

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

Telephone (941) 244-5352
Telephone (941) 306-4730
Facsimile (941) 306-4832
Email: mmooney@swflgovlaw.com

* Board Certified City, County and Local Government Law

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 # 3
REQUESTED APPEAL FROM GENE JALESKI DATED JANUARY 13, 2015

I. BACKGROUND

On January 13, 2015, Mr. Jaleski transmitted an email to Alaina Ray, the Town's Planning and Zoning Director, and entitled such email "Three separate complaints." In that email, Mr. Jaleski asserts that he has lodged three (3) distinct complaints to the Town. Despite the absence of a reference in his email to the Town's Zoning Board of Adjustment ("ZBA") or a specific request to appeal the complaints to such board, Mr. Jaleski's communication was construed as an additional request to appeal such "complaints" to the ZBA. Mr. Jaleski identifies

the complaints numerically #1-3. Complaint #1 corresponds to communications received by the Town from Mr. Jaleski dated December 10, 2014 and December 13, 2014. Complaint #2 corresponds to communication received from Mr. Jaleski dated January 6, 2015. The issues raised in Complaint #1 and 2, are discussed in separate memorandums to the ZBA. Complaint # 3 asserts newly raised allegations that the Town has granted a "special use exception" to a "non-conforming use" commercial business in the Longbeach subdivision and that this Town action has simultaneously rendered the commercial business a 'conforming use' and 'non-conforming use'. In response to Mr. Jaleski's email, I prepared and directed a letter dated January 14, 2015, to Ms. Alaina Ray, the Town's Planning and Zoning Director, with a copy to Mr. Jaleski that stated that I had already provided an opinion on the ZBA's lack of jurisdiction on the matters raised in Complaints #1-2. I also provided my opinion on the ZBA's lack of jurisdiction on the issue he referred to as "Complaint #3", and requested that this item be added to the ZBA's February meeting agenda for a jurisdiction determination. Copies of the above described correspondences 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.

(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 Complaint #3 Is Not An Appeal of a Decision By an Administrative Official Enforcing the Zoning Code.

Mr. Jaleski's Complaint #3 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.

In Complaint #3, Mr. Jaleski has asserted that the Town has improperly granted a "special use exception" to a certain commercial business. Under Section 158.028 of the Town Code, only the ZBA or the Planning and Zoning Board ("PZB") have authority to grant special use exceptions following quasi-judicial hearings. Mr. Jaleski does not identify in his allegations any specifics as to whether he is appealing a PZB or ZBA determination on the special use exception. Nevertheless, neither the PZB nor the ZBA is a Town administrative official. Both the PZB and ZBA are separate boards of the Town with duties prescribed by the Town Charter and Town Code. Accordingly, his complaint is an appeal of a past quasi-judicial decision of a Town board. The ZBA does not have authority under the Town Code to review past board quasi-judicial decisions.

There is also a potential timing problem with regard to Mr. Jaleski's complaint. 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 the purported administrative action was taken within the 30 day period prior to the correspondence dated January 13, 2015. The ZBA cannot consider appeals that are not timely under the Town Code.

Accordingly, for all of the foregoing reasons, I cannot conclude that his Compliant #3 falls within the ZBA's jurisdiction to consider appeals of administrative decisions.

(2) Mr. Jaleski's Complaint Does Not Seek 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. Rather, his Compliant #3 challenges the Town's prior issuance of a special exception use to a commercial business. Accordingly, I cannot conclude that Complaint #3 as raised in his correspondence qualifies as a request for a special exception use and that the matter is within the ZBA's jurisdiction to consider.

(3) Mr. Jaleski's Complaint Does Not Seek 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 Complaint Is Not A Variance Request.

Mr. Jaleski's correspondence does not request relief from any specific provision of the Town 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 issue raised by Mr. Jaleski in his January 13, 2015 correspondence is 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 issues raised in Mr. Jaleski's January 13, 2015 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 January 13, 2015, 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 nonrefundable 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 and determines that the ZBA does have jurisdiction over this matter, the quasi-judicial hearing will need to be conducted in accordance with all of the processes 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 January 13, 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:

Email from Gene Jaleski dated January 13, 2015

Letter from Town Attorney dated January 14, 2015

Town Resolution 2008-32

Town Resolution 2011-27

From: geneonlbk [mailto:geneonlbk@gmail.com]
Sent: Tuesday, January 13, 2015 11:34 AM
To: Alaina Ray
Cc: Dave Bullock
Subject: Three separate complaints

January 15, 2015

Alaina,

I want to specifically delineate that I have three separate and distinct complaints lodged with the town, concerning errors of due process and land use legislation, pertaining to commercial properties within 500 feet of my property and within the Longbeach Village subdivision.

1. my complaint that I do in fact have standing to argue my contention that I was denied due process, failure to notify, for over two decades. I have presented specific case law and DCA findings relating to the town's contention that there are some sort of time limits to an undisputed constitutional due process error on the part of the town. There are no statutes of limitation to addressing my constitutional rights under Federal and Florida law.

2. my complaint that I was denied "party-intervener" status at the most recent PZB quasi-Judaical hearing. In the absence of any town codes or ordinances pertaining to "party-intervener" status, the question arises as to how anyone is granted or denied such status. My complaint is that I was denied due process, that the town attorney mis-advised the PZB, and that the attorney failed to strike testimony by Ms. Bishop that was irregular, defamatory and outside allowable testimony in a quasi-Judicial proceeding. Given my long history of due process, failure to notify, violations, that my property lies within 500 feet of the designated commercial property and that my home is visually connected to the commercial property, raises me to party-intervener under Florida statutes. I believe that my due process rights were violated as a result of all the above.

3. my complaint that the "special use exception" granted to a "non-conforming use" commercial business within the Longbeach subdivision, was done so in violation of town codes and ordinances. My complaint contends that the town has taken actions that require that the said commercial business be both "conforming use" and "non-conforming use" at the same time.

Gene Jaleski
671 Cedar Street
Longboat Key, FL 34228

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

January 14, 2015

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

Re: Request for Standing/Jurisdiction Determination from Gene Jaleski
Transmitted Via Email dated January 13, 2015

Dear Ms. Ray:

I have been forwarded and reviewed a copy of an email from Gene Jaleski sent to you dated January 13, 2015 (11:34 a.m.) with the subject matter listed as "Three separate complaints." To the extent that the above referenced email from Mr. Jaleski to you can be construed as a new request to appeal certain matters to the Zoning Board of Adjustment ("ZBA"), this correspondence shall serve as my opinion on jurisdiction relating to such a request. In Mr. Jaleski's email he states that he has made "three separate and distinct complaints" to the town and then summarizes these "complaints" in paragraphs he has numbered as #1, 2, and 3.

Lakewood Ranch
6853 Energy Court
Lakewood Ranch, Florida 34240

Venice
217 Nassau Street S.
Venice, Florida 34285

Ms. Alaina Ray
January 14, 2014
Page Two

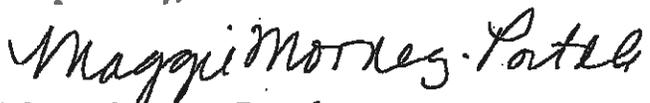
The issues identified by Mr. Jaleski in his email as complaints #1 and 2, were previously raised by Mr. Jaleski in correspondences dated December 10, 2014 and January 6, 2015. By letters dated December 22, 2014, January 8, 2015, and January 9, 2015, I have previously addressed these issues, and transmitted correspondence to you conveying my opinion that the ZBA lacks jurisdiction under the Town Code to consider the issues.

With regard to the Mr. Jaleski's assertions raised in complaint #3, Mr. Jaleski appears to raise a complaint relating to actions the "town" has taken with regard to a commercial business. Specifically, Mr. Jaleski asserts the " 'special use exception' was granted to a 'non-conforming use' commercial business within the Longbeach subdivision... in violation of town codes and ordinances." It is 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 complaint #3 of Mr. Jaleski's email. None of the four enumerated types of matters the ZBA may hear encompass the request made by Mr. Jaleski.

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.

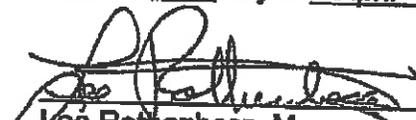
SECTION 2. The fees and charges set forth in Exhibit "A" of this Resolution are hereby adopted.

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
--------------------------	----------

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**
--	-------------------

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.

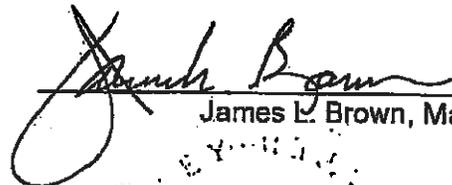
SECTION 2. The fees and charges set forth in Exhibit "A" of this Resolution are hereby adopted.

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.

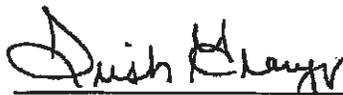
SECTION 4. If any section, subsection, sentence, clause, or provision of this Resolution is held invalid, the remainder of the Resolution shall not be affected.

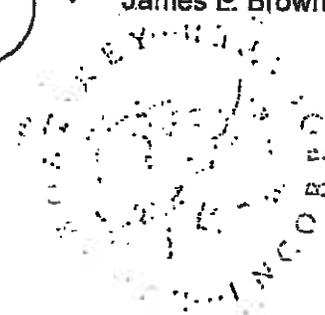
SECTION 5. This Resolution shall become effective on October 1, 2011.

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


James L. Brown, 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.

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.

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
--------------------------	----------

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**
---	------------