

**MINUTES
LONGBOAT KEY TOWN COMMISSION
SPECIAL MEETING
567 BAY ISLES ROAD
JANUARY 15, 2010 - 9:00 A.M.**

Present: Mayor Lee Rothenberg, Vice Mayor Robert Siekmann, Commrs. Jim Brown, Gene Jaleski, Hal Lenobel, Peter O'Connor, George Spoll

Also Present: Town Attorney David Persson, Town Clerk Trish Granger

CALL TO ORDER

Mayor Rothenberg called the meeting to order at 9:04 a.m.

Town Clerk Trish Granger called the roll, with all Commissioners in attendance.

1. Quasi-Judicial – Ordinance 2009-25, Longboat Key Club and Resort - Islandside, 301 Gulf of Mexico Drive, Outline Development Plan Amendment

Public hearing continued from January 13, 2010, on the Longboat Key Club Resort, Islandside, Outline Development Plan Amendment petition. The applicant, Key Club Associates, Limited Partnership and Islandside Development, LLC, property owners, are requesting Outline Development Plan amendment approval for the Longboat Key Club and Resort – Islandside, located at 301 Gulf of Mexico Drive, to redevelop the existing 18 hole golf course, and to construct the following: golf clubhouse and parking structure; golf club condominiums (132 residential units); resort meeting center and administrative building, and parking structure; hotel with 196 tourist units, 34 residential units, restaurant/lounge; 10 residential villas; and, spa and fitness center. Recommended Action: The Town Commission will base its decision on competent substantial evidence presented at this public hearing.

Town Attorney David Persson noted that a revised Ordinance had been distributed and Planning, Zoning, and Building Director Monica Simpson advised that the language in the draft documents were Staff recommendations based on the consideration of the Planning and Zoning Board but was not necessarily the recommended language of Staff, noting concerns that are not addressed in the Conditions of Approval.

- Page 5 - tourist - 34 tourist units
- Page 11 - number of stories modified as applicant is not in agreement to design taller buildings
- "Gray" highlighted portions of the revised Ordinance that are outstanding and need to be addressed.

Mayor Rothenberg inquired, and Ms. Simpson advised that the Staff report notes the concerns and noted that additional conditions may be proffered by Staff as the hearings continue. Ms. Simpson noted that Conditions 41 through 47, pages 21 through 23, are Conditions submitted and requested for inclusion by the Public Works Department.

1. Ordinance 2009-25, Longboat Key Club and Resort – Continued

Town Attorney Persson noted the applicant's request for the 5% departure from the non-commercial and Ms. Simpson advised that revised language for this request would be presented at the hearing on Wednesday, January 20, 2010.

Mayor Rothenberg noted that the hearing today will end at 4:00 p.m. in accordance with the facilities rental agreement with the Temple and advised that IPOC would be the first presenter this date.

Attorney Michael Furen, Chairman of the Board of the Icard, Merrill, et al Law Firm, representing the Island Property Owners' Coalition (IPOC), noted the Condominium Associations included and represented in the IPOC organization and the participants who will be presenting this date, advised that he will be presenting as an Attorney (not expert witness) for the proceedings.

Attorney Furen noted the action of the Commission to grant IPOC Third Party status and requested confirmation that the following documents will be included in the record of the proceedings:

- 1978 - Comprehensive (Comp) Plans
- 1955, 1972, 1977, and the current Town Code
- all documents submitted into the record at the P&Z Board hearings.

No objection was stated from any party for inclusion of the documents referenced.

Attorney Furen offered opening statements, reviewing the proposal submitted by the Applicant and the development conditions relied upon by purchasers in the development based on the approved Outline Development Plan for the property, noted the willingness of IPOC to work together with the applicant and Town Commission to provide for an agreeable resolution to the proposed development, and opined on the intent of the application to change the character of the development. Attorney Furen reviewed the original approved development plan and subsequent modifications.

Discussions were held with Attorney Furen on the following topics/issues:

- the anticipated duty and responsibilities of the Town Commission
- due process to be followed in consideration of the application
- compliance with the Comp Plan and interpretation of Florida Statutes requiring a communities compliance with their adopted Comp Plan
- modifications over the years to the Town's Comp Plan

Town Attorney Persson advised that the interpretation of the Comp Plan can be argued by the parties during the hearing process if elected.

Commr. Lenobel inquired, and Attorney Furen opined on the current provisions of the Comp Plan relating to density in the GPD.

1. Ordinance 2009-25, Longboat Key Club and Resort – Continued

Discussion ensued with Attorney Furen, Attorney Lincoln, Attorney John Patterson, and Town Attorney Persson on the existing Comp Plan and legal proceedings relating to a court's interpretation of the Town's Comp Plan. Commr. Jaleski inquired and Attorney Furen and Town Attorney Persson commented on options for a de-nova hearing and Attorney Furen clarified his opening comments relating to the modification to the GPD and the position of IPOC.

Town Attorney Persson requested further clarification and Attorney Furen noted that recreational uses should be replaced with other types of recreational uses and not utilized for commercially zoned uses. Discussion ensued with Town Attorney Persson, Attorney Furen, and Attorney Lincoln on the constraints of the existing Comp Plan, the process to be followed to allow for a change in the GPD relating to density, and the opinion that a referendum has to be submitted to the voters if a change in density in the development is requested.

Mr. Martin Black, duly sworn, presented an overview and summary of the issues he would be discussing pertaining to Comp Plan inconsistencies included in the application and requirements for compliance with the Town's Land Development Code. Discussions were held throughout Mr. Black's testimony on the following topics/issues:

- interpretation of Vacant Land Tables
- redefinition of build-out over the years and a requirement for a referendum to modify densities
- recent amendments to the Comp Plan through referendum for the 250 Tourist Units and Rebuild modifications
- required amendments to the Comp Plan relating to the Town's Water Supply Plan, pending review and recommendations from the State on the proposed Plan
- anticipation of water conservation and reuse water in the Water Supply Plan
- population projections as they relate to the Water Supply Plan and additional housings impact on consistency

Attorney Patterson noted objection to the line of questioning being utilized requiring a legal opinion of an individual testifying as an expert witness versus a legal representation. Discussion ensued with Attorney Patterson, Attorney Lincoln, and Town Attorney Persson on the qualifications of the witness to give legal opinions and interpretation of the Town Code and Comp Plan.

Attorney Patterson noted for the record his objection to the witness providing a legal opinion of compliance or non-compliance with the Town Code and Comp Plan. Discussion ensued.

Town Attorney Persson commented on the professional standing of the expert witnesses and noted his recommendation for the Commission to grant the standing objection.

RECESS: 10:25 a.m. - 10:42 a.m.

1. Ordinance 2009-25, Longboat Key Club and Resort – Continued

Mr. Black continued his presentation reviewing the Comp Plan requirements. Discussions were held Mr. Black and Attorney Lincoln throughout the presentation on the following topics/issues:

- utilization and interpretation of the word "regulate" (within the bounds established for density)
- allowed twice-yearly amendments to the Comp Plan
- time frames permitted under Florida Statutes for amendments to the Comp Plan
- opinion for lack of Commission authority to modify policy decisions during a quasi-judicial hearing
- Commission action on first hearing date relating to options for Comp Plan consideration, modification, and process to be follow
- discussion of Comp Plan in legislative versus quasi-judicial setting.

Upon inquiry, Attorney Nancy Stroud noted agreement with Town Attorney Persson on modifications/amendments to the Comp Plan. Discussion ensued on the consideration of the Comp Plan.

Mr. Black's presentation continued with discussions held on the following topics/issues:

- current coastal setback requirements/previous application and enforcement of policies
- determination of water body as a lagoon versus a pass
- Executive Report determination included in the applicants submittals
- options for "condition of approval" address deficiencies outlined
- consideration of a structure on recreation/open space
- requirements relating to density calculations outlined in the Town Code, Section 158
- Longboat Key Club Road (separate parcel of land/deeded property from Arvida Corporation to the Road Association)
- Town Code applicability to an approved GPD
- applicant's proposed acreage, density, and calculations prepared by Mr. Black
- effective density/intensity calculated by Mr. Black updated based on December 2009 submittal by applicant
- review of Inn on the Beach using methodology used to calculate density/intensity of proposal
- Arvida correspondence regarding ownership/private rights versus development rights and terms of private agreements.

Attorney Furen commented on the relevancy of the deeds from Arvida to the applicant and the position of Arvida on the sale of the property as it relates to residential development rights or density in the 1990 deed from Arvida. Discussion ensued on the current status of the position of Arvida relating to density transfer, restrictions outlined in the deed and rights deeded, and Arvida's current ownership status.

1. Ordinance 2009-25, Longboat Key Club and Resort – Continued

Mr. Black's presentation continued relating to consistency with Town Code, Section 158. Discussions were held on the following topics/issues:

- lack of mechanism for a departure approval for a 5% non-commercial waiver
- historical context and planning review of non-residential commercial uses
- significance and opinion that the Code requires a site specific referendum requirement
- 1984 Town Code relating to density and assignment of zoning
- lack of guidance in current Code
- options to define/designate a development site
- identification of other designated development sites within the Town
- request from applicant for departure from parking requirements
- Zoning Code requirements to support the basis for the final decision of the Commission.

Mr. Black summarized the basis for his testimony for non-compliance with the Comp Plan and the Town Code. Mr. Black advised that he would provide an electronic copy of his presentation to Staff for distribution to the Commission and for the record.

Discussions were held on the following topics/issues:

- density calculations/accessory uses to golf course
- commercial versus residential density calculations
- separation of GPD from the community as a whole/LOS standards for Recreation/Open Space
- ability to mitigate open space requirements on other parcels within the Town.

Vice Mayor Siekmann inquired on the order of business for the afternoon and Attorney Lincoln noted issues to be discussed after the lunch session. Vice Mayor Siekmann advised that no public comment would be taken this date.

RECESS: 12:02 p.m. - 1:01 p.m.

Mayor Rothenberg called the meeting back to order at 1:01 p.m. and recessed pending arrival of the applicant's representatives at 1:05 p.m.

Attorney Patterson proceeded with cross examination of Mr. Black. Discussions were held on the following topics/issues:

- consultation with IPOC counsel in response to legal aspects
- opinions rendered consistent with legal opinions of IPOC counsel.

Attorney Lincoln inquired as to the schedule to allow the presentation of the Committee for Positive Change. Following comments, Attorney Lincoln proceeded with his presentation and opined of non-consistency with the Comp Plan and is not in compliance with the Zoning Code. Discussions were held with Attorney Lincoln on the following topics/issues:

1. Ordinance 2009-25, Longboat Key Club and Resort – Continued

- compliance with an Ordinance versus the Comp Plan
- State law governing approval of Comp Plans and the current GPD land use categories do not permit commercial uses
- Future Land Use Element of the Comp Plan outlining density for a GPD
- requirements for incorporation by reference to specifically site the reference
- restrictions on accessory use to residential dwellings/required approvals based on structure
- difficulty for determination of all permitted uses within a Comp Plan
- Florida court rulings on Comp Plan challenges
- clustering density not permitted
- Traffic Element requirements/LOS requirements in current Comp Plan
- inclusion of provisions in the 1984 Comp Plan
- internal traffic circulation/safety concerns stated for proposed plan
- recreation/open space requirements/existing deficit based on 2005 population estimate
- record of population calculation
- suggestion for additional stipulation to address recreation/open space deficits

Town Attorney Persson inquired, and Ms. Simpson advised that the population calculation is based on the peak season population (23,758) calculated at a 22% rate of growth rate between 2000 and 2010, creating a compliance level of 285 acres (Town currently has 274 acres).

Attorney Lincoln continued his presentation and discussed the following topics/issues:

- determination of a “lagoon” versus a pass
- purported violation of Land Development Codes (exceeds 5% cap on non-residential uses)
- Code sections pertaining to consideration of departures
- prohibition of commercial uses
- prohibition of tourism uses in the GPD
- interpretation of the Zoning Code as it relates to parking requirements
- permitted density
- criteria required to meet consistency with the Comp Plan, Land Development Code, and Zoning Code
- need to address common open space
- agreement that reflects members requirements for golf course (Resolution 87-21 governing memberships)
- project relationship to the existing neighborhood
- density proposal for the site
- current character of the development (residential versus commercial)
- 1992 agreement limiting guests at the Inn on the Beach from golf play
- Stipulated Settlement Agreement between the Town and the Key Club (Ordinance 94-04)

1. Ordinance 2009-25, Longboat Key Club and Resort – Continued

- authority to limit outside membership for specific uses
- requirement to amend the 1992 agreement

RECESS: 2:55 p.m. - 3:07 p.m.

Mayor Rothenberg called the meeting back to order.

Attorney Casey Colburn, with Kirk Pinkerton Law Firm, duly sworn, and representing the Coalition for Positive Change on Longboat Key. Attorney Colburn introduced Mr. Rick Crawford, President of the Coalition for Positive Change, duly sworn, proceeded with his presentation.

Attorney Furen proceeded with cross examination. Discussions were held on the following topics/issues:

- reason for starting Coalition for Positive Change
- discussion with Key Club on the development
- basis for formation of the Coalition for Positive Change
- membership lists provided by the Key Club
- location of organization offices (Crawford’s residential unit)
- membership number and participation of businesses (residents versus non-resident)
- support of the Coalition by the Key Club
- development of website and company utilized

Discussions were held with Mr. Crawford on the following topics/issues:

- Hometown Democracy (grass roots movement) supporting referendum requirements for all future comprehensive plan revisions
- lack of guarantee by Key Club to commit to the construction of a hotel
- high level of competition faced by the Longboat Key Club
- preference for full proposal over just residential component
- lack of driving range on last course played by Mr. Crawford
- percentage of membership who are business owners, realtors, and tourist service providers.

Upon inquiry, Attorney Furen noted preference to continue the IPOC presentation on Wednesday, January 20, 2010.

Vice Mayor Siekmann requested consideration to set a firm time for public comments. Discussion ensued on the time frame for consideration, the Attorney presentations scheduled for the next hearing date, and additional time for the Committee for Positive Change.

1. Ordinance 2009-25, Longboat Key Club and Resort – Continued

Subsequent to discussion, there was consensus to set the time certain for public presentation for 1:00 p.m. on Wednesday, January 20, 2010.

RECESS/CONTINUATION:

Mayor Rothenberg recessed and continued the public hearing to Wednesday, January 20, 2010, at 9:00 a.m., at the Temple facility, located at 567 Bay Isles Road, Longboat Key, Florida.

s/s Trish Granger

Trish Granger, Town Clerk

/s/ George Spoll

George Spoll, Mayor

Minutes Approved: 05/03/2010