has not requested a use for a home occupation, windwall, trellis, boat dock, or tennis court as referenced in Sections 158.028, 158.125, and 158.127 of the Town Code. Accordingly, I cannot conclude that his request falls within the ZBA's jurisdiction to consider a special exception use.

(3) Mr. Jaleski's Request is Not Seeking a Daylight Plane Waiver.

Mr. Jaleski's correspondence does not request a waiver of the daylight plane height regulations for buildings or structures specifically provided for in Section 158.153 of the Town Code. Accordingly, I cannot conclude that his request falls within the ZBA's jurisdiction to consider a daylight plane regulation waiver.

(4) Mr. Jaleski's Request is Not A Variance Request.

Mr. Jaleski's correspondence does not request relief from any specific provision of the Code (i.e., setbacks, side yard, or open space requirements). Accordingly, I cannot conclude that his request falls within the ZBA's jurisdiction to provide variance relief from the Town Code.

IV. LEGAL JURISDICTIONAL DETERMINATION BY THE ZBA

Subsection (F)(5) of 158.026 provides authority for the ZBA to make a legal determination on the ZBA's jurisdiction after considering the Town Attorney's recommendation. Specifically, the Town Code states:

(5) The board of adjustment shall not consider any matter when in the opinion of the board, after consideration of the recommendation of the town attorney, the matter presented is not within the jurisdiction of the board as set forth in this chapter.

The ZBA will need to determine at the February 12, 2015 meeting whether or not the board finds that the issues raised by Mr. Jaleski in his December 10, 2014 correspondence are within the jurisdiction of the ZBA. Importantly, when considering this agenda item the ZBA should be reminded that the ZBA is not considering the merits of the appeal issue raised in Mr. Jaleski's December 10, 2014 correspondence. The ZBA will only be ruling on the jurisdictional issue at this proceeding. In an effort to afford Mr. Jaleski the greatest amount of procedural due process on his appeal, and without waiving the ability to argue that the jurisdiction determination is more of an executive/legislative determination by the ZBA, I would recommend that the ZBA conduct the jurisdiction determination hearing as a quasi-judicial proceeding.

If the ZBA concludes that it does have jurisdiction to consider the matters raised by Mr. Jaleski in his December 10, 2014, correspondence, then a future quasi-judicial hearing will need to be scheduled and properly noticed in accordance with Section 158.027 of the Town Code. Section 158.027 provides specific notice requirements and requires that Mr. Jaleski provide the remittance of a fee for such appeal. Pursuant to Town Resolutions 2008-32 and 2011-27, the non-refundable fee for zoning appeals is \$450.00 per appeal, with a minimum deposit per appeal of \$1,000.00. See, Town Resolutions 2008-32 and 2011-27. To the extent the ZBA moves forward in finding jurisdiction over this manner, the quasi-judicial hearing will need to be conducted in accordance with the process outlined in Section 158.027 of the Town Code.

If, however, the ZBA determines that the board does not have jurisdiction to hear the matters raised in Mr. Jaleski's December 10, 2015 correspondence, and decides to follow the recommendation of the Town Attorney, then the issue of Mr. Jaleski's appeal will be concluded and the ZBA will not need to take any further action on this matter.

I will present the above overview at the upcoming February 12, 2014, ZBA meeting.

Attachments:

Letter from Gene Jaleski dated December 10, 2014

Letter from Gene Jaleski dated December 13, 2014

Letter from Town Attorney dated December 22, 2014

Letter from Gene Jaleski dated January 6, 2015

Letter from Town Attorney dated January 9, 2015

Town Resolution 2008-32

Town Resolution 2011-27

Jaleski

Zoning Board of Adjustment
Town of Longboat Key
501 Bay Isles Road, FL 343238

Dated: 12/10/2014

I am requesting a formal review by the Longboat Key Board of Adjustment of my standing, under town and state laws, to ask for a formal review of certain actions by the town planning and zoning board and/or town commission pertaining to various land use actions by the town within 500 feet of my home.

It is fact that I never received legal notice of said actions in accordance with both town and state statutes, over a period of approximately 20 to 25 years, and that said actions by the town have affected my property value and quality of life being within 500 feet of where certain zoning actions were taken, including, but not limited to, variances, departures and waivers.

This request is being made as a result of recent actions taken by the town stating that the town contends that I have no standing due to a five year statute of limitations – F.S. 166.041 (7).

I disagree with the town's position and am requesting that the town board of adjustment address my complaint – Town Council of Town of Hilliard, Florida, and George I. McKinnon, Individually, Appellees. No. 1D99-2968, District Court of Appeal of Florida, First District. September 25, 2000.

Gene Jaleski

Eugen Jaleski 12/10/14

TOWN OF LONGBOAT KEY
TOWN CLERK/ASD
2014 DEC 10 PM 12:46

Authority to request a ZBA hearing – town code 158.027 (F) -

The board of adjustment shall have the following powers and duties:

(1)

To hear and decide appeals where it is alleged there is error in any order, requirement, decision, or determination made by an administrative official in the enforcement of this chapter.

Delivered to T VII - 12/15/14

TOWN OF LONGBOAT KEY
TOWN CLERK/ASD
2014 DEC 15 PM 2:27

Town of Longboat Key
501 Bay Isles Road
Longboat Key, FL 34228

12/13/2014

Notice of appeal to the Longboat Key Zoning Board of Adjustment – legal standing in Void Ab Initio proceedings by Gene Jaleski against the Town of Longboat Key, involving all land use actions by the town requiring certified mail notification to me of public meetings from 1988 to 2014.

ref: town email to Gene Jaleski from Planning Director citing F.S. 166.041 (7) denying standing on my *void ab initio* complaint to the town. It is my contention that all previous land use actions by the town involving property within 500 feet of my property were not properly noticed and denied me legal access. It is my further contention that said proceedings were void ab initio due to failure in due process and failure to legally comply with all provisions of F.S 166.041.

158.027 - Appeals.

Appeals to the board of adjustment may be taken by any person aggrieved or by any officer, board, or commission of the town affected by any decision of the administrative official under any provision of this chapter.

(A)

An appeal to the board of adjustment stays all work on the premises and all proceedings in furtherance of the action appealed for unless the official from whom the appeal was taken shall certify to the board of adjustment, by reason of facts stated in the certificate, a stay would cause imminent peril to life or property. In this case, proceedings or work shall not be stayed except by a restraining order which may be granted by the board of adjustment or a court of record on application, on notice to the officer from whom the appeal is taken, and on due cause shown.

(B)

Any person appealing any decision of an administrative official shall make the appeal within 30 days after rendition of the order, requirement, decision or determination appealed from in writing to the board of adjustment and file with the planning and zoning official the appeal, an application fee as set by resolution of the town commission, and a sufficient number of copies of supporting facts and data to satisfy administrative needs as determined by the town manager, or designee. This does not, however, restrict the filing of a request for a special exception or variance by any person at any time as provided for elsewhere in this chapter.

(C)

Upon receipt of the appeal, the planning and zoning official shall forthwith examine the appeal or request application and endorse his weighted options thereon together with all documents, plans, papers, or other materials constituting the record on which the action appealed was taken and transmit it to the board of adjustment. Concurrently, the planning and zoning official shall transmit a copy of the appeal together with all documents, plans, papers, or other materials constituting the record to the town attorney for his review and opinion. The town attorney shall present his opinion to the board of adjustment with respect to two items, as to whether the appeal is in fact an appeal and within the jurisdiction of the board of adjustment, and the merits of the appeal proper if requested by the board. Based on past opinions of the town attorney, the town manager, or designee may make such determinations.

(D)

Before rendering a decision on an appeal, the board of adjustment shall hold a public hearing. The board shall fix a reasonable time of day for the hearing and cause public notice to be given at the petitioner's expense. Notice of public hearings of the board shall, at least seven days prior to hearing, be:

(1)

Prominently posted by the applicant by a sign provided by the town on the property which is the subject of the application or petition. The posted notice shall be:

(a)

Placed in a location in conformance with chapter 156

(b)

Placed in a location unobstructed to the view of passersby;

(c)

Maintained by the applicant until required to be removed and if damaged, destroyed or removed, shall be replaced as soon as possible by the applicant with another sign provided by the town;

(d)

Modified by the applicant to reflect any errors or changes in scheduling of the applicable public hearings so as to ensure accurate information;

(e)

Removed by the applicant within 48 hours after conclusion of the public hearing; and

(f)

Inspected by the planning, zoning and building department to ensure compliance with these posting requirements.

(2)

Posted by the town at town hall.

(3)

Published in a newspaper of general circulation within the town; and

(E)

A copy of the legal notice sent by certified mail 14 days prior to the hearing by the petitioners to all owners of property involved in the petition or application, and to all owners of property immediately adjacent to and within 500 feet of the perimeter of the subject property, and to each homeowners', property owners' or condominium association which annually registers with the planning, zoning and building department to receive such notice by first class mail. The guide for the mailing requirement to owners shall be the most current town or county assessment roll.

(F)

At the hearing, any party may appear in person, by agent or by attorney. With respect to condominiums or cooperatives, notice required by this section will be deemed notice to its property owners when notice is sent or delivered to the secretary and the president of the condominium or cooperative association, unless the offices are not filled, in which event notice to the agent designated for the service of process will be sufficient compliance with the notice requirements of this section. However, in the discretion of the zoning board of adjustment, notice may be required to be given to each condominium owner or cooperative unit owner.

(Ord. 90-06, passed 3-19-90; Amd. Ord. 94-16, passed 11-17-94; Amd. Ord. 97-24, passed 11-3-97; Amd. Ord. 98-24, passed 7-16-98; Ord. 2011-04, § 2, passed 6-6-11)

Failure to Notify under town's codes and ordinances:

33.25 - Public hearings.

(A)

The planning and zoning board shall hold a public hearing on any matter if requested by the town commission. The board may hold one or more public hearings on any matter, if in the opinion of the board the best interests of the town will be served, except on matters initiated by the board. on matters initiated by the board, public hearings will be held only with the approval of the town commission.

(B)

Any changes in land use and zoning initiated by the town, and changes in land use and zoning not initiated by the town, including, without limitation, development agreements and adoption or amendments to outline development plans, if not initiated by the town, shall be at the petitioner's or applicant's expense. Notice of such public hearing shall:

(1)

Be published at least seven days prior to the hearing in a newspaper of general circulation within the town; and

(2)

Be published at least four days (including weekends and holidays) prior to the public hearing, in a publication generally circulated weekly within the town in a format similar to F.S. § 166.041(3) (c)2.b., as may be amended.

(3)

A copy of the notice shall be sent by certified mail 14 days prior to the hearing to all owners of property involved in the petition or application, to all owners of property in the same MUC zoning district for applications that would add dwelling or tourism units to the subject property, to all owners of property immediately adjacent to and within 500 feet of the perimeter of the subject property, and to each homeowners', property owners' or condominium association which annually registers with the planning, zoning and building department to receive such notice by first class mail. The guide for the mailing requirement to owners shall be the most recent town or county assessment roll.

Precedence – case law:

766 So.2d 1241 (2000)

**Wiley WEBB, Appellant,
v.
TOWN COUNCIL OF TOWN OF HILLIARD, Florida, and George I. McKinnon, Individually,
Appellees.**

No. 1D99-2968.

District Court of Appeal of Florida, First District.

September 25, 2000.

"[S]trict compliance with the notice requirements of the state statute is a jurisdictional and mandatory prerequisite to the valid enactment of a zoning measure." See Lady J. Lingerie, Inc. v. City of Jacksonville, 973 F.Supp. 1428, 1434 (M.D.Fla. 1997), *aff'd in part, quashed in part on other grounds by* 176 F.3d 1358 (11th Cir. 1999), *cert. denied*, ___ U.S. ___, 120 S.Ct. 1554, 146 L.Ed.2d 459 (2000). Attempts of local government to grant zoning changes without compliance with procedural requirements have been deemed invalid and void. See Ellison v. City of Fort Lauderdale, 183 So.2d 193, 195 (Fla. 1956)(Since City Commission did not comply with notice and public hearing provisions, ordinance was invalid); Healthsouth Doctors' Hospital, Inc. v. Hartnett, 622 So.2d 146, 148 (Fla. 3d DCA 1993); City of Miami Beach v. State ex rel. Consolo, 279 So.2d 76, 78-79 (Fla. 3d DCA 1973), *cert. denied*, 292 So.2d 24 (Fla. 1974)(City's attempt to change classification of property was a nullity, because the proposed change was not effected in accordance with the procedural requirements of the zoning ordinance, i.e., the city failed to hold a public hearing after due notice); City of Coral Gables v. Deschamps, 242 So.2d 210, 212 (Fla. 3d DCA 1970)(ordinance deemed invalid and void, because the notice as to the proposed zoning change was inadequate to inform regarding the proposed changes).

Eugene Jaleshi 12/15/2014

- *Mar Vista status as a non-conforming use*

-

- **Town Code & Ordinances 158.138 (3)**

Nonconforming use. Where at the effective date of the ordinance codified in this chapter or any amendments thereto, lawful use of buildings or structures exists, the use may be continued subject to the provisions of this chapter. Any nonconforming use may be extended throughout any parts of a building which were manifestly arranged or designed for such a use at the effective date of the ordinance codified in this chapter or any amendments thereto. Any nonconforming use which occupied a portion of a building not originally designed or intended for such a use shall not be extended to any other part of the building.

Any additional increases in building mass, height and relocation of seating, from an indoor location to an outdoor location, at a non-conforming use business, will increase the level of noise pollution and loss of ambiance, that will directly affect my lifestyle and property value.

Gene Jaleski
671 Cedar Street
Longboat Key, FL 34228

My property is within 500 feet of the Mar Vista Property.

Eugene Jaleski 12/15/2014

TOWN OF LONGBOAT KEY
TOWN CLERK/ASD
2014 DEC 15 PM 2:27

158.138 - Status of nonconformities.

(A)

Within the districts established by these zoning regulations or amendments that may be later adopted, there may exist lots, buildings, structures, or uses which are lawful at the effective date of this chapter but which would be prohibited, regulated, or restricted under the terms of this chapter to permit those nonconformities to continue until they are removed either voluntarily or as required by subsection (B)(5), unsafe structures, or subsection (B)(8)(a), abandonment. It is further the intent that nonconformities shall not be expanded, enlarged upon, intensified, or extended, except as provided hereafter in this section. Furthermore, no expansion, enlargement, intensification, extension of a nonconforming structure, building, lot of record, use, or waiver thereof, shall be permitted which increases its nonconformance with present site and development plan performance standards or district regulations, unless provided for in this section or section 158.139.

158.138 - Status of nonconformities.

(A)

Within the districts established by these zoning regulations or amendments that may be later adopted, there may exist lots, buildings, structures, or uses which are lawful at the effective date of this chapter but which would be prohibited, regulated, or restricted under the terms of this chapter to permit those nonconformities to continue until they are removed either voluntarily or as required by subsection (B)(5), unsafe structures, or subsection (B)(8)(a), abandonment. It is further the intent that nonconformities shall not be expanded, enlarged upon, intensified, or extended, except as provided hereafter in this section. Furthermore, no expansion, enlargement, intensification, extension of a nonconforming structure, building, lot of record, use, or waiver thereof, shall be permitted which increases its nonconformance with present site and development plan performance standards or district regulations, unless provided for in this section or section 158.139.

(B)

The following policies shall determine the management of nonconformities:

(1)

Nonconforming lots of record. A permitted or permissible building or structure may be erected, expanded or altered on any lot of record at the effective date of the ordinance from which this chapter derives or any legally created amendment thereto. The maximum density to the greatest extent possible, maximum lot coverage, building height and floor area shall conform to the district in which the lot is located, and shall be subject to the requirements below:

(a)

All nonconforming lots shall:

1.

Have a minimum required side yard setback of ten feet for each side yard or meet the minimum requirements within its respective district, whichever is less.

2.

Meet the required yards conforming to the minimums required for the district in which the lot is located.

(b)

Two or more nonconforming lots or combinations of lots shall be considered an undivided lot for the purposes of this chapter if:

1.

As of July 21, 1976, the lots were in continuous frontage in single ownership, of record in the appropriate county where located; and

2.

The lots are deficient in the requirements established for lot width or area.

(c)

(2)

Nonconforming buildings or structures. Where a building or structure exists lawfully that could not be built under this chapter or as it may be amended by reason of restrictions on lot area, lot coverage, height, yards, location on the lot, or requirements (other than use) concerning the structure, then the building or structure may be continued so long as it remains otherwise lawful; provided further, that:

(a)

The building or structure may not be altered or enlarged in any way which creates a new nonconformity or increases or enlarges an existing nonconformity, and

(b)

The building or structure may be altered or enlarged in any way which decreases an existing nonconformity or in any way which is otherwise conforming.

(3)

Nonconforming use. Where at the effective date of the ordinance codified in this chapter or any amendments thereto, lawful use of buildings or structures exists, the use may be continued subject to the provisions of this chapter. Any nonconforming use may be extended throughout any parts of a building which were manifestly arranged or designed for such a use at the effective date of the ordinance codified in this chapter or any amendments thereto. Any nonconforming use which occupied a portion of a building not originally designed or intended for such a use shall not be extended to any other part of the building.

• (7)

Change in nonconforming uses without structural alteration. If no structural alterations are made, a nonconforming use of a building or structure may be changed to another nonconforming use of a similar or higher (more restrictive) classification under the following conditions:

(a)

The change in use shall not intensify or enlarge the basic use of the building or premises by increasing the need for more parking facilities, by increasing vehicular or pedestrian traffic, by creating more noise, vibration, fire hazard, smoke, dust or fumes, by increasing hours of operation or number of employees, by increasing ground coverage or adversely impacting drainage, or otherwise result in a more intensive use of the building or premises, or change the basic character of the building or premises except to more nearly conform to the character of the zoning of the district in which the building or structure is located.

(b)

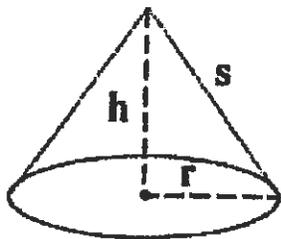
When a nonconforming use of all or any part of a building, structure or premises is changed to another nonconforming use of a more restricted character, the new use may not thereafter be changed to any nonconforming use.

(9)

Pre-existing legal uses. Certain uses of land that cannot be added under current regulations are legal because they lawfully existed on January 1, 2014, and are authorized as "pre-existing legal uses" on the schedule of uses in section 158.125. "Pre-existing legal uses" uses may also be classified as nonconforming uses, but by virtue of their listing in section 158.125 shall be afforded the privileges of permitted uses and may be reconstructed up to their pre-existing density, in accordance with all applicable current regulations, but only on the specific parcels on which they are located. The abandonment and termination provisions in subsection (B)(8) do not apply to uses that qualify as "pre-existing legal uses."

(Ord. 90-06, passed 3-19-90; Amd. Ord. 93-23, passed 10-21-93; Amd. Ord. 94-06, passed 3-24-94; Amd. Ord. 98-24, passed 7-16-98; Ord. 2013-20, § 20, passed 6-30-14)

- Adverse impacts of relocating 40+ indoor ground level seats to outdoor elevated seating.



As the source of sound pollution is elevated, the area being impacted by the noise is expanded.

Simple physics tells us that the proposed alterations and additions to the present Mar Vista structure will worsen the negative impacts of a non-conforming business on the surrounding neighborhood.

The level of noise pollution is directly affected by several factors, including elevation.

Moving the noise source from a contained indoor location at ground level, to an elevated outdoor locating, increases the existing level of noise pollution.

First imagine your next door neighbor having a party for forty people inside his home. Think about the noise from the party in your home.

Now imagine the same party taking place in your neighbor's back yard. Think about how much greater the noise is because it is not being muffled by the walls of the neighbor's house.

There is no public purpose to increasing commercially generated noise pollution levels in the surrounding community.

In the absence of scientific on-site noise studies on the adverse affects of increased noise levels on the surrounding community, the town should not move forward on the pending application. Noise impact studies need to be conducted by an independent (not retained by the applicant) qualified engineering company that accurately model the proposed modifications to the existing structures.

Former U.S. Surgeon General William H. Stewart said in 1978, "Calling noise a nuisance is like calling smog an inconvenience. Noise must be considered a hazard to the health of people everywhere."

Gene Jaleski, residing at 671 Cedar Street, Longboat Key, Florida, who's property lies within 500 feet of the applicant's property, is a qualified "party-intervener" and is requesting the right of cross-examination during the Longboat Key Planning and Zoning Board quasi-judicial proceedings to be held on 12/16/2014 at the Longboat Key town hall under state statute 265.115.

I further request that the PZB hearing be video recorded by the town.

Gene Jaleski

party-intervener - legal def - An intervenor is a a party who does not have a substantial and direct interest but has clearly ascertainable interests and perspectives essential to a judicial determination and whose standing has been granted by the court for all or a portion of the proceedings.

F.S; 265.115.2(b) - (b) In a quasi-judicial proceeding on local government land use matters, a person who appears before the decisionmaking body who is not a party or party-intervenor shall be allowed to testify before the decisionmaking body, subject to control by the decisionmaking body, and may be requested to respond to questions from the decisionmaking body, but need not be sworn as a witness, is not required to be subject to cross-examination, and is not required to be qualified as an expert witness. The decisionmaking body shall assign weight and credibility to such testimony as it deems appropriate. A party or party-intervenor in a quasi-judicial proceeding on local government land use matters, upon request by another party or party-intervenor, shall be sworn as a witness, shall be subject to cross-examination by other parties or party-intervenors, and shall be required to be qualified as an expert witness, as appropriate.

Gene Jaleski 12/15/2014

Nonconforming Use:

In the past the town has granted waivers to the applicant under 158.175 which established the applicant's status as a nonconforming-use commercial operation.

- 158.175 - Commercial revitalization—Intent and purpose.

These commercial revitalization sections (sections 158.175 through 158.179) recognize that within the town there exist commercially zoned and developed parcels with structures, which were lawful when established, but as of October 1, 2002 are nonconforming under the terms of the town's land development code. It is the intent of the commercial revitalization sections to provide reasonable flexibility for these nonconforming commercial, office and marina establishments located within the C-1, C-2, C-3, O-I and M-1 zoning districts, that are developed with conforming uses as of October 1, 2002, by providing a process for existing business establishments to make small alterations in order to meet state or federal mandates, or to improve their businesses to maintain viability.

The commercial revitalization is optional. Property owners may avail themselves of these provisions contingent on the requirements and standards identified in this section. Waiver approvals shall apply during the life of the building or improvement only and shall not run with the land. Waiver approvals shall terminate at the time of building demolition and/or destruction whether by voluntary or involuntary means.

- The town has permitted a quadrupling of seating capacity from 44 seats to 169 seats. This can not be viewed as "small alterations".

Case Law:

By definition, a nonconforming use or structure is one in which the use or structure was legally permitted prior to a change in the law, and the change in law would no longer permit the re-establishment of such structure or use. As the Fifth District Court of Appeal noted in *Lewis v. City of Atlantic Beach*, 467 So. 2d 751, 754 (Fla. 5th DCA 1985):

Eugen Jalev!

12/15/2014

TOWN OF LONGBOAT KE
TOWN CLERK/ASD
2014 DEC 15 PM 2:27

The applicant has failed to adequately demonstrate through independent studies and analysis that the expansion of the physical plant and the relocation of forty-four ground level enclosed seats to an elevated outdoor location will not adversely impact surrounding residential properties.

It is obvious that relocating seating from an indoor to an outdoor location will increase noise pollution in the surrounding neighborhood.

Additionally, the applicant has produced studies on the impact of elevated and increased outdoor seating on the quality of life in a residential community including nighttime community amenities such as the town dock and beach where residents presently enjoy a natural night sky and relatively quiet ambiance.

158.097 - Application for site plan approval

(D) The relationship of the site to existing development in the area including streets, utilities, residential and commercial development, and important physical features in and adjoining the project, including ecological features.

(E) The density or intensity of land use(s) to be allocated to all parts of the site to be developed together with tabulations by acreage and percentage thereof itemized by use and density.

Persson & Cohen, P.A.

Attorneys and Counselors At Law

David P. Persson
Andrew H. Cohen
Kelly M. Fernandez
Maggie D. Mooney-Portale*
R. David Jackson, P.A.

Telephone (941) 306-4730
Facsimile (941) 306-4832

Email: mmooney@swflgovlaw.com

* Board Certified City, County and Local Government Law

Reply to: Lakewood Ranch

December 22, 2014

Ms. Alaina Ray
Zoning Board of Adjustment
Town of Longboat Key
501 Bay Isles Road
Longboat Key, FL 34228

Re: Request for Standing Determination by Gene Jaleski

Dear Ms. Ray:

I have reviewed the letter from Gene Jaleski dated December 10, 2014, which requests that the Zoning Board of Adjustment ("ZBA") make a determination as to his standing to challenge various, unspecified actions of the Town Planning & Zoning Board and Town Commission.

It is my opinion that the ZBA does not have jurisdiction under Town Code Section 158.026(F). None of the four enumerated types of matters the ZBA may hear encompass the request made by Mr. Jaleski.

Kindly forward this opinion to the Members of the Zoning Board of Adjustment.

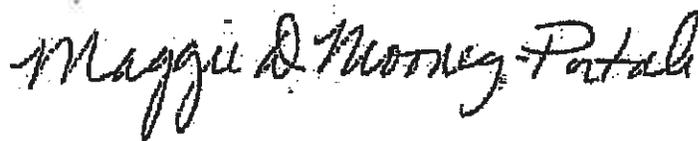
Lakewood Ranch
6853 Energy Court
Lakewood Ranch, Florida 34240

Venice
217 Nassau Street S.
Venice, Florida 34285

Ms. Alaina Ray
December 22, 2014
Page Two

This letter is an opinion of jurisdiction and is not intended to address the merits of the application. Should you have any questions, please contact me.

Respectfully,

A handwritten signature in black ink that reads "Maggie Mooney-Portale". The signature is written in a cursive, flowing style.

Maggie Mooney-Portale

MMP/vlg

cc: Donna Chipman

Town Manager & Zoning Board of Adjustment
Town of Longboat Key
501 Bay Isles Rd.
Longboat Key, FL 34228

1/06/2015

RE: Request for Zoning Board of Adjustment Hearing.

In response to the town attorney's letter, dated 12/22/2014, I hereby request a formal hearing of my initial complaint, dated 12/06/2014, as there is nothing in the cited Town Code 158.026 (F) that allows the town attorney to preclude the ZBA's decision making process.

- 158.025 (5)

The board of adjustment shall not consider any matter when in the opinion of the board, after consideration of the recommendation of the town attorney, the matter presented is not within the jurisdiction of the board as set forth in this chapter.

The above code provision mandates that it is the ZBA, and not the town attorney, that must decide if it has purview over a specific complaint filed by a property owner.

Additionally, there is no specific language in 158.026 that prevents the ZBA from adjudicating the specific complaint I have filed with the town.

Further, Town Code 158.027 specifically calls for a public hear to be held to consider the legal merits of an appeal brought by a property owner.

(D)

Before rendering a decision on an appeal, the board of adjustment shall hold a public hearing. The board shall fix a reasonable time of day for the hearing and cause public notice to be given at the petitioner's expense.

Gene Jaleski
671 Cedar Street
Longboat Key, FL 34228

Gene G. Jaleski

TOWN OF LONGBOAT KEY
TOWN CLERK/ASD
2015 JAN -6 PM 3:41

Persson & Cohen, P.A.

Attorneys and Counselors At Law

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Email: mmooney@swflgovlaw.com

* Board Certified City, County and Local Government Law

Reply to: Lakewood Ranch

January 9, 2015

Ms. Alaina Ray
Zoning Board of Adjustment
Town of Longboat Key
501 Bay Isles Road
Longboat Key, FL 34228

Re: Request for Standing Determination by Gene Jaleski dated December 10, 2014

Dear Ms. Ray:

This shall serve a supplemental correspondence to my letter dated December 22, 2014, regarding Mr. Jaleski's December 10, 2014, request for a standing determination to bring certain action before the Zoning Board of Adjustment ("ZBA") for appeal.

It continues to be my opinion that the ZBA does not have jurisdiction under Town Code Section 158.026(F) to consider an appeal over the issues raised in Mr. Jaleski's correspondence. None of the four enumerated types of matters the ZBA may hear encompass the request made by Mr. Jaleski.

Lakewood Ranch
6853 Energy Court
Lakewood Ranch, Florida 34240

Venice
217 Nassau Street S.
Venice, Florida 34285

Ms. Alaina Ray
January 9, 2014
Page Two

I would appreciate it if you would kindly forward this opinion to the Members of the Zoning Board of Adjustment. Additionally, pursuant to Town Code Section 158.026(F)(5), please place this opinion and recommendation on the February 12, 2015 agenda, or on the next regular meeting agenda where a quorum is available, for a determination by the Zoning Board of Adjustment.

This letter is an opinion of jurisdiction and is not intended to address the merits of the request. Should you have any questions, please contact me.

Respectfully,


Maggie Mooney-Portale

MMP/vlg

cc: Donna Chipman (via email)
Gene Jaleski (via U.S. Mail)

RESOLUTION 2008-32

A RESOLUTION OF THE TOWN OF LONGBOAT KEY, FLORIDA, ESTABLISHING A NEW APPLICATION/FILING FEE SCHEDULE FOR VARIOUS SERVICES, AND REORGANIZING THE EXISTING FEE SCHEDULE FOR THE PLANNING, ZONING, AND BUILDING DEPARTMENT; PROVIDING FOR REPEAL OF ALL RESOLUTIONS IN CONFLICT HERewith; PROVIDING FOR SEVERABILITY; PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, Ordinance 98-24 establishes that permit/application fees associated with Town Code Chapters 150, 151, 152, 153, 154, 155, 157, 158, and 160 be set by resolution of the Town Commission; and

WHEREAS, the Town Commission passed Resolution 98-18, along with attachment, Exhibit "A", at a Town Commission meeting held on July 16, 1998, which was subsequently amended by Resolution 02-06 on April 1, 2002, and Resolution 05-15 on July 11, 2005, to set certain application/filing fees; and

WHEREAS, additional services are now provided for which an appropriate application/filing fee has not been established; and

WHEREAS, the staff time, Town Attorney time, and advertising costs associated with the filing of such applications is not being completely recovered by the Town; and

WHEREAS, the Planning, Zoning, and Building Department identified that it is customary in other communities and would be beneficial to the Town to collect a deposit for certain applications from which fees can be collected; and

WHEREAS, the Town wishes to collect fees for processing such applications, in addition to required staff time and Town Attorney time charges, as well as consultant and advertising fees when applicable, in order to ensure that the expenses incurred by the Town are recovered; and

WHEREAS, it is desirable to reformat the existing schedule of fees, which will remain unchanged, and include the newly proposed fees, for ease of reference to both staff and the public.

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

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

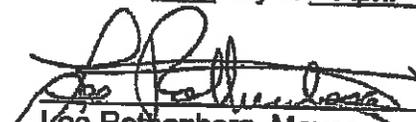
SECTION 2. The fees and charges set forth in Exhibit "A" of this Resolution are hereby adopted.

SECTION 3. Resolutions 98-18, 02-06, 05-15, and any portion of other Resolutions in conflict with this Resolution are hereby repealed.

SECTION 4. If any section, subsection, sentence, clause, or provision of this Resolution is held invalid, the remainder of the Resolution shall not be affected.

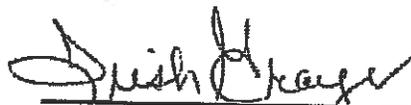
SECTION 5. This Resolution shall be come effective immediately upon adoption.

Passed at a meeting of the Town Commission held the 6th day of April 2009.



Lee Rothenberg, Mayor

ATTEST:



Trish Granger, Town Clerk

Attachment: Exhibit "A"

EXHIBIT "A"

PLANNING, ZONING AND BUILDING DEPARTMENT FEES

The Planning, Zoning and Building Department shall collect from each applicant for a permit the following fees as required by Title 15, Chapters 150-160 of the Town of Longboat Key Code of Ordinances. In addition to the following fee amounts, applicants for Building, Shoreline Construction, Dredging and Filling, Electrical, Flood Control, and Plumbing permits, as well as Subdivision modifications, Zoning Code applications, and Comprehensive Plan amendments shall be responsible for all costs of advertising and other expenses reasonably incurred by the Town in connection with the processing of the application.

FLORIDA BUILDING CODE PERMIT FEES

These costs include hourly staff charges for each review after the third permit application plan review, Town Attorney expenses as submitted by the attorney, and fees and expenses as submitted by consultants deemed necessary by the Town. Changes or alterations to a permit are charged staff time for the initial review and any additional reviews.

Failure to obtain any and all required approvals prior to commencing work shall result in fines and penalties as set forth in the respective standards and codes, including a penalty of one hundred percent as set forth in section 108.2 of the Florida Building Code.

Staff review charges after the third review (per staff member/per hour)	\$110.00/hour
Changes or alterations to a permit (per staff member/per hour)	\$110.00/hour

Fees for building permits shall be as follows:

1. **Construction costs** - The fee for each \$1,000 or part thereof of the cost of construction \$19.50
2. **Construction costs/Fire inspection** - The fee for each fire inspection fee (plan review) per \$1,000 of the cost of construction \$4.00
3. **Moving Fee** - The fee for moving any building or structure \$250.00
4. **Demolition Fee** - The fee for the demolition of any building or structure shall be per 1,000 square feet or any part thereof \$145.00
5. **Re-inspection Fee** - The fee for each re-inspection when work is not ready or does not meet code \$50.00

6. **H.A.R.V. Fees** - The fee for heating, air conditioning, refrigeration, and ventilation inspections shall be as follows:
- a. Alterations, additions, repairs, and window units, per inspection required \$50.00
 - b. New residential and commercial living or working area, per square foot \$0.07
 - c. Ventilation inspections, 3-story or higher \$7.00/inspection
 - d. Commercial boiler, per unit \$43.25
7. Inspections at request of applicant \$50.00

Fees for electrical permits shall be as follows:

- 1. Alterations, additions, repairs, per inspection \$50.00
- 2. New Residential
 - a. 0 to 100 amp service per unit \$50.00
 - b. 101 to 200 amp service per unit \$75.00
 - c. 201 to 400 amp service per unit \$85.00
- 3. New Commercial: per amp service/per occupied or unoccupied unit \$0.75
- 4. Additional work found to be improper requiring additional inspections \$50.00/per inspection
- 5. Temporary pole/underground \$50.00/per inspection
- 6. **Re-inspection Fees:** When extra inspection trips are necessary due to any one of the following reasons, a charge shall be made for each trip. The payment of re-inspection fees shall be made before any further inspections are made.
 - a. Wrong address \$50.00/per re-inspection
 - b. Condemned work resulting from faulty construction or code violation \$50.00/per re-inspection
 - c. Repairs or corrections not made when re-inspection is called \$50.00/per re-inspection

- d. Work is not ready for inspection when called \$50.00/
per re-
inspection

Fees for plumbing permits shall be as follows:

1. For issuance of each permit	\$50.00
2. Each plumbing fixture up to and including the first twenty (20)	\$7.25
3. Each plumbing fixture in excess of twenty (20)	\$5.75
4. Building sewers four-inches (4") and not over fifty-feet (50') long	\$20.00
5. Large sewers, each 100-feet or fraction thereof per inch in diameter	\$10.85
6. Each additional fifty-feet (50')	\$10.00
7. Trailer connection	\$36.00
8. Repair or alteration of water, drainage, waste or vent piping	\$21.50
9. Water service (new construction)	\$36.00
10. Septic tanks, grease traps, oil separator, traps, etc., in excess of 500 gallons	\$36.00
11. Re-inspection, when work is not ready, or does not meet code	\$50.00
12. Demolition sewer caps	\$28.75
13. Back flow preventer (per address)	\$50.00

SHORELINE CONSTRUCTION CODE PERMIT FEES

The Planning, Zoning and Building Department shall collect from each applicant for a shoreline construction permit the following fee as required by Chapter 151. The fee shall be \$50.00 per linear foot of proposed shoreline construction.

DREDGING AND FILLING CODE PERMIT FEES

The Planning, Zoning and Building shall collect from each applicant for a dredging and filling permit the following fees as required by Chapter 152.

- | | |
|--|------------------|
| 1. Fee for off-shore and on-shore areas to be filled not in excess of one square acre. | \$50.00/
acre |
|--|------------------|

- | | | |
|----|---|----------------------|
| a. | For each additional off-shore acre or fraction thereof to be filled | \$15.00/
acre |
| b. | For each on-shore cubic yard of fill | \$0.01/
c.y. fill |
| c. | Canal maintenance work | \$50.00/
acre |

FLOOD CONTROL CODE VARIANCE FEES

The Planning, Zoning and Building Department shall collect from each application for variance from the flood control code the following fee as required by Chapter 154.

Variance application fee	\$450.00
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PLANNING AND ZONING APPLICATION/PROJECT DEPOSITS

A deposit shall be required for all applications with an asterisk or double asterisk under the following fee schedule. Staff will withdraw funds from the initial deposit on a monthly basis to pay all costs in connection with the processing of the application. In the event that the initial deposit falls below \$250.00, an additional deposit equal to fifty percent of the original deposit will be required. If the processing costs exceed the deposits, all additional costs will be billed to the applicant. Unused funds from the deposits will be refunded after all invoices and outstanding charges for processing the application have been paid.

A single asterisk (*) denotes that an initial deposit of \$1,000 shall be required.

A double asterisk (**) denotes that an initial deposit of \$3,000 shall be required.

SUBDIVISION CODE FEES

The Planning, Zoning and Building Department shall collect from each applicant for subdivision approval the following fees as required by Chapter 157.

- | | | |
|----|--|-----------|
| 1. | Preliminary plan | \$180.00* |
| 2. | Final plat | \$252.00* |
| 3. | Lot line adjustment (Section 157.32, Lot Line Adjustments) | \$252.00* |

4. Filing fee \$450.00

ZONING CODE FEES

The Planning, Zoning and Building Department shall collect the following fees as required by Chapter 158.

1.	Application for certificate of occupancy or temporary certificate of occupancy, per unit	\$150.00/ unit
2.	Zoning Determination Letter	\$75.00
3.	Appeal of a decision of the Town Manager or designee	\$450.00*
4.	Application for variance	\$450.00*
5.	Application for special exception	\$450.00*
6.	Application for rezoning	\$900.00**
7.	Application for site plan review	\$360.00**
8.	Application for commercial site plan review	\$725.00**
9.	Application for outline development plan review	\$275.00**
10.	Application for development agreement	\$5,000.00
11.	Temporary use permits	
	a. Model homes or apartments	\$135.00
	b. Real estate offices limited to the sales of dwelling units on those premises	\$135.00
	c. Construction material and equipment storage	\$45.00
	d. All other temporary uses	\$45.00
12.	Application for vested rights determination	\$450.00**
13.	Application for site plan exemption	\$75.00
14.	Application for zoning code text amendment	\$900.00**
15.	Application for letter of no objection	\$100.00
16.	Application for physical address change	\$100.00

COMPREHENSIVE PLAN FEES

The Planning, Zoning and Building Department shall collect the following fee for each Comprehensive Plan text or map amendment application as required by Chapter 160. If a rezoning application is submitted, the rezoning fee shall also be paid.

Fee for each Comprehensive Plan text or map amendment	\$725.00**
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RESOLUTION 2011-27

A RESOLUTION OF THE TOWN OF LONGBOAT KEY, FLORIDA, AMENDING THE FEE SCHEDULE FOR BUILDING PERMIT FEES AND FIRE FEES ASSOCIATED WITH PERMITTING; PROVIDING FOR REPEAL OF ALL RESOLUTIONS IN CONFLICT HEREWITH; PROVIDING FOR SEVERABILITY; PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, Ordinance 98-24 establishes that permit/application fees associated with Town Code Chapters 150, 151, 152, 153, 154, 155, 157, 158, and 160 be set by resolution of the Town Commission; and

WHEREAS, the Town Commission passed Resolution 98-18, which was subsequently amended by Resolution 02-06, Resolution 05-15, and Resolution 2008-32, to set certain application/filing fees; and

WHEREAS, the Town hired a consultant to review the services and costs associated with the building and fire plans reviewers and inspectors for the issuance of building permits and other related services; and

WHEREAS, it was determined that certain staff time charges associated with the completion of many services are not being fully recovered by the Town; and

WHEREAS, it was determined that the certain fees necessary to fully recover the cost of some services provided were not reasonable, consequently a reasonable flat fee has been established for such services; and

WHEREAS, the Town Commission determined that it is in the best interests of the Town to amend the fee schedule for the Planning, Zoning and Building Department to change existing fee amounts and to include the newly proposed fees, and

WHEREAS, the Town Commission adopted Resolution 2011-24 on July 11, 2011, establishing an updated fee schedule for building related plan reviews, inspections services, and other services provided; and

WHEREAS, the Town Commission on that date determined the valuation method for permitting fees was not entirely equitable, and

WHEREAS, the Town Commission determined that it is in the best interests of the Town to amend the fee schedule for the Planning, Zoning and Building Department, established by Resolution 2011-24, to establish fee amounts for new construction and additions based on the square footage of improvements.

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

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

SECTION 2. The fees and charges set forth in Exhibit "A" of this Resolution are hereby adopted.

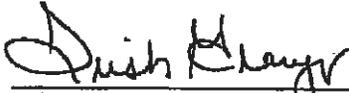
SECTION 3. Resolutions 98-18, 02-06, 05-15, 2008-32, 2011-24 and any portion of other Resolutions in conflict with this Resolution are hereby repealed.

SECTION 4. If any section, subsection, sentence, clause, or provision of this Resolution is held invalid, the remainder of the Resolution shall not be affected.

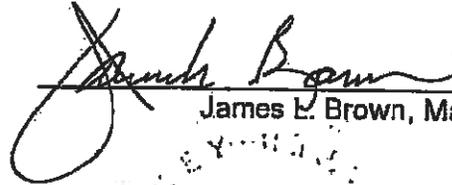
SECTION 5. This Resolution shall become effective on October 1, 2011.

Adopted at a meeting of the Town Commission held the 26th day of September 2011.

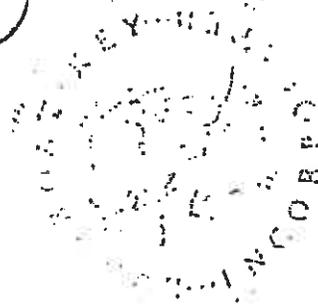
ATTEST:



Trish Granger, Town Clerk



James L. Brown, Mayor



Attachment: Exhibit "A"

EXHIBIT "A"

PLANNING, ZONING AND BUILDING DEPARTMENT FEES

The Planning, Zoning and Building Department shall collect from each applicant for a permit the following fees as required by Title 15, Chapters 150-160 of the Town of Longboat Key Code of Ordinances. In addition to the following fee amounts, applicants for Building, Shoreline Construction, Dredging and Filling, Electrical, Flood Control, and Plumbing permits, as well as Subdivision modifications, Zoning Code applications, and Comprehensive Plan amendments shall be responsible for all costs of advertising and other expenses reasonably incurred by the Town in connection with the processing of the application.

Charges for services not specifically listed in the following shall be calculated based on actual staff time provided for the service. Absent an adopted hourly rate within this resolution, staff time charges shall be at the employee's fully burdened rate for the Department. When necessary, additional consultant or Town Attorney charges may be applicable.

Staff time charges per hour (per staff person per hour):

Building Official	\$75.00/hour
Planning Staff	\$55.00/hour
Trade Inspector	\$65.00/hour
Building Inspector/Plans Reviewer	\$60.00/hour
Administrative Staff	\$55.00/hour
Fire Marshal/Inspector	\$75.00/hour

FLORIDA BUILDING CODE PERMIT FEES

These costs include hourly staff charges for each review after the third permit application plan review, Town Attorney expenses as submitted by the attorney, and fees and expenses as submitted by consultants deemed necessary by the Town. Changes or alterations to a permit are charged staff time for the initial review and any additional reviews.

Failure to obtain any and all required approvals prior to commencing work shall result in fines and penalties as set forth in the respective standards and codes, including a penalty of one hundred percent as set forth in section 108.2 of the Florida Building Code.

Fees for building permitting and inspection services shall be as follows*:

<p>1. Building Permit</p> <p>a. Application/Processing Fee: 25% of the building permit fee shall be payable at the time the building permit application is submitted, and shall be non-refundable. The remaining portion of the full building permit fee shall be payable at the time the building permit is issued</p> <p>b. The application/processing fee shall not be applicable to those building permit applications that result in estimated permit fees of less than \$1,000 or those jobs that have a flat permit fee. In such cases, the full building permit fee shall be payable at the time the building permit is issued</p>	<p>\$3.00/sq. ft. of job</p>
<p>2. Moving Fee - The fee for moving any building or structure</p>	<p>\$250.00</p>
<p>3. Staff Plan Review Charges after the third review (per staff person per hour)</p>	<p>Actual cost (based on tiered hourly rates)</p>
<p>4. Changes or alterations to a permit (per staff person per hour)</p>	<p>Actual cost (based on tiered hourly rates)</p>
<p>5. Swimming Pool/Spa</p>	<p>\$360.00</p>
<p>6. Deck</p>	<p>\$180.00</p>
<p>7. Lanai and Screen Enclosures</p>	<p>\$180.00</p>
<p>8. Roof Repair</p>	<p>\$0.20/sq. ft. (\$80 minimum)</p>
<p>9. Roof Recovering</p>	<p>\$90.00</p>
<p>10. Reroof</p>	<p>\$240.00</p>
<p>11. Roof Replacement</p>	<p>\$300.00</p>
<p>12. Residential Dock, Davit, Lift, Hoist or Seawall</p>	<p>\$240.00</p>
<p>13. Gutter, Soffits, Siding and Facia</p>	<p>\$50.00</p>
<p>14. Pre-constructed/Pre-engineered Shed</p>	<p>\$70.00</p>
<p>15. Solar Energy Systems</p>	<p>\$125.00</p>
<p>16. Demolition Fee</p>	<p>\$400.00</p>
<p>17. Permanent Free-Standing Sign</p>	<p>\$67.50</p>
<p>18. Other work requiring a building permit that cannot be evaluated on a square footage basis (includes initial round of plan review and one inspection)</p>	<p>\$60.00</p>

19. Re-inspection Fee	
a. During normal business hours: re-inspection when work is not ready or does not meet code, wrong address is provided, or condemned work resulting from faulty construction or code violation	\$85.00
b. Outside of normal business hours: requested re-inspections before 8:00 a.m. or after 5:00 p.m. (per hour - one hour minimum charge)	\$110.00
20. Courtesy or Additional Inspection (per inspection for all trades)	\$85.00
21. Certificate of Occupancy (Including Temporary CO)	\$30.00

* unless otherwise stated, fees include standard plan review (three standard plan review submittals with no additional staff time charges) and the required standard inspection services. Additional charges shall be charged for additional necessary plan reviews and inspections beyond that which is standard or previously listed. Additionally, staff time charges at the tiered staff rate may be applied per hour as necessary to perform the requested service. Flat fees, as listed, shall be payable at the time the permit application is submitted and shall be non-refundable.

Fees for Building Official Administrative Services shall be as follows**:

1. Renewal of Building Permit (all trades)	\$30.00
2. Change of Contractor	\$30.00
3. Transfer of Permit	\$30.00
4. Revoked Permit	\$30.00
5. Lost Plan Replacement	\$25.00 plus actual cost of duplication
6. Bond Review and Processing	\$10.00
7. Letters of Determination (e.g. flood, building, etc.)	\$10.00
8. Appeals to the Building Official	\$70.00
9. Appeals of the Building Official's Decision	\$70.00
10. All other administrative services of the building official that require written documentation	\$70.00

** charge is a base fee that is payable upon request of the service. Additional staff time charges at the tiered staff rate may be applied per hour as necessary to perform the requested service. Additional consultant or Town Attorney charges may be applicable.

Fees for heating, air conditioning, refrigeration, ventilation, and electrical permitting and inspections shall be as follows***:

1. New residential living and commercial working area (per square foot)	\$0.07
2. Alterations, additions, and repairs (additional inspections and association charges may be required depending on the scope of work)	\$80.00
3. Commercial Boiler (per unit)	\$ 80.00
4. Air Conditioning Systems	\$80.00
5. New Amp Service	\$80.00
6. Commercial Site Lighting	\$80.00
7. Sprinkler Pump (per pump)	\$100.00
8. Construction/Sales Trailer	\$70.00
9. Temporary Electric Service	\$100.00
10. Other HARV or Electrical permitted work	\$80.00
11. Re-inspection Fee	
a. During normal business hours: re-inspection when work is not ready or does not meet code, wrong address is provided, or condemned work resulting from faulty construction or code violation	\$85.00
b. Outside of normal business hours: requested re-inspections before 8:00 a.m. or after 5:00 p.m. (per hour - one hour minimum charge)	\$110.00

*** charge is a permit fee that is payable upon request of the service, which includes plan review and the required standard inspection services. Additional charges shall be charged for additional necessary plan reviews and inspections beyond that which is standard. Additionally, staff time charges at the tiered staff rate may be applied per hour as necessary to perform the requested service. Flat fees, as listed, shall be payable at the time the permit application is submitted and shall be non-refundable.

Fees for plumbing permits shall be as follows****:

1. New Construction, alterations, additions, repairs (additional inspections and association charges may be required depending on the scope of work)	\$80.00
2. Fixture Charge (per fixture in addition to building permit fee)	\$6.00
3. Water Heater	\$50.00
4. Pool Heater	\$50.00
5. Water Well Installation or Relocation	\$100.00
6. Commercial LP Gas Tank	\$150.00
7. Backflow Preventer (per address)	
a. Residential	\$80.00
b. Non-Residential	\$110.00
8. Construction/Sales Trailer	\$70.00
9. New Water Service	
a. Residential	\$50.00
b. Non-Residential	\$110.00
10. Demolition sewer caps	\$28.75
11. LP Gas System	\$90.00 base fee
12. Sewer	
a. Residential	\$40.00 base fee
b. Non-Residential	\$70.00 base fee
13. Lawn Sprinkler/Irrigation System	
a. Residential	\$100.00 base fee
b. Non-Residential	\$160.00 base fee
14. Water and Venting Piping	
a. Residential	\$50.00 base fee
b. Non-Residential	\$110.00 base fee
15. Septic tanks, grease traps, oil separator, traps, etc.	\$110.00 base fee
16. Other Plumbing permitted work	\$80.00

17. Re-Inspection Fee	
a. During normal business hours: re-inspection when work is not ready or does not meet code, wrong address is provided, or condemned work resulting from faulty construction or code violation	\$85.00
b. Outside of normal business hours: requested re-inspections before 8:00 a.m. or after 5:00 p.m. (per hour - one hour minimum charge)	\$110.00

**** charge is a permit fee that is payable upon request of the service, which includes plan review and the required standard inspection services, unless otherwise specified. Additional charges shall be charged for additional necessary plan reviews and inspections beyond that which is standard. Additionally, staff time charges at the tiered staff rate may be applied per hour as necessary to perform the requested service. Base and flat fees, as listed, shall be payable at the time the permit application is submitted and shall be non-refundable. For those services with a base fee, the actual cost to perform the services will be charged, with the base fee applied to that actual cost.

Fees for fire prevention permitting and inspections shall be as follows****:

Job Scope	Fee
1. New Construction – Building Permit Fee: Fire Plan Review and Inspection	
Inspection fees include inspections required for issuance of Certificates of Occupancy (CO) and Certificates of Use (CU)	
a. Residential Plan Review	
1. One- and two-family (a.k.a. single-family and duplex)	\$75.00
2. Multifamily Structure	
a. up to 2,500 sq. ft.	\$75.00
b. >2,500 sq. ft. – 5,000 sq. ft.	\$150.00
c. >5,000 sq. ft. – 10,000 sq. ft.	\$225.00
d. >10,000 sq. ft. – 20,000 sq. ft.	\$300.00
e. >20,000 sq. ft. – 40,000 sq. ft.	\$375.00
f. >40,000 sq. ft. – 60,000 sq. ft.	\$450.00
g. >60,000 sq. ft. – 80,000 sq. ft.	\$525.00
h. >80,000 sq. ft. – 100,000 sq. ft.	\$600.00
i. >100,000 sq. ft.	\$600.00 + \$0.025 per each additional sq. ft.

b. Parking Garage (exception: one and two-family structures) Plan Review	
1. up to 50 feet in height	\$150.00
2. >50 feet – 75 feet in height	\$225.00
3. > 75 feet in height	\$300.00
c. Commercial Structures Plan Review	
1. up to 1,500 sq. ft.	\$150.00
2. >1,500 sq. ft. – 5,000 sq. ft.	\$225.00
3. >5,000 sq. ft. – 10,000 sq. ft.	\$300.00
4. >10,000 – 20,000 sq. ft.	\$375.00
5. >20,000 – 40,000 sq. ft.	\$450.00
6. >40,000 – 60,000 sq. ft.	\$525.00
7. >60,000 – 80,000 sq. ft.	\$600.00
8. >80,000 – 100,000 sq. ft.	\$675.00
9. >100,000 sq. ft.	\$675.00 + \$0.025 per each additional sq. ft.
d. Docks – multifamily, community, commercial and public docks	
1. up to 100 lineal feet	\$75.00
2. >100 lineal feet – 500 lineal feet	\$150.00
3. >500 lineal feet	\$225.00
e. Windows and shutters	\$37.50
f. Miscellaneous plan review for job scope not listed	\$75.00
g. Pre-application plan review	\$75.00/hr. or fraction thereof
h. Re-examination of plans due to corrections, changes or alterations, prior to or after permit issuance	\$75.00/hr. or fraction thereof

i. Residential Occupancy Construction Inspection Fees	
1. One- and two-family (a.k.a. single-family and duplex)	\$75.00
2. Multifamily Structure	
a. up to 2,500 sq. ft.	\$75.00
b. >2,500 sq. ft. – 5,000 sq. ft.	\$150.00
c. >5,000 sq. ft. – 10,000 sq. ft.	\$225.00
d. >10,000 sq. ft. – 20,000 sq. ft.	\$300.00
e. >20,000 sq. ft. – 40,000 sq. ft.	\$450.00
f. >40,000 sq. ft. – 60,000 sq. ft.	\$600.00
g. >60,000 sq. ft. – 80,000 sq. ft.	\$750.00
h. >80,000 sq. ft. – 100,000 sq. ft.	\$900.00
i. >100,000 sq. ft.	\$975.00 + \$0.025 per each additional square foot
3. Commercial Structure	
a. up to 1,500 sq. ft.	\$75.00
b. >1,500 sq. ft. – 5,000 sq. ft.	\$150.00
c. >5,000 sq. ft. -10,000 sq. ft.	\$225.00
d. >10,000 sq. ft. – 20,000 sq. ft.	\$300.00
e. >20,000 sq. ft. – 40,000 sq. ft.	\$450.00
f. >40,000 sq. ft. – 60,000 sq. ft.	\$600.00
g. >60,000 sq. ft. – 80,000 sq. ft.	\$750.00
h. >80,000 sq. ft. – 100,000 sq. ft.	\$900.00
i. >100,000 sq. ft.	\$975.00 + \$0.025 per each additional square foot
4. Inspection of Docks – multifamily, community, commercial and public docks	
a. up to 100 lineal feet	\$75.00
b. >100 lineal feet – 500 lineal feet	\$150.00
c. >500 lineal feet	\$225.00

5. Pre-inspection when required prior to issuance of permit or license	\$75.00
6. Miscellaneous inspection fee for use not listed	\$75.00
2. Regulatory License Inspections (includes fees for inspection required for Initial licensing and renewal of Child Care, Family Day Care, Adult Living Facilities, DCF, AHCA and other regulated facilities)	
a. up to 1,500 sq. ft.	\$75.00
b. >1,500 sq. ft. – 5,000 sq. ft.	\$150.00
c. >5,000 sq. ft. – 10,000 sq. ft.	\$225.00
d. >10,000 sq. ft. – 20,000 sq. ft.	\$300.00
e. >20,000 sq. ft. – 40,000 sq. ft.	\$450.00
f. >40,000 sq. ft. – 60,000 sq. ft.	\$600.00
g. >60,000 sq. ft. – 80,000 sq. ft.	\$750.00
h. >80,000 sq. ft. – 100,000 sq. ft.	\$900.00
i. >100,000 sq. ft.	\$1,050.00 + \$0.025 per each additional square foot
3. Fire Sprinkler System:	
a. New system plan review: up to 12 sprinkler heads	\$150.00
b. New system plan review: each head or device after the first 12	\$1.00
c. Alterations plan review	\$75.00
d. Rough inspection	\$75.00
e. Witness inspection and reinspection: above-ground pressure test	\$150.00
f. Witness fire main pressure test: inspection and reinspection	\$150.00
4. Back Flow Preventer:	
a. Fire main plan review	\$75.00
b. Inspection and reinspection	\$75.00
5. Fire Pump:	
a. Plan review	\$150.00
b. Acceptance test	\$150.00
6. Standpipe System:	
a. Plan review	\$75.00
b. Inspection	\$75.00

7. Hood Suppression:	
a. Plan review	\$75.00
b. Acceptance test	\$150.00
8. Penetrations and/or Fire Stopping Inspections	\$75.00
9. Halon System:	
a. Plan review	\$75.00
b. Acceptance test	\$150.00
10. New Fire Alarm System:	
a. New system plan review: up to 12 devices	\$150.00
b. New system plan review: each head or device after the first 12	\$1.00
c. Acceptance test	\$225.00
d. Retest	\$225.00
11. Smoke Evacuation System:	
a. Plan review	\$150.00
b. Acceptance test	\$225.00
12. Fuel Storage Tank: (Above and Below Ground)	
a. Plan review	\$75.00
b. Inspection	\$75.00
13. Single-Station Smoke Alarm Retrofit – Multifamily Buildings	
a. Plan review	\$75.00
b. Inspections	\$75.00
14. Alterations to Existing Fire Alarm System:	
a. Plan review	\$225.00
b. Acceptance test	\$225.00
15. Other Life Safety Systems:	
a. Plan review	\$75.00
b. Acceptance test	\$150.00
16. Special Event:	
a. Plan review	\$75.00
b. Inspection	\$75.00
17. Fireworks Display:	
a. Plan review	\$75.00
b. Inspection	\$75.00
c. Watch fee for Fire Department Staff (per staff person per hour)	\$75.00

18. Fire Truck Stand-by: (per staff person per hour - minimum two hours – includes two firefighter/paramedics)	\$75.00
19. Fire Boat Stand-by: (per staff person per hour - minimum two hours – includes two firefighter/paramedics)	\$75.00
20. Site Plan or Plat Review (per staff person per hour)	\$75.00
21. Outline Development Plan Review (per staff person per hour)	\$75.00
22. Parking Lot Plan Review (per staff person per hour)	\$75.00
23. Additional Fire Department Staff Required (per person per hour)	\$ 50.00
24. Fire Marshal Consultation Fee (per hour – minimum one hour)	\$75.00

***** Additional charges shall be charged for additional necessary plan reviews and inspections beyond that which is standard. Additionally, staff time charges at the tiered staff rate may be applied per hour as necessary to perform the requested service.

SHORELINE CONSTRUCTION CODE PERMIT FEES

The Planning, Zoning and Building Department shall collect from each applicant for a shoreline construction permit the following fee as required by Chapter 151. The fee shall be \$50.00 per linear foot of proposed shoreline construction.

DREDGING AND FILLING CODE PERMIT FEES

The Planning, Zoning and Building Department shall collect from each applicant for a dredging and filling permit the following fees as required by Chapter 152.

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| 1. Fee for off-shore and on-shore areas to be filled not in excess of one square acre. | \$50.00/
acre |
| a. For each additional off-shore acre or fraction thereof to be filled | \$15.00/
acre |
| b. For each on-shore cubic yard of fill | \$0.01/
c.y. fill |
| c. Canal maintenance work | \$50.00/
acre |

FLOOD CONTROL CODE VARIANCE FEES

The Planning, Zoning and Building Department shall collect from each application for variance from the flood control code the following fee as required by Chapter 154.

Variance application fee	\$450.00
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PLANNING AND ZONING APPLICATION/PROJECT DEPOSITS

A deposit shall be required for all applications with an asterisk or double asterisk under the following fee schedule. Staff will withdraw funds from the initial deposit on a monthly basis to pay all costs in connection with the processing of the application. In the event that the initial deposit falls below \$250.00, an additional deposit equal to fifty percent of the original deposit will be required. If the processing costs exceed the deposits, all additional costs will be billed to the applicant. Unused funds from the deposits will be refunded after all invoices and outstanding charges for processing the application have been paid.

A single asterisk (*) denotes that an initial deposit of \$1,000 shall be required.

A double asterisk (**) denotes that an initial deposit of \$3,000 shall be required.

SUBDIVISION CODE FEES

The Planning, Zoning and Building Department shall collect from each applicant for subdivision approval the following fees as required by Chapter 157.

1. Preliminary plan	\$180.00*
2. Final plat	\$252.00*
3. Lot line adjustment (Section 157.32, Lot Line Adjustments)	\$252.00*
4. Filing fee	\$450.00

ZONING CODE FEES

The Planning, Zoning and Building Department shall collect the following fees as required by Chapter 158.

1.	Application for certificate of occupancy or temporary certificate of occupancy, per unit	\$150.00/ unit
2.	Zoning Determination Letter	\$75.00
3.	Appeal of a decision of the Town Manager or designee	\$450.00*
4.	Application for variance	\$450.00*
5.	Application for special exception	\$450.00*
6.	Application for rezoning	\$900.00**
7.	Application for site plan review	\$360.00**
8.	Application for commercial site plan review	\$725.00**
9.	Application for outline development plan review	\$275.00**
10.	Application for development agreement	\$5,000.00
11.	Temporary use permits	
	a. Model homes or apartments	\$135.00
	b. Real estate offices limited to the sales of dwelling units on those premises	\$135.00
	c. Construction material and equipment storage	\$45.00
	d. All other temporary uses	\$45.00
12.	Application for vested rights determination	\$450.00**
13.	Application for site plan exemption	\$75.00
14.	Application for zoning code text amendment	\$900.00**
15.	Application for letter of no objection	\$100.00
16.	Application for physical address change	\$100.00

COMPREHENSIVE PLAN FEES

The Planning, Zoning and Building Department shall collect the following fee for each Comprehensive Plan text or map amendment application as required by Chapter 160. If a rezoning application is submitted, the rezoning fee shall also be paid.

Fee for each Comprehensive Plan text or map amendment	\$725.00**
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