

May 12, 2015

To: Longboat Key Planning & Zoning Board (PZB)  
From: UF Resilient Communities Initiative (UFRCI)  
Through: Alaina Ray, Director, Planning, Zoning & Building  
Re: Process Report

In advance of the May, 19, 2015 joint workshop of the PZB and Town Commission (TC), here is an update on current progress and next steps to further the development of the new Comprehensive Plan (Plan) and Land Development Code (LDC) recommended by the Urban Land Institute (ULI), discussed under the headings of the various aspects of the ongoing planning efforts for the Town.

### **NONCONFORMING PROPERTIES—Recent Legislative Efforts--Generally**

There are four (4) generally accepted types or varieties of nonconforming property:

1. Nonconforming lots/parcels. These are properties with existing boundary dimensions that do not comply with current property dimensional standards—generally by being less than or smaller than the requirements for the controlling zoning district
2. Nonconforming sites. These properties often contain more existing units than the upper limit of the zoning districts allowed density. Also described as “nonconforming density.”
3. Nonconforming structures. These are buildings or structures that do not comply with the dimensional requirements for structures in the controlling zoning district.
4. Nonconforming uses. These are uses of property, the use of which is not a permissible use in the controlling zoning district.

On Longboat Key, many regulatory provisions establishing nonconforming properties are underscored by policies and related criteria currently contained in the Plan and restated in the LDC. This dual regulatory scheme complicates the effort to allow greater conformity, requiring at least two (2) affirmative legislative actions to revise. The progress that has so far been made towards this end is below described.

**Ordinance 2015-02.** The PZB completed its focused review of the Plan FLUE policies directly related to nonconforming properties. The PZB unanimously recommended

changes to the Plan proposed to Town staff by UFRCI—with certain modifications suggested by PZB. Ordinance 2015-02 amends the comprehensive plan to combine current FLUE Policies 1.1.5 (A), 1.1.5 (B), and 1.1.6 into a new FLUE Policy 1.1.5 that provides that the standards for nonconforming properties will be provided in the LDC. This ordinance was reviewed by the TC at a workshop, unanimously forwarded to a first public hearing and approved on first reading, and transmitted to the State for review by the Florida Department of Economic Opportunity (DEO) in accordance with State Law. DEO and other State agencies completed their review and offered no objections. The TC adopted Ordinance 2015-02 at a second public hearing and on second reading on April 6, 2015.

A subsequent legislative action, draft Ordinance 2015-11, is being revised following PZB direction to provide processes and standards in the LDC to address nonconforming properties.

## **Nonconforming Density**

**Ordinance 2015-10.** The PZB completed its focused review of the Plan FLUE policies related to density currently provided in the Plan FLUE Policy 1.1.10 and Table 1. The PZB unanimously recommended the modifications proposed to Town staff by UFRCI—with certain modifications recommended by the PZB.

As a necessary initial step to the development of a new Future Land Use Map, Ordinance 2015-10 divides the FLUE Table 1 and the future land use categories currently established in Policy 1.1.10 into two (2) overarching general categories—Stability Areas and Opportunity Areas. Every property in the Town will be within one or the other of these general categories. The current future land use categories are grouped below the new general Stability Areas category, i.e., areas that are mature and settled in their development patterns and unlikely to be desirous of—or to support a market for—dynamic changes in use. Stability areas are intended to accommodate properties currently conforming to the density limitations established by the 1984 Plan.

Below the general Opportunity Areas category, the several current future land use categories are subsumed into parallel, but more general, future land use categories focused on areas identified throughout the Town where properties generally exceed the density limitations of the 1984 Plan. These new future land use categories provided under the Opportunity Areas, i.e., areas that are suitable for and capable of the type of dynamic redevelopment that can restore the historic balance of residential, commercial, and tourism uses the Town desires for the future, establish the planning basis for new zoning districts in a new LDC. The joint workshop will discuss these concepts and provide the direction necessary for revising the LDC to accommodate the various ranges of density in new or revised zoning districts. This direction is necessary to inform the next steps in the LDC reformation process, including

1. revise the Future Land Use Map to accommodate currently nonconforming density,
2. amend the zoning code to establish new and revised zoning districts to accommodate the currently nonconforming density, and
3. revise the zoning map to identify the properties that will be included in the new zoning districts.

It is likely that these steps will trigger the need for referenda approvals by the electors in accordance with Article II, Section 22(b) of the Town Charter.

Ordinance 2015-10 was reviewed by the TC at a workshop on April 20, 2015, unanimously forwarded to a first public hearing and approved on first reading by the TC at a regular meeting on May 4, 2015, and transmitted to the Florida DEO for review and comment. DEO will provide their review and comment back to the Town, after which the ordinance will be scheduled for a second public hearing and second reading.

### **Other Nonconformities**

**Ordinance 2015-11.** Staff—in collaboration with UFRCI—is crafting changes to the LDC to implement the Plan changes provided in Ordinance 2015-02 with regard to nonconforming properties. Each section of the LDC that addresses nonconformities is being reviewed for suggested revisions. A new consolidated LDC chapter is being developed to address properties that will remain nonconforming after the other Plan and LDC changes are adopted. Thus, existing sections with copious detail for addressing nonconformities will be deleted, as the Town's established administrative and legislative direction is to provide methods to conform most density and use nonconformities through ordinance amendments to the Plan and LDC. The PZB and TC will determine if any specific existing provisions should be retained and included in the new LDC Chapter for nonconformities.

### **NEXT STEPS—Joint TC/PZB Workshop**

**Nonconforming Density Analysis.** Staff and UFRCI will present an analysis of existing non-conforming commercial tourism and multi-family density. This presentation will include maps developed using Geographic Information Systems (GIS) and data from both the Sarasota and Manatee County Property Appraisers, which identify where—and by how much—properties exceed the density limitations contained in the current Plan and the current LDC.

**Objectives for Conforming Properties Currently Nonconforming for Density.** Direction received at the Joint TC/PZB Workshop in October included several overarching objectives. First was to enhance the currently limited opportunities to modernize the existing inventory of aging commercial tourism and mixed residential

buildings. TC/PZB recognized that the current regulatory scheme provides little incentive—and disincentives in most cases—for redevelopment of existing nonconforming properties. Some movement toward conforming currently nonconforming densities will serve to support this objective. This belief is underscored by the successful approval of the 2008 referendum (Ordinance 2007-48), allowing the rebuilding of over-density units in the event of involuntary or voluntary destruction. Nonconforming properties also face considerable uncertainty of access to financing—for ongoing activities and for redevelopment. Again, conforming currently nonconforming densities will reduce that unpredictability.

**Guidelines for Implementing Objectives.** We have developed a series of guidelines for discussion at the TC/PZB Joint Workshop. These include the establishment of new or revised zoning districts within the legal framework of the new land use categories being established in the Plan through approval of Ordinance 2015-10. Within these proposed new or revised zoning districts, we propose to establish incremental ranges to conform existing higher densities while minimizing potential density increases above what currently exists and balancing that with the potential number of new or revised zoning districts created to accomplish this conformation. It may be important to establish a limited pool of units through a referendum to increase density above the 1984 Plan limits, with the units in the pool to be assigned to properties to attain the additional units allowed by the new incremental range of density options afforded by the new or revised zoning districts. It will also be important to discuss the process or process options for the rezoning of nonconforming properties, i.e., Town-initiated public hearing, owner-initiated public hearings, owner-initiated administrative determinations, etc. We expect a robust discussion of how we pursue implementation from these guidelines will inform out progress.

**Overcoming Potential Obstacles.** As we continue to remain aware, under the Town Charter, the provision of any additional density over the limits of the 1984 Plan currently require affirmative approval by referendum. The scenarios and processes the Town chooses to move the conformation of nonconforming densities forward must be particularly aware of the protections afforded in Florida by the Bert J. Harris Act, as well as the necessity of an equitable outcome from comprehensive legislation. Gaining support for this effort is also likely to require an extensive public engagement effort, which may involve considerable time to achieve success. We look forward to the Joint Workshop providing additional incites to any additional obstacles we have been unable to identify.

### **Scenarios for Conforming Existing Density**

Three scenarios have been explored for addressing nonconforming density.

**Scenario 1—Conforming All Existing Density A.** This first scenario:

1. identifies the extent of all the nonconforming commercial tourism and multiple-family properties' existing nonconforming density;

2. classifies those identified properties in a range of densities over currently allowable density; then
3. groups the range of existing density in ascending categories of two (2) dwelling units per acre, e.g., two (2) dwelling units per acre over currently allowable density, four (4) dwelling units per acre over currently allowable density, six (6) dwelling units per acre of currently allowed density, etc., up to the top of the range by two (2) units per acre to conform the most dense existing nonconforming properties.

This results in a relatively fine granular range of density groupings as a potential basis for new zoning categories within--and consistent with--the Opportunity Areas future land use categories of the Plan provided for in draft Ordinance 2015-10, that conform all currently over density. Under this first scenario the potential for providing additional density to properties beyond their existing nonconforming density is minimized without creating the potential larger swings of additional potential units.

### **Scenario 2—Conforming Some Existing Commercial Tourism Density but not All.**

This second scenario:

1. identifies the extent of only the currently nonconforming commercial tourism properties' existing nonconforming density;
2. classifies only those currently nonconforming commercial tourism properties in a range of densities over currently allowable density; but
3. groups the range of existing commercial tourism density in ascending, but more generalized, categories of dwelling units per acre, i.e., 12 dwelling units per acre over currently allowable density, 15 dwelling units per acre over currently allowable density, 18 dwelling units per acre over currently allowed density, and 42 dwelling units per acre over currently allowable density.

This results in a more generalized range of density groupings as a potential basis for new commercial tourism zoning categories within, and consistent with, the Opportunity Areas future land use categories of the Plan provided for in draft Ordinance 2015-10 that conform all currently over density commercial tourism properties. Under this third scenario, the potential for providing additional density to properties beyond their existing nonconforming density seeks to strike a balance—some properties gain potential additional density, but some properties would potentially loose density in a redevelopment scenario—without creating as many potentially new zoning districts as provided in the first scenario.

### **Scenario 3—Conforming All Existing Density B.** This third scenario:

1. identifies the extent of all the nonconforming commercial tourism and multiple-family properties' existing nonconforming density;
2. classifies those identified properties in a range of densities over currently allowable density; then

3. groups the range of existing density in ascending categories of five (5) dwelling units per acre, e.g., five (5) dwelling units per acre over currently allowable density, 10 dwelling units per acre over currently allowable density, six (6) dwelling units per acre of currently allowed density, etc.

This results in a more generalized range of density groupings as a potential basis for new zoning categories within, and consistent with, the Opportunity Areas future land use categories of the Plan provided for in draft Ordinance 2015-10 that conform all currently over density commercial tourism and multiple-family properties. Under this third scenario the potential for providing additional density to properties beyond their existing nonconforming density increases without creating as many potentially new zoning districts as provided in the first scenario but with more potential additional units.

**Other Redevelopment Accommodations/Considerations.** In addition to density, zoning districts often address other regulatory standard for property development. Below is a general list of examples. The current code is relatively restrictive with regard to most of these regulatory standards, making modern redevelopment more problematic than may be desired. Below is a list of regulatory areas to consider for accommodation in an ordinance creating new zoning districts.

1. Additional height/stories
2. Open space percentage reduction
3. Floor/area ratio (FAR) increases
4. Living space ratio increases
5. Lot, Yard, and Bulk standard reductions
6. Building coverage increases
7. Parking requirement reductions
8. Pool of units for assignment upon redevelopment
9. Transferable Development Rights and Receiving Areas
10. Potential areas for incorporation of Mixed Use Districts

**Next Steps following the May 19, 2015 Joint Workshop.** Following direction and feedback provided at the Joint Workshop, staff—in collaboration with UFRCI—will draft an ordinance for Town Attorney review and scheduling before PZB. That draft ordinance will include potential processes for changing and establishing new zoning districts, assignment of additional units of density, and other proposed standards for redevelopment.

In the pendency between PZB recommendation and TC adoption of that ordinance, we recommend the Town pursue a vigorous outreach effort to assure that there is broad public support for the proposed changes. Absent changes to the Town Charter, the proposed ordinance—or certain portions thereof—will probably trigger the need for elector referenda approval. In order to plan for the date for such referenda, and to make the most effective use of the time provide prior to such date(s), those options should be discussed at the Town's earliest convenience.