

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

APRIL 6, 2010

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

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

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

AGENDA ITEM #1
ADMINISTRATION OF OATH

Deputy Town Clerk Mixon swore new member Brad Saivetz.

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

Pursuant to published notice, the public hearing was opened.

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

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

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

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

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

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

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

Mr. Wild asked if the three categories (PD, GPD, and NPD) were the only categories in the code, or was the Town missing a category. Ms. Simpson pointed out that Section 158.009(L) only addressed the PD, GPD and NPD districts. She noted that subsection

(1), of 158.009(L), addressed the clustering of density. Mr. Hackett asked if in the overall density per acre, including recreation, open space, road rights-of-way, wetland, and non-residential, when equating to clustering of density on one or more parcels, would the clustering provide an increase. Ms. Simpson replied no; the acreage remains the same regardless of where they placed the units.

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

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

John Patterson, attorney representing the Key Club Associates, LP and Islandside Development LLC, agreed with staff that the proposed changes were 'housekeeping' and were to clarify what was found by the Board to be the interpretation of the code. He commented that Mr. Siegler's suggestion was to clarify the item even further, and he had no objection to that.

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

Plan; and the present language (density of development sites within the PUD may vary), noting that parcel Rec-1 and the north parcel were not development sites.

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

Marty Black, 2601 Cattleman Road, Kimley-Horn & Associates, representing IPOC, discussed that in the materials received from the applicant in support of the petition, the narrative indicates that one of the basis for the request was there were sections of the definition in the zoning code, as applied and written, that limit and restrict the development potential and density restrictions by the very definition of what was allowed under ‘maximum gross density-residential’ and the types of acreage that were included in the provisions. He commented if there was a conflict on how acreage was calculated, the new language would allow an applicant to override even the basic definitional provisions. He believed this change had the affect of attempting to modify that provision of the Comprehensive Plan that specified how density shall be calculated by, in effect, voiding that provision of the zoning code. He discussed the additional language that specified the mix of uses, noting the Comprehensive Plan did not provide a range of intensity of uses.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Attorney Persson suggested that Section 158.009(L) (1) (page 2 of 5 of the draft ordinance) be modified to read, “*such that the clustering of density on one or more parcels within a site may be allowed,*” deleting the word ‘is’ to be clear it was permissive. Referring to the second suggested change, he did not believe the Board should make

that change because density was a defined term in the code, and he did not believe there was a need to add 'units per acre' after the word 'density' in the schedule. He also addressed Mr. Furen's, Mr. Black's, and Mr. Singer's comments by suggesting a modification that stated, "*In the event of a conflict between the **specific** provisions of this Section 158.009(L), and the provisions of any other sections of the Zoning Code, the **specific** provisions of this section shall apply.*"

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

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

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

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

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

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

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

He discussed Comprehensive Plan Policies 1.2.2, 1.1.4 and 1.1.7 of the Future Land Use Element; and, Policies 1.1 and 4.6 of the Housing Element. He noted they believed the amendment was a major expansion of the departure capability and further weakened the provisions of the Zoning Code, and provided "unbridled discretion" to the Town and

denied property owners, who relied on the code provisions, their protection. He requested that the Board not recommend approval of the amendment.

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

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

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

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

Discussion ensued on modifications to the proposed language.

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

Amendment 3. Chapter 158, Section 158,071, Proposed Land Uses, subsection (A)(2):

Ms. Simpson discussed that this amendment currently read that where mixed uses, residential, and non-residential were proposed, non-residential development may be permitted to occupy up to five percent of the gross land area of the PUD. She explained that the 1979 Zoning Code was the last edition of the code that presented language that differed from what currently existed, which used the term 'non-residential.' The change to the existing code reflected a change in policy, which limited the amount of commercial development in a PUD to limiting the amount of non-residential development in a PUD. She pointed out that the proposed amendment essentially returned to the policy reflected in the 1979 code, limiting the amount of commercial development to five percent, and distinguishing between accessory commercial and non-accessory commercial development in that calculation.

She noted that the Zoning Code for the Town did not consider tourism units to be commercial uses. She explained that special provisions had been made in the Town to allow for tourism uses on a commercially-zoned parcel through Ordinance 2008-34; however, the provisions were specifically for the distribution of the 250 tourism units that

were approved by the voters in the referendum of March 2008. Ms. Simpson noted that without this ordinance, tourism units would not be allowed at all on commercially-zoned property; this was a policy change being requested.

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

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

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

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

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

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

Mr. Patterson provided a history of the code language. He noted there was a question of whether this was a legal impediment for moving forward with the Key Club’s application, whether this was passed or not, and he responded no. They believed it was an issue that should be reviewed and that was the reason they proposed it. He pointed out that if the Town approved the change, it still meant a developer, for any change to a pud, would have to follow the same process of applying for a change in the ODP and meet the criteria.

Mr. Symanski commented that Mr. Patterson had stated this was not needed, and asked if ‘tourism’ was non-residential. Ms. Simpson noted that tourism was non-residential. Mr. Symanski asked how a hotel could be constructed if over the five percent. Mr. Patterson replied they could ask for a departure from the five percent.

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

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

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

Richard Webber, 2120 Harbourside Drive, president of Bay Isles Association, noted he was speaking on behalf of Bay Isles. He asked if the changes, if approved, would set a precedent for the entire island. Attorney Persson explained that it would create a standard for the PD, GPD and NPD districts. Mr. Webber asked if it allowed a change in the density for each area. Attorney Persson replied no. Mr. Webber asked if it would allow reassignment of density units. Attorney Persson pointed out that it depended upon whether the units were initially allocated to the parcel; if they were allowed a certain number of units, and built less, then there was density available in the PUD that could be assigned within that district.

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

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

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

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

Mr. Grossman discussed that he could not find a definition of ‘departures’ in the Town’s Zoning Code, and continued with discussing mixed use zones, accessory uses, and Mr.

Symanski's comments concerning the accessory uses exceeding the five percent commercial restriction.

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

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

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

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

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

Mr. Saivetz commented that the applicant had noted they did not need the amendment for their proposal, and suggested that the amendment could be approved without the non-commercial item. Mr. Siegler discussed the Comprehensive Plan and its reference to the island and "its unique character" and that it was "an affluent retirement community." He did not see a reason to change the code such that the Town would allow a future group to make changes as they saw fit.

Mr. Hixon explained that the Board was discussing a PUD that would apply anywhere on Longboat Key, and the purpose of a PUD was to allow designers, without limitations and regulatory restrictions, the ability to create the most positive land use proposal possible. He encouraged the Board to approve the amendment. Mr. Symanski commented that

the applicant had noted they did not need it, because the Town Commission could grant a departure. The amendment would clarify the code so there was not a weakness. He supported the amendment.

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

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

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

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

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

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

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

She commented that the applicant was stating that it did not make sense, in a PUD, to only allow that very strict standard, which was why the departure language was included for PUDs. Mr. Symanski asked if this amendment simply allowed the Town Commission to look at a building that was longer and prohibited otherwise. Ms. Simpson noted that it

would take it to a departure standard, rather than a waiver /hardship standard in most cases. Ms. Stroud commented that departures were not in the definition section of the code, but was in the standards of the code.

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

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

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

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

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

Ms. Simpson reviewed the suggested change proposed by Mr. Siegler. Mr. Hixon commented that it did not indicate the overall length, connecting the extreme right and

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

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

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

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

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

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

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

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

AGENDA ITEM #3
ADJOURNMENT

The meeting was adjourned at 3:20 pm.

John Wild, Secretary
Planning and Zoning Board