

M E M O R A N D U M

TO: Tom Harmer, Town Manager

FROM: Allen Parsons, AICP
Director, Planning, Zoning & Building Department

DATE: November 28, 2018

SUBJECT: Ordinance 2018-20, Amending Chapter 158, Reconstruction of Nonconformities in the Event of Voluntary Reconstruction or Involuntary Destruction or Damage, Providing for Creation of Conformance Overlay Redevelopment District (CORD)

Recommended Action

Forward Ordinance 2018-20 to the January 7, 2019, Regular Meeting for first reading and public hearing.

Background

The Town Commission held discussions on Ordinance 2018-20 at their November 5, 2018, Regular Meeting, November 13, 2018, Regular Workshop Meeting and forwarded it to the December 10, 2018, Regular Workshop Meeting for more in-depth discussion.

At their November 13, 2018, Regular Workshop Meeting discussion the Commission:

- Received a report from the Town Attorney (memorandum attached) on a question raised at the November 5, 2018, Town Commission Regular Meeting regarding the conversion or reclassification of nonconforming density between residential and tourism uses, and allocating between conforming and nonconforming categorizations of density.
- **Provided consensus support for Nonconforming Redevelopment Option #1**, with recommendations for minor clarifications, which have been addressed in the attached Ordinance 2018-20, to:
 - Sec. 158.139(B)(5), “*Time frame for obtaining site approval*” to clarify that redevelopment site plan approval may be obtained “prior to” abandonment or removal of an existing use.
 - Sec. 158.139(B)(6), “*Demonstration of Legal Conformity*” to clarify that an applicant for redevelopment will be able to utilize the assistance of all available Town records in establishing existing nonconformities.
- **Provided consensus support for Nonconforming Redevelopment Option #2**, with recommendations for minor clarifications and additions, which have been addressed in the attached Ordinance 2018-20, to:
 - Allow Option #2 to be utilized by all existing nonconforming density developments. Ordinance 2018-20 was previously drafted to limit redevelopment under this Option to multifamily and tourism zoned properties only.
 - Add a new “*Intent*” provision (Sec. 158.139(C)(1)), per a suggested edit provided by Vice Mayor Zunz (attached).
 - Add a new “*Building Cubic Content*” provision (Sec. 158.139(C)(2)), per a suggested edit provided by Vice Mayor Zunz (attached), providing

language indicating that “owners may elect to reduce the number of nonconforming units in order to achieve compliance with Option 2.”

- Sec. 158.139(C)(3), “*Time frame for obtaining site approval*” to clarify that redevelopment site plan approval may be obtained “prior to” abandonment or removal of an existing use.
 - Sec. 158.139(C)(4), “*Demonstration of Legal Conformity*” to clarify that an applicant for redevelopment will be able to utilize the assistance of all available Town records in establishing existing nonconforming density, along with clarifying that the only applicable demonstration of nonconformity for Option 2 will be density, as any redevelopment would be meeting applicable zoning district requirements.
- **Continued Discussion on Nonconforming Redevelopment Option #3.** Items discussed are summarized below.
 - A suggestion was made to consider providing a prioritization of standards that may be modified to indicate which standards have the highest importance, with the greatest need for reduction or elimination of existing nonconformities, and therefore would be least likely to be approved for modification compared to zoning standards which may have a lower importance in terms of reducing or eliminating existing nonconformities. **In response, staff has revised Ordinance 2018-20 to indicate such a ranking order with the standards revised in order of importance¹**, from highest to lowest with the following proposed order: 1) Building Setbacks; 2) Open Space; 3) Building Height; 4) Maximum Building Length, Distance Between Buildings, Distance Between Buildings and Driveways; 5) Off-Street Parking; 6) Lot Coverage. Note: Standards 7-11 are requirements of the CORD and do not confer authority to revise standards of the underlying zoning district.
 - Related to the above bullet point, the Commission discussed providing minimums for developments standards to be achieved with redevelopment regardless of existing conditions. The Commission considered the draft minimum Open Space percentage of 20% as an initial standard to potentially revise further. Discussion on minimums for other standards did not occur within the time limits of the meeting.
 - A suggestion was made to direct staff to provide options for the Commissioner’s consideration that would provide a mechanism to preserve unused redeveloped density units in a “pool” that could be utilized as additional development density by other eligible properties via a mechanism referred to as Transfer of Development Rights (TDRs).
 - A suggestion was made to draft CORD zoning district provisions in a manner that would obligate an applicant that requested modifications, to provide supporting justifications for changes starting from the standards of the existing underlying zoning district instead of providing justifications from the starting point of existing nonconforming conditions.
 - A call for consensus on the question of whether to continue with consideration of Option #3 as a concept (i.e. primarily allowing an option providing flexibility from underlying zoning district standards) resulted in a 3-3 poll.

¹ Note: Proposed order of importance mirrors the order found in Sec. 158.139(B)(7), Option 1, Redevelopment of Non-Compliant Structures

- It was suggested that the December 10, 2018, Regular Workshop Meeting discussion begin with a confirmation of nonconforming redevelopment objectives.

Among the questions to potentially contemplate are considering the differences in intents between 1985 Referendum (Ord. 85-2), which provided that:

“The present density limitations provided in the existing Comprehensive Plan as adopted March 12, 1984 shall not be increased without the referendum approval of the electors of Longboat Key.”

Compared to the related 2007 Referendum (Ord. 2007-48), which affirmatively provided that:

“For properties that have more dwelling or tourism units than currently allowed, but which were legal at the time they were created, may the Town consider and grant approval to allow those properties to rebuild to their current dwelling or tourism unit levels in the event of involuntary or voluntary destruction?”

The intent of the 1985 Referendum was to ultimately reduce the densities of many residential and tourism properties, over time. The intent of 2007 Referendum can be viewed as being contrary to the reduction intent of the 1985 Referendum by allowing nonconforming densities to be rebuilt.

Further, should the 2007 Referendum above be viewed as providing an intent to preserve, the then-existing densities, as it was approved at the same time as a Referendum (Ord. 2007-47), which resulted in the creation of the 250-Units Tourism Units Pool via the affirmative response to the referendum question:

“In an effort to recover the approximate number of tourism units lost since the Year 2000, may the Town consider, allocate, and permit 250 tourism units beyond those provided for by the Town’s 1984 Comprehensive Plan?”

In consideration of the above Charter requirement and referendum questions, several policy questions relating to the Town Commission’s overall objections should be addressed:

- Is there an overall objective to maintain existing nonconforming densities (i.e. generally allow for retaining the existing number of dwelling and tourism units)? If so, under what circumstances?
- Should existing nonconforming densities generally be steered towards reductions to limits established by the 1984 Comprehensive Plan as redevelopment occurs over time? If so, under what circumstances?
- Should nonconforming density redevelopment be held to the Town’s existing zoning district standards?

- Should nonconforming density redevelopment be provided opportunities to seek flexibility from existing zoning district standards? If so, is the Town Commission comfortable granting greater flexibility to nonconforming properties than conforming properties?

Confirmation of overall objectives will assist in the drafting appropriate reconstruction of nonconformities provisions and standards.

Previous Background

Ordinance 2018-20 follows from the Town Commission's series of three Special Workshop Meetings held in April, May, and June 2018, on the historically challenging subject of redevelopment of properties that contain more legally approved dwelling units per acre than their underlying zoning district densities would allow for (a/k/a "Non-Conforming" Densities). At their June 4, 2018, Special Workshop Meeting, the Town Commission reached consensus on a series of goals and options (i.e. methods) for the redevelopment of legally nonconforming properties (see attached meeting minutes).

The Commission's overall goals, in no particular order, for redevelopment of legally nonconforming properties from those workshops were:

- Goal 1- No new density will be allowed (without a referendum approval).
- Goal 2- A property's use and its structures, in any redevelopment, would meet existing zoning district standards (i.e. other than density, redevelopment will ideally meet all applicable zoning requirements).
- Goal 3- Any redevelopment of legally nonconforming properties will use their best efforts to meet the existing zoning district requirements (i.e. providing options and potential for flexibility).

Among the topics discussed during the Town Commission Workshop Meetings, the Commission raised the question as to whether there needed to continue to be distinctions between the existing Zoning Code provisions that govern legally nonconforming redevelopment depending on whether the redevelopment is a result of either "voluntary" or "involuntary" actions of a property owner(s). The Town's adoption of voluntary nonconforming rebuilding provisions followed the Town's approval of a March 2008 Referendum that posed the question to voters:

For the properties that have more dwelling or tourism units than currently allowed, but which were legal at the time they were created, may the Town consider and grant approval to allow those properties to rebuild to their current dwelling or tourism unit levels in the event of involuntary or voluntary destruction?

In response to the Commission's policy question, staff is of the opinion that separate, and slightly different, rebuilding standards and requirements, based on the reason why a property may be seeking to rebuild, need no longer apply. The distinction between voluntary and involuntary nonconforming reconstruction has therefore been removed in Ordinance 2018-20.

For the Town Commission's consideration, the existing Redevelopment Regulations (Zoning Code Sections 158.139 "Involuntary" and 158.140 "Voluntary") have been

combined and a new draft “Floating Overlay Zone District²” are proposed to address updated non-conforming redevelopment regulations that attain the methods arrived at by Commission consensus. These methods are described as a series of three (3) options arrived at by Commission consensus:

- Option 1- Redevelopment of legally nonconforming density and structures with existing limitations generally prohibiting additional building cubic content. This option is available to all nonconforming properties within the Town.
- Option 2- Redevelopment of legally nonconforming density via meeting all applicable Zoning District standards (allowing additional cubic content). This option is available to all nonconforming properties within the Town.
- Option 3- Redevelopment of legally nonconforming density utilizing a New “Floating Zone District” (allowing additional cubic content, ability to request modifications from underlying zoning district standards and providing for conformity of a subject property’s density with the Zoning Code and Comprehensive Plan). This option is available to all nonconforming properties within the Town.

Ordinance 2018-20 provides three (3) options for the Town Commission’s consideration.

The first two of the options above are addressed via the proposed combination of existing nonconforming code sections 158.139 (Involuntary Destruction) and 158.140 (Voluntary Reconstruction) into a combined single Section, which, as drafted, is **Sec. 158.139 – Reconstruction of Nonconformities**.

The third option above includes the creation of a new floating overlay Zoning District within the Town, tentatively referred to as the **Conformance Overlay Redevelopment District (CORD)** and proposed as a new code section, **Article III, Division 3, Sec.158.114**. The proposed CORD would provide the opportunity for legally nonconforming density properties to seek rezoning to this newly established floating overlay zoning district in order to obtain conforming status. The CORD also provides for the ability to seek modification(s) to the existing underlying zoning district standards on the property. Note: The Planning and Zoning Board (P&Z) reviewed the draft contents of the CORD as a separate draft Ordinance (previously included as part of draft Ord. 2018-14). Addressing this as a separate Ordinance made the P&Z’s consideration unnecessarily awkward by requiring separate and repeated actions to ultimately recommend approval of all three options. Staff has addressed this former cumbersome Ordinance construction by separating the concepts into two Ordinances: Ordinance 2018-20 which is before you, and companion Ordinance 2018-14, which addresses the elimination of the Town’s existing Planned Unit Development (PUD) process for properties outside of the Town’s Mixed Use Community (MUC) zoning districts/land uses. The contents of both ordinances contain the language reviewed and recommended for approval by the P&Z.

Proposed amendments to the existing voluntary and involuntary reconstruction provisions (Secs. 158.139 and 158.140) provide three (3) individual and mutually exclusive

² Definition: An overlay zone is a zoning district which is applied over one or more previously established zoning districts, establishing additional or different standards and criteria for covered properties in addition to those of the underlying zoning district. The Town of Longboat Key, Future Land Use Policy 1.1.5 provides authority to the Land Development Code to: specify standards for redeveloping lawfully existing property that does not conform to the future land use density and building volume limits provided elsewhere in the Plan and allows for the establishment of standards to conform such properties to densities established by their lawfully existing nonconforming density.

redevelopment options described below. These options retain the same intent to reduce or eliminate nonconformities, with a preference that properties develop according to their applicable zoning district standards. Option 1, however, recognizes that, due to a variety of circumstances, including unplanned or undesired destruction, existing legally nonconforming developments may be reconstructed to the same number of units, and the same type of principal use(s) in existence prior to the reconstruction. Such development, that includes noncompliant structure(s), may be rebuilt to the same density and building cubic volume, allowing an increase of height of the structure to correspond with the increase in height required by the flood ordinance(s).

This nonconforming structure(s) redevelopment scenario is provided for and labeled as Option 1 in proposed Ordinance 2018-20. Option 1 can be viewed as a continuation of the provisions presently more typically associated with the existing *involuntary* reconstruction provisions. It allows legally nonconforming residential or tourism properties that exceed the current allowable density, to be rebuilt for the existing use, density and cubic content, along with aspects of the structure(s) that may be nonconforming such as height, setbacks and open space in existence prior to their removal. While Option 1 has an overall intent to encourage more conforming redevelopment, it does allow nonconforming properties to generally be built to a site's existing "as is" condition, but no more. Under Option 1, properties still would retain nonconforming status with regard to density.

Option 2 in the ordinance proposes new language, and a new option to the nonconforming redevelopment provisions. This option labeled **Nonconforming Redevelopment in Conformance with Zone District Requirements**, would allow legally nonconforming density properties that rebuild and meet *all* of the applicable zoning requirements to redevelop with the nonconforming density. Exercise of this redevelopment option would no longer require a site to maintain its existing building cubic content in a redevelopment scenario. This option provides more flexibility than Option 1, in that it would permit the redevelopment of a property to configure building(s) differently than what was existing on the property previously, and to add cubic content to those buildings, as long as all of the other requirements of the zoning district for the property (height, open space, setbacks, etc.) are met. This option, however, still would retain a nonconforming status with regard to density.

A noteworthy difference in the draft nonconforming redevelopment text is that the existing Sec. 158.139 (Involuntary Destruction) applies to all nonconforming properties in the Town, whereas Sec. 158.140 (Voluntary Reconstruction) is limited to multifamily and tourism properties. Thus, under the existing Code provisions, a nonconforming single family or two-family property can only rebuild to its nonconforming extent under the existing *involuntary* destruction provision. The draft text would permit nonconforming single family or two-family properties to rebuild regardless as to whether the redevelopment was either voluntary or involuntary in nature via the provisions of all three Options.

The proposed creation of a new **Conformance Overlay Redevelopment District (CORD)**, follows the Town Commission consensus and direction from their June 4, 2018, Special Workshop Meeting (see attached meeting minutes) to draft a new floating zoning district to address nonconforming redevelopment opportunities that attain the following goals:

- Reduce existing nonconforming height, if applicable.

- Redevelopment should conform to the underlying zoning district standards to the greatest extent possible.
- Allow redevelopment flexibility (including building heights greater than allowed in underlying zoning district) from underlying zoning district standards, when certain site specific findings such as site or market/economic constraints and demonstration(s) can be made by the applicant.

The CORD is proposed to provide the opportunity for legally nonconforming properties to seek rezoning in order to obtain conforming status with the Zoning Code and Comprehensive Plan for density and provide the ability to request modification(s) to the existing underlying zoning district standards for the proposed redevelopment of a property. The CORD is referenced as **Option 3** in the revised nonconforming redevelopment text drafted as a combined Zoning Code Sec. **158.139 – Reconstruction of Nonconformities**. The CORD is proposed as a new Code section, **Article III, Division 3, Sec. 158.114**.

The CORD, as drafted, will function as a zoning overlay district, meaning that it can modify the underlying zoning district standards. For the CORD to apply, a rezoning of the property at a quasi-judicial hearing would have to occur to establish the legally nonconforming density as being conforming with Zoning Code and Comprehensive Plan densities. The CORD, as proposed, would offer some limited flexibility from the underlying zoning district standards. The potential design flexibility of the CORD provides the opportunity for properties to achieve improved conformance with underlying zoning district requirements, in comparison to existing legally nonconforming development, and would allow for imaginative, functional, high-quality land planning developments to be compatible with adjacent and nearby lands and activities, in keeping with the low density and lower-scale character of the Town. Overall, such developments are intended to reduce or eliminate nonconformities, especially Gulf and Pass waterfront yard setbacks, and bring previous nonconformities more into conformance with the Town's Zoning and Building Codes.

The steps to request a change in zoning to the CORD will follow the requirements for a zoning amendment (rezoning). The CORD introduces a new step of conducting a neighborhood meeting to inform nearby residents and interested parties of what is proposed, prior to filing an application. The rezoning would be required to be processed concurrently with a Future Land Use Map amendment that would apply the Town's, "Opportunity Area" designation to the site's Future Land Use designation. The application of the Opportunity Area future land use designation would allow for a site's legally nonconforming density to be recognized as conforming (per Future Land Use Policies 1.1.5 and 1.1.10).

Of note, with the creation of a new floating overlay district, staff is also proposing, in companion Ordinance 2018-14, to eliminate the use of the Planned Unit Development (PUDs) process, outside of the Mixed Use Community zone districts/future land uses. PUDs, via Outline Development Plans (ODPs), authorizes an applicant to apply for additional height and lot coverage that exceeds the zoning district standard maximums, as set forth in Policy 1.1.10. Notwithstanding the foregoing, PUD requests are considered on a case by case basis by the Town Commission, and while these zoning district standards may be expanded in a qualifying PUD, they are not guaranteed. The potential increases, via PUD, include the following items **highlighted** below:

Table 1
Land Use Densities and Intensities in the Town of Longboat Key

OPPORTUNITY AREAS		ESTABLISHED AREAS						
Symbol	Category	Symbol	Category	Density	Nonresidential Intensities			
					Maximum Lot Coverage		Maximum Height (stories/feet)	
					Standard	PUD or ODP	Standard	PUD or ODP
CTDO	Commercial Tourist Destination							
		TRC-3	Medium Density Tourist Resort/Commercial	3 u/ac	25%	35%	3/40	4/55
		TRC-6	High Density Tourist Resort/Commercial	6 u/ac	30%	40%	4/50	5/65**
COMO	Commercial							
		OI	Office-Institutional		30%	40%	2/30	
		CL	Limited Commercial		30%	40%	2/30*	
		CG	General Commercial		30%	40%	3/40*	
		CH	Highway Commercial	3 tourism u/ac	40%	50%	3/40*	
		MCS	Marina Commercial Service	1 accessory du located on the same lot	40%	50%	2/30*	

* An additional five feet in building height allowed for a waterfront restaurant.

The proposed CORD does not presently include provisions for height or lot coverage increases like the PUD process does. Adoption of the proposed CORD would not change any existing entitlement rights as the potential for an additional story of height or lot coverage is at the discretion of the Town Commission, as is in PUD approval. Should the Commission wish to include similar provisions for the CORD, Future Land Use Policies 1.1.9 and 1.1.10 would need to be revised.

In addition, rezonings to the CORD are required to be accompanied by a site plan that is simultaneously reviewed by the Planning & Zoning Board and then by the Town Commission.

Although the CORD would afford the ability to request relief or modification from the underlying zoning district standards, applicants must demonstrate through the rezoning, the elimination or reduction of prior existing nonconformities, to the greatest extent possible, in conformance with the established standards of the CORD. These standards include: Building Height, Lot Coverage, Building Setbacks, Off-Street Parking, Open Space, Building Distances, along with requirements to maintain Beach and Bay Access, Natural Shoreline, and the timing of the Development of Amenities and Tourism Units, in the case of mixed-use developments.

Below is a brief description of some of the standards and changes addressed in the CORD.

Building Height - Two separate standards apply.

- i. For properties with existing structures that are at or below the allowable height of the underlying zoning district, the maximum height shall be the height allowed by the underlying zoning district.
- ii. For properties with existing structure(s) that exceed the allowable height of the underlying zoning district, the Town Commission may approve waivers allowing increases in height above the maximum height of the underlying zoning district, provided that proposed height(s) represent a decrease in nonconforming height. The applicant shall demonstrate how reduction(s) in height on the property, to the greatest extent possible, will be more in conformity with the zoning district standards than the prior nonconforming height(s).

Cubic Content - Not restricted to the previous existing structures, and may be increased in conformance with the underlying, or modified, zoning district standards such as height, setbacks, and lot coverage.

Lot Coverage - Shall conform to the greatest extent possible to the lot coverage permitted in the underlying zoning district from the existing nonconforming development condition.

Building Setbacks – Shall to the greatest extent possible conform to the setbacks allowed by the underlying zoning district from the existing nonconforming development condition. Note: For any buildings that would exceed the underlying zoning district height, each building must have a minimum street setback of at least 2.5 times the overall height of the building, with a vegetative street buffer with sufficient density and height to minimize the visibility of the buildings from the right-of-way. Waivers to this required street setback may be granted by the Town Commission.

Open Space - The open space of the property proposed for zoning amendment shall conform to the greatest extent possible to the open space permitted in the underlying zoning district from the existing nonconforming development condition. However, open space shall not be less than 20 percent of the lot area.

Density - Provides for the preservation of the nonconforming density and authorizes the nonconforming density to become conforming within the CORD zoning district.

The Ordinance was also considered by the Planning and Zoning Board (P&Z Board) at its September 18, 2018, Regular Meeting and was recommended for approval. The recommendations were in the form of separate recommendations, as follows:

- Recommendation to strike all references to “Voluntary” and “Involuntary” within Ordinance 2018-20. Approved 6-0.
- Recommendation to approve Ordinance 2018-20, with the addition of the word ‘zoned’ to Sec. 158.139 (C), Option 2, in the first sentence, to state “*existing multifamily and tourism ‘zoned’ properties...*” Approved 5-1.
- Recommendation to approve the Conformance Overlay Redevelopment District (previously included as part of Ord. 2018-14). Approved 4-2.

Although not on the prevailing recommending side, concern was expressed by P&Z members regarding the flexibility provided by Option 3.

Staff Recommendation

Following Commission direction, forward Ordinance 2018-20 to the January 7, 2019, Regular Meeting for first reading and public hearing.

Attachments

Ordinance 2018-20;

Staff PowerPoint Presentation;

Memorandum from Town Attorney, dated 11-13-18, Re: Density Conversions;

Vice Mayor Zunz Suggested Edits to Option 2, dated 11-9-18;

Staff Report, dated 09-18-18, Director to P&Z Board;

Minutes from the 09-18-18 regular P&Z Board meeting on this issue; and

Minutes from the Town Commission Redevelopment Workshops: April 16, 2018, May 14, 2018, and June 4, 2018.

ORDINANCE 2018-20

AN ORDINANCE OF THE TOWN OF LONGBOAT KEY, FLORIDA, MODIFYING AND AMENDING TITLE 15 LAND DEVELOPMENT CODE, CHAPTER 158, ZONING CODE; MODIFYING AND AMENDING DIVISION 1, USE REGULATIONS WITHIN ARTICLE IV, GENERAL REGULATIONS; AMENDING 158.138 STATUS OF NONCONFORMITIES; AMENDING SECTION 158.139, RECONSTRUCTION OF NONCONFORMITIES IN THE EVENT OF INVOLUNTARY DESTRUCTION OR DAMAGE AND RETITLING THE SECTION TO RECONSTRUCTION OF NONCONFORMITIES; DELETING SECTION 158.140, RECONSTRUCTION OF NONCONFORMITIES IN THE EVENT OF VOLUNTARY RECONSTRUCTION; ADDING DIVISION 3 OVERLAY DISTRICTS WITHIN ARTICLE III, SITE AND DEVELOPMENT PLANS; ADDING SECTION 158.114, CONFORMANCE OVERLAY REDEVELOPMENT DISTRICT (CORD); PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL OF ORDINANCES IN CONFLICT HERewith; PROVIDING FOR CODIFICATION; PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Charter of the Town of Longboat Key, Article II, Section 22(b), "*Comprehensive plan for town*," does not permit an increase in the allowable density as established by the March 12, 1984, Comprehensive Plan, without a referendum approved by the electors of Longboat Key; and

WHEREAS, on March 18, 2008, the electors of the Town of Longboat Key approved a referendum that allowed the Town's Comprehensive Plan and Zoning Code to be amended to allow then existing properties which had more dwelling or tourism units than the Comprehensive Plan allowed but which were legal at the time they were created to voluntarily rebuild to their then current dwelling or tourism density levels; and

WHEREAS, following that vote, the Town's Comprehensive Plan and Zoning Code were amended to allow certain nonconforming properties which have more multifamily dwelling or tourism units (density) than the Town's 1984 Comprehensive Plan allows, but which were legal at the time they were created, to rebuild to their current dwelling or tourism density levels under certain conditions by adopting Sections 158.139 and 158.140, of the Town Code which permitted such reconstruction; and

WHEREAS, the Town recognizes that property owners of Longboat Key should be able to continue to rebuild certain legally nonconforming structures, provided that certain conditions and all applicable local, state and federal codes are met in order to improve the public health, safety and welfare of the Town; and

WHEREAS, the Town Commission has deemed it desirable to stabilize and allow for the modernization of certain existing legally nonconforming residential, multifamily, and tourism densities by allowing redevelopment while allowing the current legally nonconforming density of the property to remain; and

WHEREAS, it is recognized that the owners of certain existing legally nonconforming residential, multifamily and tourism properties on Longboat Key should be able to apply to

rebuild their structures, provided that they are not increasing the extent of the prior existing nonconformities except as provided in this ordinance; and

WHEREAS, the Town's Land Development Code serves to preserve and enhance the Town's character by ensuring that land uses are responsive to the social and economic needs of the community and are consistent with the support capabilities of the natural and manmade systems; and

WHEREAS, the Town's Land Development Code also serves to maintain an environment conducive to the health, safety, welfare of the Town's residents, and preserves and enhances property values within the Town; and

WHEREAS, the Town Commission seeks to amend the Town's Land Development Code to create a new Overlay District, applicable to some legally nonconforming properties to enable flexibility of design and to encourage imaginative, functional, high-quality land planning developments in designated areas which are compatible with adjacent and nearby lands and activities and are consistent with the existing character of the Town, while also encouraging redevelopment of aging properties; and

WHEREAS, the Town Commission has determined that the new Overlay District also will provide a method to allow the Town Commission to consider requests from certain non-conforming properties that seek additional cubic content, while recognizing and keeping with the relatively low-density nature of the community; and

WHEREAS, it is the intent of this ordinance to require that all structures be brought into compliance with the State Building Code, FEMA requirements, and local flood control regulations; and

WHEREAS, the Town recognizes that to the "greatest extent possible," as referred to in this ordinance means that all structures, buildings, and uses that are rebuilt or restored under this ordinance should comply with the current local, state, and federal codes, with emphasis on meeting the gulf waterfront yard and open space requirements; and

WHEREAS, pursuant to Town Code Section 158.030(B), the Planning and Zoning Board considered the Zoning Code amendments described herein at its regular meeting and public hearing on September 18, 2018; and

WHEREAS, the Planning and Zoning Board found that the subject Zoning Code amendments are consistent with the Town of Longboat Key Comprehensive Plan as amended; and

WHEREAS, the Town Commission of the Town of Longboat Key, after review of the recommendations of the Planning and Zoning Board, comments made at public hearings, and careful consideration of the issues, finds that the proposed amendments are consistent with the Comprehensive Plan as amended and are in the best interest of the health, safety, and welfare of the citizens of Longboat Key.

WHEREAS, on _____, 201_, the Town Commission conducted a duly noticed first reading and public hearing on the proposed Zoning Code amendments; and

WHEREAS, on _____, 201_, the Town Commission conducted a duly noticed second reading and public hearing on the proposed Zoning Code amendments and the Town Commission approved the amendments.

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. Chapter 158, *Zoning Code*, Article IV, *General Regulations*, Division 1, *Use Regulations*, is hereby amended to delete Section 158.140, and amend Sections 158.138, and 158.139 of the Town's Zoning Code to read as follows:

158.138(8)(a)- Status of Nonconformities, Abandonment

(a) *Abandonment.* Except as set forth in subsections 158.139(A) and 158.114, providing for the reconstruction of legally involuntarily destroyed nonconforming structures, buildings or uses, a nonconforming use not used for a period of one year or the change of use to a more restricted or conforming use for any period of time shall be considered an abandonment thereof and the nonconforming use shall not thereafter be revived.

158.139 - Reconstruction of nonconformities ~~in the event of involuntary destruction or damage.~~

(A) *Intent.* It is the intent of this section, subject to an applicant meeting all the criteria set forth below, that in the event of involuntary destruction due to natural events to allow existing, legally nonconforming noncompliant residential or tourism properties that exceed the current allowable density, structures to be rebuilt for the existing use and to the same density in accordance with all existing Zoning and Building requirements. Existing developments that are legally nonconforming due to the current number of dwelling or tourism units, may be reconstructed to the same number of units, and the same type of principal use(s) in existence prior to the reconstruction. It is also the intent of this section that noncompliant structures may be rebuilt to the same density and building cubic volume, allowing an increase of height of the structure to correspond with the increase in height required by the flood ordinance(s). In any redevelopment scenario, the overarching intent is and to reduce or eliminate nonconformities, with a preference that properties develop according their zone district, especially gulf and pass waterfront yard setbacks, to the greatest degree possible, as set forth below. Three individual, and mutually exclusive, legal nonconforming density redevelopment options are provided below. These options may not be combined.

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- (B) Option 1- —Redevelopment of Non-Compliant Structures Legally nonconforming structures, buildings and uses ~~which are substantially damaged by more than 50 percent in accordance with chapter 154, destroyed or made unsafe or unusable by hurricane, storm surge, or other involuntary act,~~ may be reconstructed. Such reconstruction shall be limited to the same building cubic content, location, and number of units in existence prior to their removal-casualty, subject to compliance with the following conditions:
- (1) *Compliance with town ordinances.* To the greatest extent possible, such reconstruction shall comply with all codes and regulations of the town. For purposes of this section, "to the greatest extent possible" shall mean bringing the previous nonconformities into conformance with the Town's Code to the extent that it does not create an unnecessary and undue hardship as determined by the town.
 - (2) *Prohibition on increase in extent of nonconformities.* All such reconstruction shall not increase the extent of the prior existing nonconformities, except for height as addressed below or as a result of modifications approved by the planning and zoning board, and prior existing nonconformities shall be eliminated to the greatest extent possible.
 - (3) *Building cubic content.* Owners of legally nonconforming structures shall be permitted to rebuild ~~the non-compliant~~ structure(s) to the same building cubic content that existed prior to ~~the removal-casualty~~. Additional building volume created as a result of compliance with flood control laws shall not be included in determining building cubic content. Additional areas and volume created for elevators, stairs, landings, mechanical areas and walkways, which were not included in the former structure(s), shall not be included in building cubic content, provided that the addition of any of these elements does not create a greater nonconformity as to open space or required setback.
 - (4) *Unit area increase.* So long as there is no increase in overall building cubic content, as determined by subsection (3) above, units within the structure(s) may be increased in cubic ~~content~~ volume only as a result of decreasing the number of units within the structure or diminishing the previously existing common areas within the ~~substantially damaged or destroyed non-compliant building~~ structure(s).
 - (5) *Time frame for obtaining site plan approval.* To qualify for rights under this provision, any such reconstruction shall obtain site plan approval prior to or within two years of the ~~date of the casualty removal; or abandonment of use.~~ The planning and zoning board may, upon application received prior to the expiration of the two-year period, extend such time for demonstrated cause pursuant to the town's Code. A building permit shall be obtained within the timeframe conditioned at the time of site plan approval. Notwithstanding the foregoing, the planning and zoning board may in its sole discretion unilaterally extend the date for site plan approval up to an additional two years if, owing to ~~the~~ circumstances of the such as a natural disaster, such extension is in the best interests of the town.
 - (6G) *Demonstration of Legal Nonconformity.* It is the burden of the applicant, with the assistance of all available Town records, to establish, to the satisfaction of the town manager or designee, by clear and convincing evidence, through documentation, as applicable to the nonconformity proposing to be maintained, including, but not limited to, certification, photographs, diagrams, plans, affidavits, and permits, the actual uses, building cubic content, densities, and intensities legally existing prior to the disaster event or redevelopment, prior to seeking site plan approval.

(7D) *Nonconformities and the relaxation of certain controls.* To minimize the need for individual variances or departure applications, prior to the approval of reconstruction site plans, the planning and zoning board may, as part of the site plan review process, relax or modify one or several of the controls listed in sections 158.069, 158.102, 158.127, 158.128, 158.145, 158.150 and 158.153 in conformance with this section. However, prior existing nonconformities shall be eliminated to the greatest extent possible. In considering such request, the planning and zoning board shall also consider the nature and character of development in the surrounding area, and the impact thereon, in determining whether, or the degree to which, these controls may be modified. Those controls which may be modified are listed below in order of importance, highest to lowest, such that the control with the highest importance is the control with the greatest need for reduction or elimination of any nonconformities (and least likely of relaxation or modification) and the control with lower importance has a lesser need for reduction or elimination (and more likely of relaxation or modification).

(a) ~~(1)~~ Required yards:

Required yards:

(ia) Properties which were previously permitted to build within a gulf or pass waterfront yard, closer to the water than currently permitted, may continue to enjoy these lawfully existing rights without subsequent planning and zoning board approval, however those properties shall not be able to avail themselves of this Code section regarding reconstruction of nonconformities ~~in the event of involuntary destruction or damage~~ and shall comply in all respects with the codes in effect at the time of reconstruction ~~the destruction or damage~~. These properties may, alternatively, waive these previously granted rights and seek approval of the planning and zoning board for encroachments into the required gulf or pass waterfront yard, thus availing themselves of the provisions of this Code section. In accordance with the policies and procedures in this Code section, the planning and zoning board may approve encroachments into a waterfront yard up to the amount of the previously existing encroachment.

(bii) The approval of a modification to the required gulf or pass waterfront yards shall never be less than 50 feet from the mean high-water line or erosion control line, whichever is most landward, unless the previous legal encroachment was less than 50 feet, in which case the modification may never be less than the previous encroachment. The burden to provide sufficient evidence as to why the modification is necessary and essential to the redevelopment of the site shall be upon the applicant.

(iiie) Street, rear, side, or waterfront yards, other than the gulf waterfront yard, may be modified to:

(1i) Permit the reconstruction of existing structures that are nonconforming, with minor modifications to the required yards, in order to accommodate an increase in building cubic content, as permitted in subsection (B)(3) of this section;

- (2ii) Permit the reconstruction of existing structures that are nonconforming with regard to a specific setback so long as the reconstruction will not further reduce the setback;
 - (3iii) Permit the construction of a handicapped access appurtenance to any reconstruction; or
 - (4iv) Allow for the placement of stairs or stair landing that provides access into a reconstructed dwelling unit.
 - (5d) Buildings or structures that are ~~not in compliance~~non-compliant with the current street, rear, side or waterfront yards regulations, other than the gulf or pass waterfront yards, and can be proven to have been permitted prior to the adoption of such regulations shall be considered legally nonconforming. The street, rear, side or waterfront yards, other than the gulf or pass waterfront yards, may be modified to be reconstructed as it existed prior to the disaster event.
- (b2) *Open space:*
- (ia) Modifications which reduce the open space requirement of the Zoning Code may be allowed when it:
 - (1i) Accommodates modifications to the off-street parking requirements, and utilizes the subsection locating off-street parking at the ground floor level of a structure pursuant to subsections ~~(e5)(iii)(e)~~ and ~~(iv)(d)~~ below of this section; or
 - (2ii) Accommodates other approved changes to the site as a result of the reconstruction.
 - (iib) Reductions from the open space that existed prior to reconstruction ~~the disaster event~~ shall be minimized to the greatest extent possible to allow for compliance with the town's flood control ordinance, but open space shall not be less than 20 percent of the lot area.
- (c3) *Building height:*
- (ia) The overall height of a building, at the time of reconstruction, shall be measured from the minimum habitable floor elevation in accordance with the local flood control ordinance, or state mandated height, whichever is applicable. This shall not preclude the utilization of the ceiling of the ground floor parking garage from being utilized as the base measuring point for building height for a multifamily structure, as defined in section 158.006 (definition of "Building, Height of").
 - (iib) The overall height of a building may be increased by a maximum of the additional elevation required to comply with subsection ~~(c)-(i)-3(a)~~ above.
- (d4) *Maximum building length, distance between buildings, and distance between buildings and driveways.* These development criteria may be modified to allow reconstruction of existing non-conforming structures, but shall not be reduced in a manner that jeopardizes public safety.
- (e5) *Off-street parking spaces.*

(ia) In no instance shall the parking requirements be modified where the reconstruction involves the increase of density or intensity of use.

(iib) Shelters for parking spaces that were previously unsheltered shall not be permitted unless the shelters meet the setback and land coverage requirements for the site.

(iiie) Where to the greatest extent possible, the ground floor area of the reconstructed building shall be utilized for off-street parking.

(ivd) Off-street parking modifications may include the number of spaces provided, minimum dimensions of the stalls, minimum aisle widths, and location of spaces within required yards, and be made to:

(1i) Improve ingress and egress to the site;

(2ii) Eliminate or reduce the instances where conditions require that parked vehicles back out onto public/private streets; or

(3iii) Allow for the provision of handicapped-accessible parking spaces.

(E8) Site plan approval.

(a1) All applications for the rebuilding of ~~involuntarily damaged or destroyed~~ nonconforming structures, buildings or uses shall be submitted for site plan review in accordance with article III of this chapter.

(b2) Permitted uses without site plan review, as listed in section 158.125, are not required to be processed under the site plan review provisions of article III, but can instead be processed in accordance with section 150.31.

(c3) Permitted uses with site plan review, which meet the provisions of section 158.100, may be exempted from site plan submission requirements, in accordance with said section, and the administrative staff is hereby authorized to modify the controls as set forth herein.

(9F) The town commission, by emergency ordinance, may develop additional or alternative procedures for the swift processing of applications in cases where a state of emergency is declared; and, in addition, may expand the authority of the administrative staff to relax certain controls by the emergency ordinance. A status report, delineating activities undertaken by the administrative staff under the provisions of this section, shall be provided to the planning and zoning board on a monthly basis.

(10G) Decisions of the administrative staff, made relative to the provisions of this section, may be appealed by any person to the zoning board of adjustment, in accordance with the appeal procedures set forth in section 158.027. No provision herein, shall be construed to deny the reconstruction, continuance or improvement of legally nonconforming structures, buildings and uses, so long as the reconstruction, continuance or improvement is in accordance with this section.

~~(H) — Developments approved by an outline development plan may request departures from the land development regulations through the standard ODP procedures.~~

(C) Option 2— Nonconforming Redevelopment in Conformance with Zone District Requirements

Legally nonconforming structures, buildings and uses may be rebuilt to the existing use and density, provided the proposed redevelopment is in accordance with all of the criteria associated with the subject site's zoning and requirements of this code. Such developments may be redeveloped to the same number of units, same type of principal use(s) in existence prior to the redevelopment, and may add additional cubic content, subject to compliance with the following conditions:

- (1) Intent. The purpose of Option 2 is to accommodate redevelopment of existing legal nonconforming properties that could retain their existing nonconforming densities and uses but, through redevelopment of their properties, would achieve conformity with all applicable building heights and all other town codes, regulations and ordinances.
- (2) Building cubic content. Structures can be rebuilt to the same total building cubic content as before, which volume can also be increased to an extent consistent with section 158.139 (C)(1). Owners may elect to reduce the number of nonconforming units in order to achieve compliance with Option 2.
- (3) Time frame for obtaining site plan approval. To qualify for rights under this provision, any such redevelopment shall obtain site plan approval prior to or within two years of the removal or abandonment of use. The planning and zoning board may, upon application received prior to the expiration of the two-year period, extend such time for demonstrated cause pursuant to the town's Code. A building permit shall be obtained within the timeframe conditioned at the time of site plan approval. Notwithstanding the foregoing, the planning and zoning board may in its sole discretion unilaterally extend the date for site plan approval up to an additional two years if, owing to circumstances such as a natural disaster, such extension is in the best interests of the town.
- (4) Demonstration of Legal Nonconformity. It is the burden of the applicant to establish, with the assistance of all available Town records, to the satisfaction of the town manager or designee, by clear and convincing evidence, the density proposed to be maintained, prior to seeking site plan approval.
- (5) Site plan approval. All applications for the rebuilding of nonconforming multifamily or tourism zoned properties shall be submitted for site plan review in accordance with article III of this chapter.

(D) Option 3- Nonconforming Redevelopment Seeking Modifications from Zone District Requirements

Existing properties that are legally nonconforming due to the current number of dwelling or tourism units exceeding the current allowable density, may also seek a zoning amendment to the Conformance Overlay Redevelopment District (CORD) in accordance with section 158.114 of this code. Such rezoning, if approved, allow for properties to be made conforming and provide for relaxation or modification of one or several of the controls as identified in the CORD.

(1) Time frame for obtaining Conformance Overlay Redevelopment District (CORD) approval. To qualify for rights under this provision, any such redevelopment shall obtain CORD approval prior to or within two years of the removal or abandonment of use. The planning and zoning board may, upon application received prior to the expiration of the two-year period, extend such time for demonstrated cause pursuant to the town's Code. A building permit shall be obtained within the timeframe conditioned at the time of CORD approval. Notwithstanding the foregoing, the planning and zoning board may in its sole discretion unilaterally extend the date for CORD approval up to an additional two years if, owing to circumstances such as a natural disaster, such extension is in the best interests of the town.

(2) Demonstration of Legal Nonconformity. It is the burden of the applicant to establish, with the assistance of all available Town records, to the satisfaction of the town manager or designee, by clear and convincing evidence, through documentation, as applicable to the nonconformity proposing to be maintained, including, but not limited to, certification, photographs, diagrams, plans, affidavits, and permits, the actual uses, densities, and intensities legally existing prior to the disaster event or redevelopment, prior to seeking site plan approval.

~~158.140 – Reconstruction of nonconformities in the event of voluntary reconstruction.~~

~~(A) Intent.~~ It is the intent of this section, subject to an applicant meeting all of the criteria set forth below, to allow existing, legally nonconforming multifamily residential or tourism properties that exceed the current allowable density, to be voluntarily demolished and rebuilt for the existing use and density. Existing developments that are legally nonconforming due to the current number of dwelling or tourism units, may be reconstructed to the same building cubic content, the same number of units, and the same type of principal use(s) in existence prior to the reconstruction.

~~(1) For multifamily or tourism use structures whose first habitable floor does not comply with the current flood control ordinance(s) or state requirements, an increase in height of the new structure will be granted equal to the increase in height required by the local flood control ordinance(s) or the state.~~

~~(2) Voluntary reconstruction under this section allows for the town commission under certain circumstances to allow for modifications of zoning code requirements to comply with federal, state, or local code requirements and limited adjustments from the requirements of this Code as set forth below.~~

~~(3) Density.~~

~~(a) The maximum allowable density for voluntary reconstruction under this section shall be the density allowed by the underlying zoning district or the legally nonconforming existing density on the subject site at the time of application, whichever is greater.~~

~~(b) The number of units approved by the ODP shall become the maximum allowable density.~~

~~(c) Any additional density between what is allowed by the ODP and what was legally nonconforming shall be lost, forfeited and not available for future development.~~

~~(B) *Nonconformities and code compliance.* In conjunction with an application to voluntarily reconstruct a legally nonconforming structure, the town commission may, as part of the review and approval process, permit modifications for one or several of the controls listed in sections 158.069, 158.102, 158.127, 158.128, 158.145, 158.150 and 158.153, in conformance with this section. In considering such request, the town commission shall consider the nature and character of existing and approved future development in the surrounding area, the comprehensive plan, and the impact thereon, in determining whether or the degree to which these controls may be modified. Modifications of zoning code requirements shall be subject to compliance with the following conditions:~~

~~(1) *Compliance with town ordinances.* To the greatest extent possible, such reconstruction shall comply with all codes and regulations of the town, to eliminate prior existing nonconformities. For purposes of this section, "to the greatest extent possible" shall mean bringing the previous nonconformities into conformance with the Town's Code to the extent that it does not create an unnecessary and undue hardship as determined by the town.~~

~~(2) *Prohibition on increase in extent of nonconformities.* All such reconstruction shall not increase the extent of the prior existing nonconformities, except for height as provided herein, and all prior existing nonconformities shall be eliminated to the greatest extent possible.~~

~~(3) *Modifications of zoning code requirements may be granted for the following:*~~

~~(a) *Building height.*~~

~~i. The overall allowable height of a building, at the time of reconstruction, shall be measured from the minimum habitable floor elevation, as required by the local flood control regulations, or state mandated height, whichever is applicable.~~

~~ii. The overall height of a building may be increased by a maximum of the additional elevation required to comply with subsection (A).~~

~~iii. Modifications of zoning code requirements for the existing building height, exceeding the application of subsections (B)(3)(a)i. and (B)(3)(a)ii. above, may be requested not to exceed the minimum height necessary to comply with federal, state and town flood regulations and to allow for the maximum use of understructure area for parking to encourage the reduction of nonopen space. The burden to provide sufficient evidence as to why the modification is the minimum necessary and essential to the redevelopment of the site shall be upon the licensed design professional.~~

~~(b) *Building cubic content.* Legally nonconforming structures shall be permitted to rebuild the structure to the same building cubic content that existed at the time of application for voluntary reconstruction, subject to compliance with the following conditions:~~

~~i. Additional building volume created as a result of compliance with flood control laws shall not be included in determining building cubic content.~~

~~ii.—Additional areas and volume created for elevators, stairs, landings, mechanical areas and walkways required to meet all applicable code requirements and minimum legal standards, which were not included in the former structure, shall not be included in building cubic content, provided that the addition of any of these elements does not create a greater nonconformity as to open space or required setback.~~

~~iii.—Unit area. So long as there is no increase in overall building cubic content, as determined by the applicable subsection of (B)(3)(b), subject to compliance with all other conditions of this section, units within the structure may be increased in cubic volume as a result of decreasing the number of units to be reconstructed or by diminishing the previously existing common areas within the building.~~

~~(c)—Open space. The required open space may be modified, but shall not be less than what existed prior to the voluntary redevelopment or a minimum of 50 percent of the lot area.~~

~~(d)—Yard areas. Buildings or structures that are not in compliance with the current street, rear, side or waterfront yards regulations, other than the gulf or pass waterfront yards, and can be proven to have been permitted prior to the adoption of such regulations shall be considered legally nonconforming. The street, rear, side or waterfront yards, other than the gulf or pass waterfront yards, may be modified to be reconstructed as it existed prior to the application for voluntary reconstruction. The burden to provide evidence, sufficient to establish that the modification is the minimum necessary and essential to the redevelopment of the site, shall be upon the licensed design professional.~~

~~i.—Modifications may be permitted to yard areas for the construction of a handicapped access appurtenance to the minimum legal standards necessary for any reconstruction.~~

~~ii.—Modifications may be permitted to yard areas for the placement of stairs or stair landings that provide access into a reconstructed dwelling unit to the minimum code standard.~~

~~(C)—Limited adjustments. Limited adjustments may be granted to the following controls in order to benefit the public interest. The burden of proof shall be upon the applicant. The benefit to the public interest shall be demonstrated by clear and convincing evidence and that the adjustments are necessary and essential to the application.~~

~~(1)—Building height.~~

~~(a)—Adjustments to the existing building height, exceeding the application of subsection (B)(3)(a), may be requested.~~

~~(b)—Additional height permitted by the zoning code does not require an adjustment.~~

~~(2)—Unit area.~~

~~(a)—Units within the structure may be increased in cubic volume, as a result of increasing unit square footage, only if there is sufficient open space on the property to accommodate the increased square footage, and the structure complies with the building coverage requirements of the site.~~

- ~~(b) The floor area ratio (FAR) for the proposed structure shall not exceed the FAR of the existing structure or that allowed by the underlying zoning district, whichever is greater.~~
- ~~(3) *Required yards.* Properties that were previously permitted to build within a gulf or pass waterfront yard, closer to the water than currently permitted, must comply with the minimum required gulf or pass waterfront yard to the greatest extent possible. These properties may request an adjustment to decrease the required yard, but in no case shall the adjustment permit encroachments into a waterfront yard further than the amount of the previously existing encroachment.~~
- ~~(a) The adjustment to the required gulf or pass waterfront yards shall never be less than 50 feet from the mean high-water line or erosion control line, whichever is most landward.~~
- ~~(b) If the structure cannot be otherwise constructed, adjustments to the required street, rear, side or waterfront yards, other than the gulf and pass waterfront yards, may be requested subject to compliance with the following:~~
- ~~i. Adjustments may be permitted to yard areas for the reconstruction of existing structures that are nonconforming, with adjustments to the required yards, in order to accommodate an increase in building cubic content as permitted in subsection (B)(3)(b) building cubic content, and shall be subject to the following limits:~~
- ~~a. Street yards shall be no less than 20 feet.~~
- ~~b. Side yards shall be no less than ten feet on each side.~~
- ~~c. Water yards, other than gulf or pass waterfront yards, shall be no less than 30 feet.~~
- ~~d. Rear yards shall be no less than 20 feet.~~
- ~~ii. Adjustments may be permitted for the reconstruction of existing structures that are nonconforming with regard to a specific setback so long as the reconstruction will not further reduce the setback.~~
- ~~iii. Adjustments to required yards shall be prioritized with the goal of preserving the required gulf waterfront yard.~~
- ~~(4) *Open space.* Adjustments may be granted so long as the provided open space is no less than 20 percent of the land area.~~
- ~~(5) *Off-street parking spaces.*~~
- ~~(a) In no instance shall the parking requirements be modified where the reconstruction involves the intensity of use.~~
- ~~(b) Shelters for parking spaces that were previously unsheltered shall not be permitted unless the shelters meet the setback and land coverage requirements for the site.~~
- ~~(c) To the greatest extent possible, the ground floor area of the reconstructed building shall be utilized for off-street parking.~~
- ~~(d) Requested adjustments to the off-street parking requirements of the zoning code may include the number of spaces provided, minimum dimensions of the~~

~~stalls, minimum aisle widths, and location of spaces within required yards only when clear and convincing evidence is submitted that the adjustment will:~~

- ~~i. Improve ingress and egress to the site;~~
- ~~ii. Eliminate or reduce the instances where conditions require that parked vehicles back out onto public/private streets; or~~
- ~~iii. Allow for the provision of handicapped accessible parking spaces.~~

~~(6) If ten or more units cannot be otherwise constructed, the following adjustments to the supplemental controls for setbacks, maximum building length, distance between buildings, and distance between buildings and driveways for buildings may be requested:~~

~~(a) *Maximum building length.* Adjustments to the allowable building length may be granted so long as the proposed side yards comply with the underlying zoning district of the property.~~

~~(b) *Distance between buildings.*~~

- ~~i. Adjustments to the required distance between buildings may be granted so long as all applicable life safety, fire and building code requirements are met.~~
- ~~ii. Adjustments to the required distance between the front or rear of any buildings may be granted so long as all applicable life safety, fire and building code requirements are met.~~
- ~~iii. Adjustments to the required distance between the sides of any buildings may be granted so long as all applicable life safety, fire and building code requirements are met.~~

~~(c) *Distance between buildings and driveways.* Adjustments to the distance between the driveway or parking lot and any building may be granted, but shall not be reduced to less than ten feet. This supplemental control does not apply to proposed parking under or within a building or to a front entrance to a building.~~

~~(D) *Application and review process.* Applications for voluntary reconstruction of nonconforming multifamily or tourism properties shall follow the procedures for approval of an outline development plan and site plan review under article III of the Town of Longboat Key Zoning Code. The review process required for voluntary reconstruction shall require concurrent review and approval of the ODP and site plan applications.~~

~~(E) *Mobile home parks.* Mobile home parks that were in existence as of January 1, 2009, may voluntarily rebuild and convert to a multifamily building or buildings with up to the same density and up to the same cubic foot content of each mobile home in existence within a particular mobile home park and ancillary structures within the park, so long as the lot, yard, height and bulk regulations of the underlying zoning district are met. Each unit shall meet the minimum requirements for square footage in accordance with section 158.145. The application shall be in the form of an outline development plan and site plan and shall be otherwise governed by the provisions of this Code.~~

~~(F) *Conflicting code provisions.* Should provisions under this section for voluntary reconstruction and the provisions of sections 158.065 through 158.103 conflict, the provisions for voluntary reconstruction shall prevail.~~

~~(Ord. 90-06, passed 3-19-90; Ord. 06-09, passed 6-15-06; Ord. 07-20, passed 4-9-07;
Ord. 2008-29, § 4, passed 1-5-09)~~

SECTION 3. Chapter 158, Zoning Code, Article III, Site and Development Plans, Division 3, Conformance Overlay Redevelopment District (CORD), is hereby established as follows:

Division 3. Conformance Overlay Redevelopment Districts (CORD)

158.114– Overview of Conformance Overlay Redevelopment District (CORD)

- (A) *Intent.* The provisions of this zoning overlay district are intended to apply to existing residential, tourism, or mixed use projects that were legally established prior to March 12, 1984, which do not comply with the existing maximum density provisions of the Comprehensive Plan. The intent of the Conformance Overlay Redevelopment District (CORD) zoning district is to function as a zoning overlay district, which can modify or adjust underlying zone district standards to allow the redevelopment of these properties consistent with the standards of this section. The overlay is intended to preserve the nonconforming density of these projects and enable such projects to rezone to become conforming, while providing for flexibility of design. The potential design flexibility is provided in order to achieve improved conformance with underlying zone district requirements and to encourage imaginative, functional, high-quality land planning developments compatible with adjacent and nearby lands and activities, in keeping with the low density character of the town. Additionally, the overlay provides for flexibility to apply creative and innovative approaches and design to address challenges related to changing markets, building trends, and environmental conditions, while remaining compatible with the overall character of the island. Overall these developments should reduce or eliminate nonconformities, especially gulf and pass waterfront yard setbacks, to the greatest degree possible. For purposes of this section, "to the greatest degree possible" shall mean bringing the previous nonconformities into conformance with the town's code to the extent that it does not create an unnecessary and undue hardship as determined by the town. Redevelopment proposed under the overlay zoning amendment process shall not be subject to any conflicting Redevelopment Standards, however, the proposed development must demonstrate that the standards proposed will enable a development that is superior to a development that could be permitted under standard zoning or that represents a significant improvement over existing nonconforming conditions. Properties approved under the outline development plan process of article III, division 1 of this chapter are not superseded or considered nonconforming by the provisions of this section.
- (B) *Uses Permitted.* The principal and accessory uses that are allowed are those that are permitted in the appropriate underlying zoning district as described in the Schedule of use regulations 158.125.

In addition, the overlay permits the replacement of any legally established, by March 12, 1984, principal or accessory use that is not currently conforming to the

applicable Future Land Use designation of the Comprehensive Plan without regard to the Redevelopment Standards of section 158.139.

(C) *Procedures for Approval*

- (1) *In General.* The steps to request a change in zoning to the CORD will follow the requirements for a zoning amendment. A CORD zoning map amendment shall be accompanied by an associated site plan that is simultaneously approved by the town commission. Applications for a change in zoning to CORD may be filed and reviewed concurrently with any requested Future Land Use map amendment. If a referendum is required to increase density pursuant to the Town Charter, a formal application for a CORD zoning amendment and site plan may not be submitted until such referendum for the increase has been approved. Approval of a referendum for increased density is merely permission for consideration of an application and does not guarantee approval of a density increase through the CORD zoning amendment process.
- (2) *Pre-Application Conference.* A pre-application conference with the planning and zoning official, or designee, is required, at which time the request will be reviewed for eligibility to apply for the CORD zoning designation consistent with the standards of this section and with the provisions of the Comprehensive Plan. For the pre-application conference, applicants must specify in writing the existing and proposed uses and the existing and proposed density and intensity of the development, as well as any other necessary information as determined by the planning and zoning official to determine eligibility to apply for a change in zoning to CORD. Applications will not be processed unless they are determined by the planning and zoning official, or designee, to be eligible to apply for the CORD zoning designation.
- (3) *Neighborhood Information Meeting.* Prior to submittal of the application by the planning and zoning board, the applicant shall hold a neighborhood information meeting with property owners and interested community members within 200 feet of the proposed development. The meeting must be held within the Town at a location and time convenient to the surrounding property owners to maximize attendance, subject to the following requirements:
 - (a) *Notification.* Two weeks prior to the meeting date, the applicant shall mail notices of the meeting date, time, and place to all property owners within a radius of 200 feet from the boundary of the proposed development and shall post the property. The applicant shall inform the planning and zoning official of the proposed meeting date and time prior to sending out the notices. Documentation of the mailed notice shall be provided to the planning and zoning official for verification.
 - (b) *Applicant's Presentation.* At the meeting, the applicant shall explain the proposed use of the subject property and make a copy of the proposed concept plan available for review by attendees. The applicant may also discuss the project's development objectives, design philosophy and proposed schedule for completion.
 - (c) *Question and Answer Period.* Upon completion of the presentation, time shall be reserved for a question and answer period. Questions

should be limited to the proposal as presented, not to the question of whether the site should be developed or redeveloped. The applicant shall identify how potential community concerns will be mitigated. Meeting notes, prepared by the applicant or representative, shall be taken of items covered and questions raised and responses provided at the meeting. Meeting notes will be required to be included in the formal application submittal.

(4) *Formal Application.* The application for a CORD shall be filed with the planning and zoning official and follow the procedures for Zoning Map Amendments. An application for site plan approval for the CORD shall be filed and reviewed concurrently with the CORD application. The application for site plan approval shall be processed in accordance with article III, division 2 of this chapter. Upon receipt of the application the planning and zoning official shall review the application to determine its appropriateness and completeness in respect to the requirements of this section, and accept or reject it in writing. Upon acceptance of the application, the town's administrative staff shall refer the application, together with all supporting documentation and a staff report, including findings of fact as to the consistency of the application with the Land Development Code and the Comprehensive Plan, to the planning and zoning board for its review and recommendations. The planning and zoning board and town commission shall not receive, review, make recommendations or act on applications for CORD approval except during the town's annual site and development plan season. During the review process, the town may retain consultants to assist in the review. The cost of retaining the consultants shall be borne by the applicant. For purposes of this chapter, the annual site and development plan cycle shall be September through June of the following year. For purposes of calculating the required processing times set forth in this section for the planning and zoning board and the town commission, the period of time from July 1 through August 31 shall not be counted in said computation.

(5) *Planning and Zoning Board Public Hearing.* Upon receipt of the application from the planning and zoning official, the planning and zoning board shall, in a quasi-judicial proceeding, review the CORD application and make recommendations to the town commission that are based on competent, substantial evidence of record. The planning and zoning board may also formulate findings of fact as to the consistency of the application with the Land Development Code and with the Comprehensive Plan. The planning and zoning board shall recommend approval of the application as submitted, approval of the application with changes or special conditions, or denial of the application. The determination and recommendations of the planning and zoning board shall be advisory only and shall not be binding upon the town commission. For purposes of this section, the planning and zoning board shall receive the application from the planning and zoning official at the board's next regular meeting where a quorum is present following the planning and zoning official's submittal of the application to the board. The planning and zoning board is specifically authorized to continue its deliberations, reasonably request additional relevant materials, and elicit expert testimony to aid in its deliberations.

- (6) *Town Commission Public Hearing.* A public hearing on the CORD application, conducted as a quasi-judicial proceeding, shall be held by the town commission upon the commission's receipt of the application from the planning and zoning board. Public notice of such hearing shall be given in accordance with the provisions of applicable Florida Statutes, the Town Charter and this chapter. For purposes of this section, the town commission shall receive an application from the planning and zoning board at the commission's next regular meeting where a quorum is present, following the submittal of the planning and zoning board's action on the application to the town commission. A transcript of the hearing may be caused to be made by the town commission at the cost of the applicant, copies of which shall be made available at cost to any party to the proceedings; and all exhibits accepted in evidence shall be identified and duly preserved, or, if not accepted in evidence, shall be properly identified and the reason for the exclusion clearly noted in the record. The town commission is specifically authorized to continue its deliberations, request additional materials, and elicit expert testimony to aid in its deliberations, and may, at its sole discretion, remand the application to the planning and zoning board for additional hearing and consideration. If changes are made to the application, accompanying plans or conditions of approval after review by the planning and zoning board, the town commission may, at its sole discretion, remand the application back to the planning and zoning board, but is not required to do so.
- (7) *Town Commission Decision Procedures.* At the conclusion of the public hearing, the town commission shall review the CORD application and either approve it as submitted, approve it with changes or special conditions, or deny it. The applicant may request that the application be withdrawn or that the hearing be continued if the applicant does not accept the changes or special conditions recommended by the town commission. The action taken by the town commission shall be by ordinance. The town commission may unilaterally extend the time for final action where the town commission determines additional time is necessary to properly and completely review the CORD overlay application.
- (a) In the event approval is granted, the town commission shall, as part of its ordinance, specify the drawings, plan sheets, renderings, specifications, and form of performance and maintenance bonds that shall be considered part of the final approval.
- (b) In the event a CORD is granted approval, the town commission shall set forth in the ordinance the time within which an application for final site plan approval, or applications in the case of a phased development, shall be filed. However, if a final site plan for the entire CORD overlay was approved concurrently with the CORD overlay, the ordinance does not need to specify a time period.
- (8) *Filing with the Town Clerk.* Within seven days after the adoption of the ordinance provided for in section 158.114(C)(7) above, it shall be certified by the town clerk and shall be filed in the clerk's office, and a certified copy shall be mailed to the applicant. A CORD overlay upon approval and acceptance, as provided herein, shall be depicted on the Town Official Zoning Map and is defined as running with the land; however, an applicant

may apply for a revision to the site plan in accordance with the site plan procedures. Any changes or amendments to an approved site plan, not determined to be minor development proposals, shall require a resubmission in accordance with the provisions of this section. Immediately following expiration of the 30-day appeal period and upon successful resolution of any appeals, if applicable, the town clerk shall file with the clerk of the court the concept plan to record it in the official records of the county in which the property is located at the cost of the applicant.

(D) *CORD Zoning Development Standards.* A CORD shall be permitted only upon an order of the town commission approving the CORD, with a site plan, and any site specific development standards, as may be modified or adjusted by the town commission due to an applicant's demonstration of applicable site constraints or economic or market related demands below, in conformance with this section. However, prior existing nonconformities shall be eliminated to the greatest extent possible. In considering such a request, the town commission shall also consider the nature and character of development in the surrounding area, and the impact thereon, in determining whether, or the degree to which, these development standards may be modified.

No CORD shall be approved unless it complies with the following standards listed below in order of importance, highest to lowest, such that the control with the highest importance is the control with the greatest need for reduction or elimination of any nonconformities (and least likely of relaxation or modification) and the control with lower importance has a lesser need for reduction or elimination (and more likely of relaxation or modification):

- (1) *Building Setbacks.* The proposed minimum side, rear, and waterfront building setbacks, as measured from the boundaries of the CORD request, shall to the greatest extent possible conform with the setbacks allowed by the underlying zone district from the existing non-conforming development condition. For any buildings that would exceed the underlying zone district height, each building must have a minimum street setback of at least 2.5 times the overall height of the building, with a vegetative street buffer with sufficient density and height to minimize the visibility of the buildings from the right-of-way. Waivers to this required street setback may be granted if the town commission determines that the waiver is necessary to meet the intent of the Comprehensive Plan and this chapter to enable redevelopment of properties that are nonconforming to density and is in the public interest.
- (2) *Open space.* The open space of the property proposed for zoning amendment shall conform to the greatest extent possible to the open space permitted in the underlying zoning district from the existing nonconforming development condition. However, open space shall not be less than 20 percent of the lot area.
- (3) *Building Height.* The height of structure(s) on property proposed for zoning amendment to the CORD shall conform to the greatest extent possible to the height of the underlying zone district, in which the property is located, subject to the following:

- a. For properties with existing structures that are at or below the allowable height of the underlying zone district, the maximum height shall be the height allowed by the underlying zone district.
 - b. For properties with existing structure(s) that exceed the allowable height of the underlying zone district, the town commission may approve waivers allowing for height(s) above the maximum height of the underlying zone district, provided that proposed height(s) represent a decrease in nonconforming height. The applicant shall demonstrate how reduction(s) in height on the property, to the greatest extent possible, will be more in conformity with the zone district standards than the prior nonconforming height(s).
- (4) Maximum building length, distance between buildings, and distance between buildings and driveways. These development criteria may be modified to allow redevelopment of existing nonconforming structures, but shall not be reduced in a manner that jeopardizes public safety.
 - (5) Off-Street Parking. Off-street parking shall meet the standards and requirements of the parking section of the Land Development Code. The town commission may reduce the number of required parking spaces upon submittal by the applicant of a parking study demonstrating a reduction in parking need. The parking study shall be based on competent, substantial evidence which may include, but is not limited to, utilization of professional standards, formulas or studies from sources such as the Urban Land Institute (ULI), the Institute of Transportation Engineers (ITE), or similar organizations.
 - (6) Lot Coverage. The lot coverage of the property proposed for zoning amendment shall conform to the greatest extent possible to the lot coverage permitted in the underlying zoning district from the existing nonconforming development condition.
 - (7) Beach and Bay Access. For all proposed CORD overlays the number of existing beach and/or bay access points shall not be decreased below the number existing at the time of the CORD overlay application. All public beach and/or bay access points shall be recorded as easements in the public record and copies provided to the town clerk.
 - (8) Natural Shoreline. For proposed CORD overlays located west of Gulf of Mexico Drive, the same percentage of natural shoreline area as a percentage of the total shoreline as it exists at the time of CORD application shall be preserved or provided.
 - (9) Development of Amenities and Tourism Units. Amenities such as parks, open space, playgrounds, pools, marinas, docks, beach and Bay accesses, and tennis/pickle-ball courts must be completed prior to issuance of building permits of more than 40 percent of the total number of authorized residential or tourism units. For mixed-use developments, all proposed tourism units must be completed prior to the issuance of any certificates of occupancy for any residential unit.
 - (10) Cubic Content. Redevelopment utilizing the CORD does not restrict the cubic volume of structures to the prior extent of previously existing structures. If a CORD development is approved, the bulk of any structures shall be limited by the underlying zoning district standards and requirements of this code.

- (11) Density. The proposed density shall not exceed the total density allowed by the underlying zoning district of the property proposed for zoning amendment to CORD, or the density of the existing nonconforming development that is proposed for redevelopment. Owners may elect to reduce the number of nonconforming units in order to achieve compliance with the CORD development standards. If a referendum is required to increase density pursuant to the Town Charter, a formal application for a CORD zoning amendment and site plan may not be submitted until such referendum for the increase has been approved. Approval of a referendum for increased density is merely permission for consideration of an application and does not guarantee approval of a density increase through the CORD zoning amendment process.
- (E) Application Contents and Submittal Requirements. An application for CORD shall be accompanied by a site plan as required in Article III Division 2.
- (F) Review Criteria. The planning and zoning board in its recommendation, and the town commission in its decision shall base its decision on each CORD application on competent, substantial evidence of record and shall include conclusions but may also include written findings of fact related to the specific proposal and shall set forth the reasons for the grant of approval, with or without changes or special conditions, or for the denial of a CORD application. The town commission's approval, approval with changes or special conditions, or denial of a CORD application, shall be based on the application, evidence and testimony presented in the public hearing, and all of the following standards for review:
- (1) In what respects the CORD is or is not consistent with the intent of a CORD zoning district as provided in this section.
 - (2) Whether the proposed request decreases existing nonconforming characteristics to the greatest extent possible.
 - (3) The adequacy, location and amount of open space in the plan.
 - (4) Whether the proposed request is compatible with surrounding properties and is consistent with the character of the surrounding area.
 - (5) Whether the proposed placement of the building allows for improved scenic views from adjacent properties and/or opens scenic view corridors from the street.
 - (6) Whether the proposed request will cause an increase or decrease in shadow effects on surrounding properties, the street, and the public beach, if applicable for building heights greater than underlying zone district standards.
 - (7) Whether the existing or proposed vegetative street buffer is sufficient to minimize the mass and scale of the building from the right-of-way.
 - (8) The physical design of the plan and the manner in which the design makes adequate provision for public services, provides adequate control over vehicular traffic and parking, and addresses the amenities of light and air, recreation and visual enjoyment.
 - (9) For phased developments, the plan must provide sufficient safeguards to protect the public interest, and the residents and owners of the CORD through the completion of the project.
 - (10) Whether the proposed development is not contrary to the interests of the Town and/or does not adversely impact or affect the public interest.

(G) Effect of Approval. Approval of a CORD zoning map amendment and site plan does not convey any rights for development. Development may only occur after approval of a final site plan, subdivision, and/or other development approvals and permits, as applicable, consistent with the approved concept plan, the Land Development Code, and the Comprehensive Plan.

(1) Notwithstanding the 24-month period specified in subsection 158.099(E), final site development plan approval for a CORD runs with the land for a period not to exceed four calendar years from the date of the ordinance adopting the final site development plan.

SECTION 4. Severability. If any provision of this Ordinance or the application thereof is held invalid, such invalidity shall not affect the other provisions or applications of this Ordinance which can be given effect without the invalid provisions or applications, and to this end the provisions of this Ordinance are hereby declared severable.

SECTION 5. Repeal of Ordinances in Conflict. All other ordinances of the Town of Longboat Key, Florida, or parts thereof which conflict with this or any part of this Ordinance are hereby repealed.

SECTION 6. Codification. This Ordinance shall be codified and made a part of the official Code of Ordinances of the Town of Longboat Key upon adoption.

SECTION 7. Effective Date. This Ordinance shall take effect immediately upon its adoption, as provided by law.

Passed on first reading and public hearing the ____ day of _____, 201__.

Adopted on second reading and public hearing the ____ day of _____, 201__.

George L. Spoll, Mayor

ATTEST:

Trish Shinkle, Town Clerk



Ordinance 2018-20

Reconstruction of Nonconformities in the Event of Voluntary Reconstruction or Involuntary Destruction or Damage, Providing for Creation of Conformance Overlay Redevelopment District (CORD)

**Town Commission Regular Workshop
Meeting**

December 10, 2018



Outline

- **Background/Commission Workshops**
- **Consensus Direction: Options 1 & 2 Recap**
- **Continued Discussion Option 3**
- **Recommendations**
- **Next Steps**



Background

1984: Comprehensive Plan and Zoning actions lowered density. Majority of existing multi-family and tourism properties were rendered nonconforming.

2008: Referendum approved to allow properties which were non-conforming for density but were legal at the time they were created, to rebuild to existing unit levels. Comprehensive Plan and Land Development Code change subsequently enacted, but strictly limited redevelopment.

2014: Town Commission directed Staff to address nonconforming density in order to move properties to a conforming status.



Legally Nonconforming Density Redevelopment Workshops April, May, June 2018 Town Commission's Overall Goals:

- **Reduce** existing **nonconforming height**, if applicable.
- Redevelopment should **conform** to the underlying zoning district standards **to the greatest extent possible**.
- **Allow redevelopment flexibility** (including building heights greater than allowed in underlying zoning district) from underlying zoning district standards, when findings such as site or market/economic constraints demonstration(s) can be made.



Legally Nonconforming Density Redevelopment Workshops April, May, June 2018 Town Commission's Consensus Options:

- Option 1- Redevelopment of nonconforming density and *structures* maintaining existing limitations for additional cubic content.
- Option 2- Redevelopment via meeting Zoning District standards (allowing additional cubic content).
- Option 3- Redevelopment Under New "Floating Zoning District" (allowing additional cubic content)



Workshops Follow-up Activities

- ✓ Certification Process *(2nd Reading 1/7/19)*
- ✓ Voluntary/Involuntary Redevelopment Ord. changes *(Combined 158.139 & 158.140 + Options 1 & 2 consensus support)*
- Conforming Redevelopment Option *(“CORD” aka Option 3: continued Discussion. Companion ordinance to replace PUD process: continued Discussion)*



November 13, 2018 Regular Workshop Meeting: Summary/Follow-ups

- **Consensus Support for Option 1: Rebuild Existing Nonconformities**

Minor Clarifications

- Sec. 158.139(B)(5), *“Time frame for obtaining site approval”* to clarify that redevelopment site plan approval may be obtained “prior to” abandonment or removal of an existing use.
- Sec. 158.139(B)(6), *“Demonstration of Legal Conformity”* to clarify that an applicant for redevelopment will be able to utilize the assistance of all available Town records in establishing existing nonconformities.



November 13, 2018 Regular Workshop Meeting: Summary/Follow-ups

- **Consensus Support for Option 2: Redevelop Meeting Zone District Standards**

Minor Clarifications

- Allow Option #2 to be utilized by all existing nonconforming density developments.
- Add a new *“Intent”* provision (Sec. 158.139(C)(1)), per a suggested edit provided by Commissioner Zunz (attached).
- Add a new *“Building Cubic Content”* provision (Sec. 158.139(C)(2)), per a suggested edit provided by Commissioner Zunz (attached), providing language indicating that “owners may elect to reduce the number of nonconforming units in order to achieve compliance with Option 2.”



November 13, 2018 Regular Workshop Meeting: Summary/Follow-ups

- **Consensus Support for Option 2: Redevelop Meeting Zone District Standards**

Minor Clarifications

- Sec. 158.139(C)(3), “*Time frame for obtaining site approval*” to clarify that redevelopment site plan approval may be obtained “prior to” abandonment or removal of an existing use.
- Sec. 158.139(C)(4), “*Demonstration of Legal Conformity*” to clarify: 1) that an applicant for redevelopment will be able to utilize the assistance of all available Town records; 2) the only applicable demonstration of nonconformity for Option 2 will be density, as any redevelopment would be meeting applicable zoning district requirements.



November 13, 2018 Regular Workshop Meeting: Summary/Follow-ups

- **Option 3: CORD. Continued Discussion Topics:**
 - Question on Continuing with Option #3 (3-3 poll)
 - Confirmation of Nonconforming Redevelopment Objectives
 - Prioritize Standards
 - Establish Minimums for Certain Standards
 - Establish Criteria Starting Point from Existing Standards vs. Existing Nonconformities
 - Preserve Unused Density Concept (TDRs)



Option 3: CORD. Continued Discussion

Confirmation of Nonconforming Redevelopment Objectives

1985 Referendum (Ord. 85-2):

“The present density limitations provided in the existing Comprehensive Plan as adopted March 12, 1984 shall not be increased without the referendum approval of the electors of Longboat Key.”

2007 Referendum (2007-48):

“For the properties that have more dwelling or tourism units than currently allowed, but which were legal at the time they were created, may the Town consider and grant approval to allow those properties to rebuild to their current dwelling or tourism unit levels in the event of involuntary or voluntary destruction?”

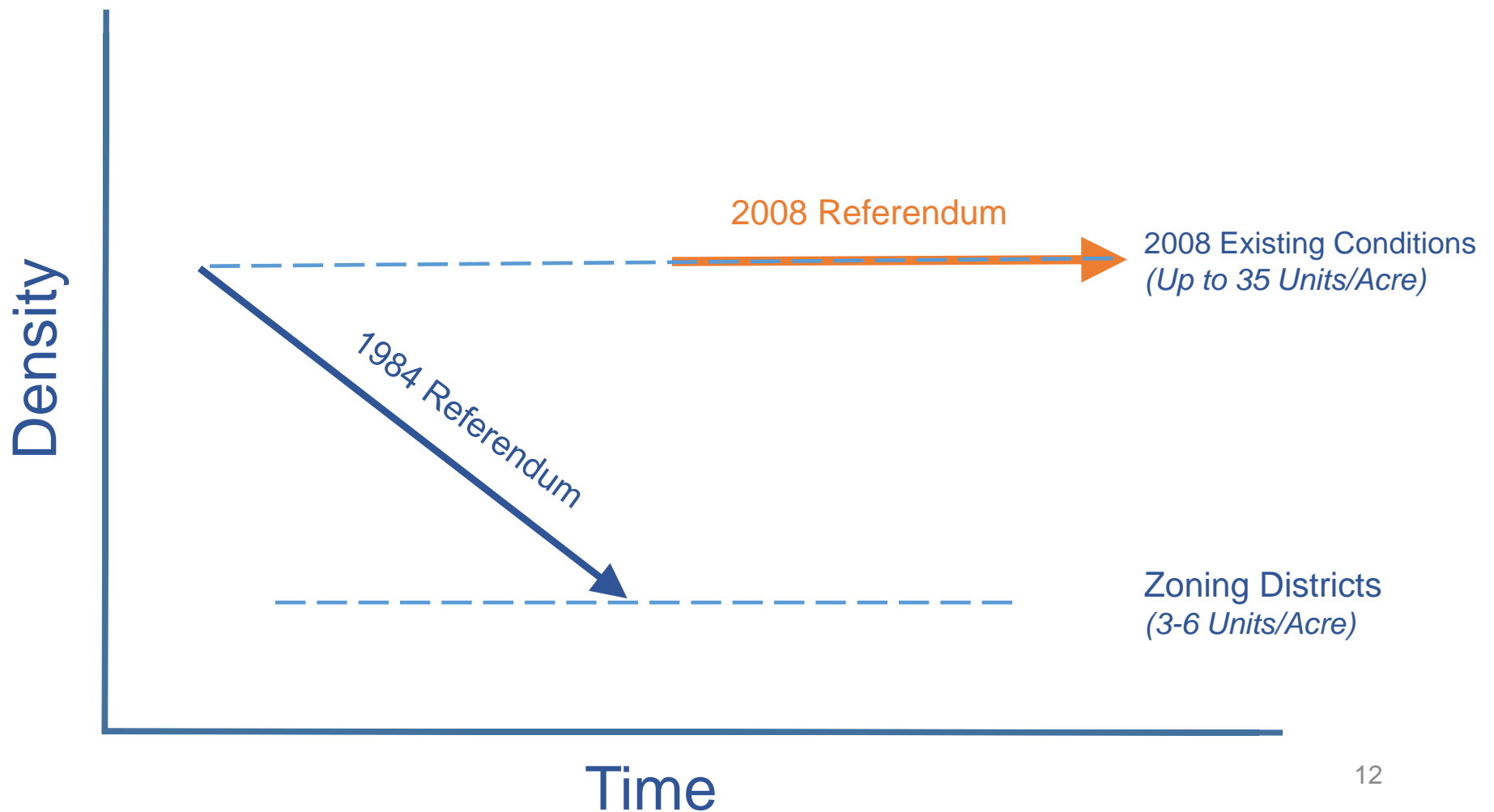
2007 Tourism Units Pool Referendum (2007-47):

“In an effort to recover the approximate number of tourism units lost since the Year 2000, may the Town consider, allocate, and permit 250 tourism units beyond those provided for by the Town’s 1984 Comprehensive Plan?”



Option 3: CORD. Continued Discussion

Confirmation of Nonconforming Redevelopment Objectives





Option 3: CORD. Continued Discussion

Confirmation of Nonconforming Redevelopment Objectives

- Is there an overall objective to maintain existing nonconforming densities (i.e. generally allow for retaining the existing number of dwelling and tourism units)? If so, under what circumstances?
- Should existing nonconforming densities generally be steered towards reductions to limits established by the 1984 Comprehensive Plan as redevelopment occurs over time? If so, under what circumstances?
- Should nonconforming density redevelopment be held to the Town's existing zoning district standards?
- Should nonconforming density redevelopment be provided opportunities to seek flexibility from existing zoning district standards? If so, is the Town Commission comfortable granting greater flexibility to nonconforming properties than conforming properties?



Option 3: CORD. Continued Discussion

Prioritize Standards:

- Staff has revised Ordinance 2018-20 to indicate such a ranking order with the standards revised in order of importance, from highest to lowest with the following proposed order:
 - 1) Building Setbacks;
 - 2) Open Space;
 - 3) Building Height;
 - 4) Maximum Building Length, Distance Between Buildings, Distance Between Buildings and Driveways;
 - 5) Off-Street Parking;
 - 6) Lot Coverage.
- Note: Standards 7-11 are requirements of the CORD and do not confer authority to revise standards of the underlying zoning district.



Option 3: CORD. Continued Discussion

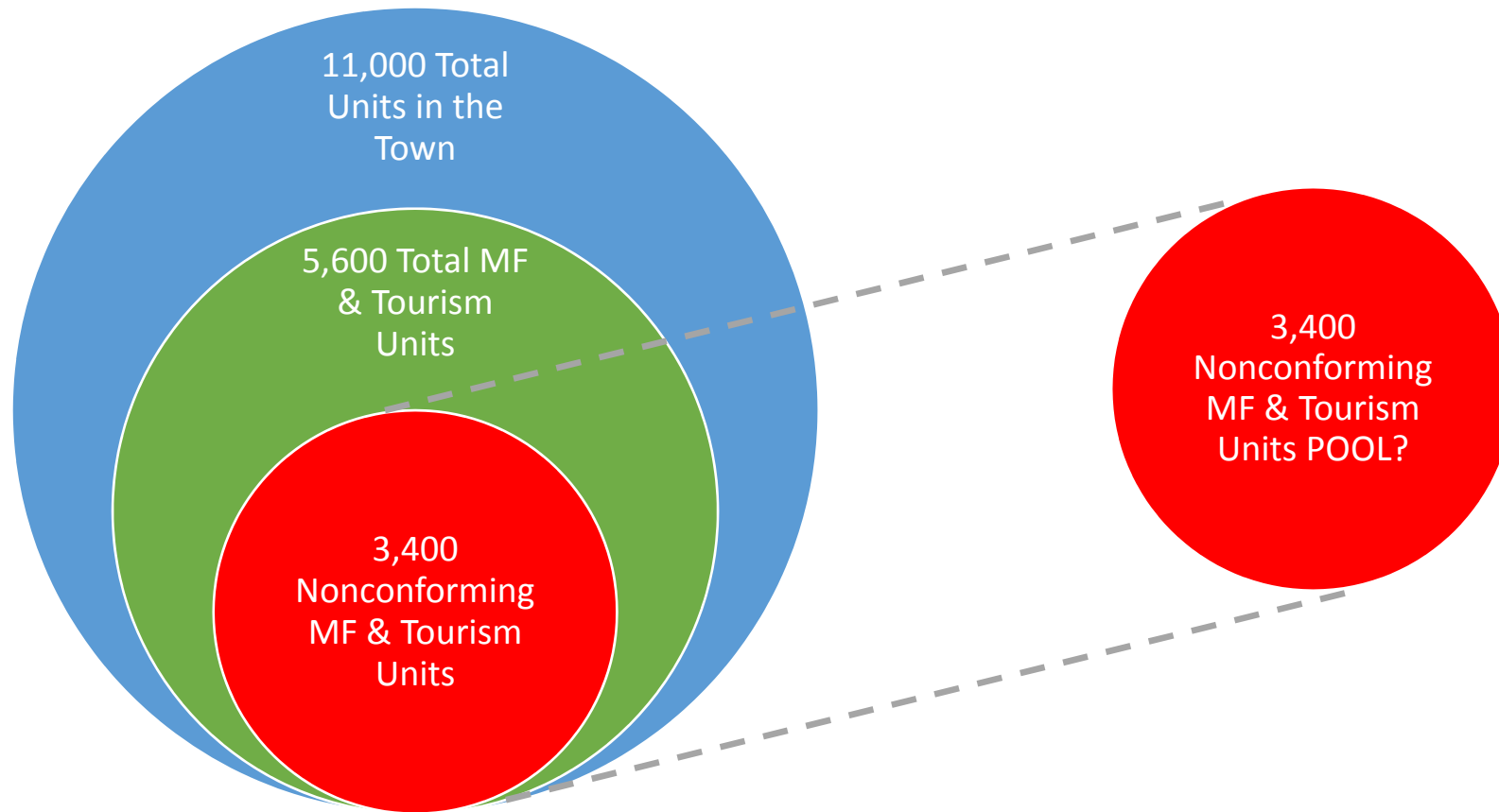
Establish Minimum Standards:

- Open space (Existing or Zoning District Reqs)
 - Minimum of 20% Open Space to Be Provided
- Building Setbacks (Existing or Zoning District Requirements)
 - Street Frontage Not Among Standards Allowed Modifications
 - Side & Rear No Minimum Presently Established
- Lot Coverage (Existing or Zoning District Reqs)
 - No Minimum Presently Established



Option 3: CORD. Continued Discussion

Preserve Unused Density: TDR Concept





Recommendations:

Planning and Zoning Board (P&Z Board): Recommended approval in the form of three separate recommendations, as follows:

- Recommendation to strike all references to “Voluntary” and “Involuntary” within Ordinance 2018-20. Approved 6-0.
- Recommendation to approve Ordinance 2018-20, with the addition of the word ‘zoned’ to Sec. 158.139 (C), Option 2, in the first sentence, to state “*existing multifamily and tourism ‘zoned’ properties...*” Approved 5-1.
- Recommendation to approve the Conformance Overlay Redevelopment District (previously included as part of Ord. 2018-14). Approved 4-2.

Though not on the prevailing side of the recommendation, concern was expressed by P&Z Board members regarding the flexibility provided by Option 3.



Next Steps

- ✓ Commission Direction- Summaries
- ✓ Update/Revise Ord. 2018-20



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MEMORANDUM

TO: Mayor Spoll and Town Commissioners

FROM: Maggie D. Mooney, Town Attorney

DATE: November 13, 2018

RE: Non-Conforming Density Conversions Without a Referendum

At the November 5, 2018, Town Commission Regular Meeting a question was posed regarding the ability of the Town to convert or reclassify density on a non-conforming site to make some of the density conforming. The question implicitly suggests that density is a severable, quantifiable unit number that can be allocated in such a way that a portion of units on a particular site could be considered “conforming” within a designated zoning district, and only the overage units that exceed the permissible zoning district classification would then be considered non-conforming as to density. As suggested, the units that “conform” to the underlying zoning district would have all of the characteristics and use rights of the underlying zoning district, and only the “overage” units would be restricted to the non-conforming designation (use). While this adjustable concept of density may function in other jurisdictions, due to the existing caselaw and referendum history associated with the Town’s Charter density limitation provision, it is not recommended that the Town Commission adopt this flexible interpretation of “density” unless the Town also plans on modifying the applicable Charter provisions governing density.

In considering the legal implications associated with this question, it is important to briefly examine the Town's "density" limitation as provided for in the Charter and the subsequent court ruling and Town referendum implementing the Town's Charter limitation.

A. Article II, Section 22 (b) of the Town Charter Capped Density Within the Town at the Level Provided For in the 1984 Comprehensive Plan.

Following the Town's 1984 down zoning of the entire island, the Town Commission considered a resident initiated petition to amend the Town's Charter to control density as a means of restricting growth. The down zoning was implemented through the Town Commission's adoption of the March 12, 1984 Comprehensive Plan. Thereafter, the Town Commission considered Ordinance 85-2, which proposed the addition of a new subsection to the Town's Charter that further locked in place the density restrictions on the island. Ordinance 85-2 placed a referendum question on the March 1985 ballot that was ultimately approved by the voters and thereby resulted in the incorporation of the following provision into the Town's Charter:

The present density limitations provided in the existing comprehensive plan as adopted March 12, 1984, shall not be increased without the referendum approval of the electors of Longboat Key. Art. II, Sec. 22 (b)

Article II, Section 22 (b) of the Town Charter essentially froze the Town's density as provided for within the 1984 Comprehensive Plan unless the Town's voters approved a greater allocation of density.

B. 2008 Referendum on Non-Conforming Density Authorized the Rebuilding of "Current" Density Levels

Since the density limitation was incorporated into the Town's Charter, there have been numerous referendums seeking to "increase" density both generally Town-wide and on specific sites. One of the town-wide density initiatives to authorize the rebuilding of non-conforming density was set forth in Ordinance 2007-48. Ordinance 2007-48 was advanced in recognition of the Charter density limitation contained in Article II, Section 22 for the purposes of stabilizing "the existing residential and tourism densities by allowing redevelopment while maintaining the current density of property..." The referendum question which was approved by the voters in March 2008 posed the following to the Town's voters:

For properties that have more dwelling or tourism units than currently allowed, but which were legal at the time they were created, may the Town consider and grant approval to allow those properties to rebuild to their current dwelling or tourism unit levels in the event of involuntary or voluntary destruction?

Importantly, the language used in Ordinance 2007-48's recitations and in the actual referendum question posed to the voters emphasized the maintenance of current dwelling or tourism unit levels on properties. The approval of the referendum question posed in the Ordinance provided all non-conforming properties as to dwelling or tourism density the ability to maintain their respective existing non-conforming density within their designated zoning district in compliance with the Charter referendum provision. Accordingly, a plain reading of the language in Ordinance 2007-48 indicates that its intent was to preserve existing conditions on non-conforming sites.

C. *IPOC, et al v. Town of Longboat Key Further Explained the Town's Density Limitation as Set Forth in the Town's Charter.*

In 2009-2010, the Town considered a redevelopment project for a hotel and other commercial uses in one of the Town's zoning districts. Islandside Property Owners Coalition, LLC (IPOC) opposed the project and filed a declaratory and injunctive relief action associated with the project and challenged the project's consistency with the Town's Comprehensive Plan and Zoning Code, as well as the Town's failure to require a density referendum pursuant to Article II, Section 22 (b) of the Town's Charter. See, *Islandside Property Owners Coalition, LLC, et al v. Town of Longboat Key, et al.*, Case No. 2010 CA 007913 NC (Florida Twelfth Judicial Circuit). Specifically, IPOC took issue with the conversion of residential units to tourism units without first conducting a referendum pursuant to the Town's Charter. While the Court's decision considered the residential and tourism unit density allocations specifically within the Town's Gulf Planned Development (GPD) zoning district (now known as the MUC zoning districts), the Court went to great lengths to interpret the meaning of the Town's density's limitation as set forth in Article II, Section 22 (b). Specifically, the Court stated:

The court finds that the "present density limitations" in the 1984 Comprehensive Plan, as referenced in the Town Charter, include both the amount and type of density for each land use category and do not permit residential "dwelling unit" density to be used for tourism units. The 1984 Comprehensive Plan expressly required future proposals in the GPD to comply with the density designation on the Future Land Use Map, and that designation was for "dwelling units" and not for "tourism units."

The Charter requires that increases in the Town's "density limitations," must be subject to voter approval. The drafters of the Charter intended the referendum requirement to reach the broader delineations of density in the 1984 Comprehensive Plan, rather than simply the numerical amount of density authorized. Any other interpretation would make the inclusion of the word "limitations" superfluous, and would be contrary to the canons of statutory construction that require all provisions of a statute to be given meaning.

The court finds that in the 1984 Comprehensive Plan, the Town treated tourism units and tourism density different from residential dwelling units and density. Any other interpretation ignores the terminology in the text and the distinct use of different density designations on the Future Land Use Map. Such an interpretation is impermissible because it fails to give meaning to the entire text and would render the use of different density designations on the Future Land Use Map meaningless. [Emphasis supplied]

The IPOC ruling indicates that “density” as used in the Town’s Charter and 1984 Comprehensive Plan means more than a mere numerical value for units per acre. The Court found that “density” has a “broader” definition in the Town’s Charter and means the numerical value and the use (tourism or residential). In other words, the types of uses permitted and authorized in the Town’s 1984 Comprehensive Plan are separate and distinct and cannot be converted or exchanged without a referendum. Consequently, the IPOC decision can be interpreted as standing for the proposition that density is not an “interchangeable” concept within the Town. Residential and tourism units and uses are distinct and separate, and conversion between the two (2) uses requires a referendum. The IPOC decision is the currently applicable judicial precedent on Article II, Section 22 (b) of the Town’s Charter.

D. Density Cannot Be Converted to Conforming and Non-Conforming

The Town’s Charter restriction contained within Article II, Section 22 (b) of the Town Charter and the IPOC decision interpreting the Town’s Charter obligates the Town to interpret “density” as more than just units. Density, according to the Court, is also use. The IPOC decision makes it clear that there cannot be conversions of use (as between residential and tourism) without a referendum. Further, the language in the 2008 Referendum and the Ordinance 2007-48, can reasonably be interpreted as preserving the current state of non-conforming tourism or residential density as of March 2008. There is no language in that referendum question that was posed to the Town’s voters that authorized the conversion of non-conforming density from tourism to residential, or residential to tourism. Arguably, the referendum preserved the status quo of non-conforming density. Accordingly, interpreting density as being “convertible” without a referendum may run afoul of the *IPOC v. Town of Longboat Key* and the 2008 Referendum question, and therefore subject the Town to a potential future legal challenge. Notwithstanding the foregoing, should the Town Commission wish to embrace a more fluid definition of “density” to achieve such conversion, the Town Commission could seek a Charter Amendment that either removes the Article II, Sec. 22 (b) provision from the Charter or add a new supplemental section that re-defines “density” in subsection (c). For the reasons explained above, unless a Charter modification is obtained, it is not advisable for the Town Commission to interpret non-conforming density as severable and convertible without a referendum.

Copies of the Ordinances and the *IPOC* decision cited in this Memorandum are attached for your reference. If you have any questions or concerns regarding the recommendations contained in this Memorandum, please do not hesitate to contact me.

- Att: (1) Ordinance 85-2
(2) Ordinance 2007-48
(3) Final Judgment in *Islandside Property Owners Coalition, LLC, et al v. Town of Longboat Key, et al.*, Case No. 2010 CA 007913 NC (Nov. 13, 2012, Florida 12th Judicial Circuit).
(4) Amended Final Judgment in *Islandside Property Owners Coalition, LLC, et al v. Town of Longboat Key, et al.*, Case No. 2010 CA 007913 NC (December 4, 2012, Florida 12th Judicial Circuit).

ORDINANCE 85-2

AN ORDINANCE OF THE TOWN OF LONGBOAT KEY, FLORIDA RELATING TO THE AMENDMENT TO THE CHARTER OF THE TOWN OF LONGBOAT KEY, FLORIDA PROVIDING THAT THE DENSITY LIMITATIONS IN THE COMPREHENSIVE PLAN AS ADOPTED ON MARCH 12, 1984 SHALL NOT BE INCREASED; PROVIDING FINDINGS; PROVIDING FOR A SPECIAL ELECTION; PROVIDING FOR ADMINISTRATION OF THE ELECTION; PROVIDING FOR BALLOT QUESTIONS; PROVIDING FOR PUBLIC NOTICE; PROVIDING FOR AN EFFECTIVE DATE.

BE IT ORDAINED BY THE TOWN OF LONGBOAT KEY:

Section 1. FINDINGS. The Town Commission of the Town of Longboat Key, Florida hereby finds and declares:

(1) That the Town has received a petition signed by 10 percent of the registered electors of the Town of Longboat Key proposing an amendment to the Town Charter in accordance with Article VIII, Section 1 of the Town Charter.

(2) Article VIII, Section 2 of the Town Charter requires that the proposed amendment be submitted to a vote of the electors at the next general election or a special election called for such purpose.

Section 2. PROPOSED AMENDMENT TO THE CHARTER OF THE TOWN OF LONGBOAT KEY. Pursuant to Article VIII of the Charter of the Town of Longboat Key, it is proposed that said Charter be amended to add a new subsection (d) to Article II, Section 24, "Comprehensive Plan for Town" to read as follows:

(d) The present density limitations provided in the existing Comprehensive Plan as adopted March 12, 1984 shall not be increased without the referendum approval of the electors of Longboat Key.

Section 3. SPECIAL ELECTION CALLED. A special election is hereby ordered and called to be held on May 7, 1985, for the purpose of submitting to the qualified electors residing within the Town of Longboat Key, the question of approval or rejection of the herein proposed amendment to the Charter of the Town of Longboat Key.

Section 4. POLLING PLACES. The special election shall be held at the polling places in the Town Hall and Longboat Island Chapel in the Town of Longboat Key.

Section 5. ELECTION OFFICIALS. The Town Clerk shall designate Inspectors and Clerks for the election pursuant to the requirements of applicable general law.

Section 6. HOURS OF ELECTION. The polls shall be open at the voting places on the date of such special election from 7:00 A.M. to 7:00 P.M. on the same day. All qualified electors residing within the Town shall be entitled to vote in said election. Absentee voting shall be permitted upon compliance with the applicable provisions of general law.

Section 7. FORM OF BALLOT.

1. The ballots to be used in the special election provided for herein shall be in substantially the following form:

OFFICIAL BALLOT

TOWN OF LONGBOAT KEY CHARTER AMENDMENT
SPECIAL ELECTION

May 7, 1985

Shall the Charter of the Town of Longboat Key be amended to provide that the present density limitations provided in the existing Comprehensive Plan as adopted March 12, 1984 shall not be increased without the referendum approval of the electors of Longboat Key?

For (Punch Card Number) Against (Punch Card Number)

INSTRUCTIONS TO VOTERS

If you are for the question, punch out the black dot on the ballot card directly above the number assigned to the word "For" with the punching device provided. If you are against the question, punch out the black dot on the ballot

card directly above the number assigned to the word "Against" with the punching device provided.

2. The Supervisor of Elections shall assign an appropriate punch card number to be used by voters desiring to vote for or against the question, respectively. Ballots containing the questions set forth in Section 7 shall be prepared for the use of absent electors entitled to cast such ballots in the election.

Section 8. NOTICE OF ELECTION. The Town Clerk shall publish a notice of said referendum in the Sarasota Herald Tribune, a newspaper of general circulation in the Town of Longboat Key, Florida. Said notice shall be published once in the fifth week prior to the week of the referendum and once in the third week prior to the week of the referendum with the first publication to be at least thirty (30) days before the date of the election. The Town Clerk is further directed to publish the entire text of the proposed Charter amendment in said newspaper, as part of the first publication of notice of said referendum. Said notice shall be in substantially the following form:

NOTICE OF SPECIAL ELECTION
TOWN OF LONGBOAT KEY, FLORIDA

May 7, 1985

Notice is hereby given that a special election of the Town of Longboat Key will be conducted on May 7, 1985. The following question will be submitted to the qualified electors of the Town of Longboat Key, Florida:

1. Shall the Charter of the Town of Longboat Key be amended to provide that the present density limitations provided in the existing Comprehensive Plan as adopted March 12, 1984 shall not be increased without the referendum approval of the electors of Longboat Key?

The polls at said election will be open from 7:00 A.M. until 7:00 P.M. of the same day.

Said election will be held at the following places in the Town of Longboat Key:

- TOWN HALL - Sarasota County
- LONGBOAT ISLAND CHAPEL - Manatee County

The Town Clerk shall appoint election inspectors and clerks in the same manner provided by Section 102.012, Florida Statutes.

Duly qualified electors residing within the Town shall be entitled to vote at such election. Absentee voting will be permitted upon compliance with applicable provisions of general law.

By order of the Town Commission of the Town of Longboat Key, Florida.

E. Jane Pool
Town Clerk

Section 9. EFFECTIVE DATE. This ordinance shall take effect upon second reading in accordance with law and the Charter of the Town of Longboat Key.

Passed on first reading this 1st day of April, 1985.

Passed and adopted finally on second reading this 22nd day of April, 1985.


MAYOR

ATTEST:


TOWN CLERK

ORDINANCE 2007-48

AN ORDINANCE OF THE TOWN OF LONGBOAT KEY, FLORIDA, CALLING FOR A REFERENDUM TO BE PLACED BEFORE THE QUALIFIED ELECTORS OF THE TOWN OF LONGBOAT KEY AT THE NEXT GENERAL TOWN ELECTION SCHEDULED FOR MARCH, 2008, FOR PURPOSES OF DETERMINING WHETHER THE TOWN OF LONGBOAT KEY COMPREHENSIVE PLAN, ZONING CODE AND RELATED DOCUMENTS MAY BE AMENDED TO ALLOW PROPERTIES WHICH HAVE MORE DWELLING OR TOURISM UNITS (DENSITY) THAN THE CURRENT LAW ALLOWS, BUT WHICH WERE LEGAL AT THE TIME THEY WERE CREATED, TO VOLUNTARILY REBUILD TO THEIR CURRENT DWELLING OR TOURISM DENSITY LEVELS; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL OF ORDINANCE; PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Charter of the Town of Longboat Key, Article II, Section 22(b), "*Comprehensive Plan for Town*", does not permit an increase in the allowable density, as established by the March 12, 1984, Comprehensive Plan, without a referendum approved by the electors of Longboat Key; and

WHEREAS, the process for a referendum as required by Article II, Section 22, is set forth by Section 160.04 of the Longboat Key Code of Ordinances; and

WHEREAS, the Planning and Zoning Board, at the direction of the Town Commission, has undertaken not only the legally required review of the Town's Comprehensive Plan, but also the development of a long-range community Vision Plan; and

WHEREAS, the Vision Plan has analyzed the current conditions on Longboat Key, reflected upon the method by which the Town achieved those current conditions and identified certain areas of improvement as the Town looks forward to the next 20 years; and

WHEREAS, to assist in drafting the Vision Plan, the Town hired Arrington-Marlowe as consultants; and

WHEREAS, after receiving both formal and informal public input, the Planning and Zoning Board received a draft Vision Plan in the Spring of 2007; and

WHEREAS, the Planning and Zoning Board appointed a Vision Plan Subcommittee to review and edit the plan over the Summer and to offer recommendations to the full Planning and Zoning Board; and

WHEREAS, after completion of the Vision Plan Subcommittee's work, the Subcommittee identified a series of potential referendum questions concerning the current and future density of the Town of Longboat Key; and

WHEREAS, it is deemed desirable to stabilize the existing residential and tourism densities by allowing redevelopment while maintaining the current density of the property; and

WHEREAS, the Planning and Zoning Board recommended to the Town Commission that this referendum question be placed before the electors of the Town; and

WHEREAS, the Town Commission has met, discussed the merits of this ballot question, and, after due consideration and public hearing, wishes to offer this question to the electors of the Town of Longboat Key at the next general election to be held in March, 2008.

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 proposed question concerning allowing legally nonconforming tourism and residential units to be rebuilt shall be submitted to the vote of the qualified electors of the Town for approval. The referendum shall be held at the March 2008, general election at a specific date established by law.

Section 3. A ballot question shall be placed before the qualified electors substantially in the following form, which shall be printed on the official ballot:

OFFICIAL BALLOT
TOWN OF LONGBOAT KEY, FLORIDA
ALLOWING LEGALLY NONCONFORMING UNITS TO BE REBUILT REFERENDUM
MARCH, 2008

REFERENDUM QUESTION:

For the properties that have more dwelling or tourism units than currently allowed, but which were legal at the time they were created, may the Town consider and grant approval to allow those properties to rebuild to their current dwelling or tourism unit levels in the event of involuntary or voluntary destruction?

_____ YES
_____ NO

Section 4. If a majority of the qualified electors of the Town of Longboat Key actually voting on the referendum shall vote for adoption of the proposed modification to the Town's density, said modification shall become effective at 12:01 a.m. on the day following the day of the Commission's canvass of the referendum results on the next day after the referendum. If a majority of the qualified electors of the Town of Longboat Key actually voting on said question vote against the adoption of the proposed modification, then it shall not be effective or operative, and the same shall be void and of no effect, and the present density and Comprehensive Plan of the Town of Longboat Key shall remain in full force and effect.

Section 5. The laws and ordinances in effect in the Town of Longboat Key at the time of this referendum governing election procedures, including the laws and ordinances governing the voting and counting of absentee ballots, shall apply to and govern the referendum provided for herein and all matters pertaining thereto, except as otherwise provide for in this Charter.

Section 6. This Ordinance shall take effect upon second reading and adoption if approved during the referendum process and shall become effective as specifically provided for in Section 4 above.

Passed on the first reading and public hearing the 5th day of November, 2007.

Adopted on the second reading and public hearing this 3RD day of DECEMBER, 2007.



Jeremy Whatmough, Mayor

ATTEST:



Jane O'Connor, Town Clerk

**IN THE CIRCUIT COURT OF THE TWELFTH JUDICIAL CIRCUIT
IN AND FOR SARASOTA COUNTY, FLORIDA**

ISLANDSIDE PROPERTY OWNERS
COALITION, LLC, a Florida limited liability
company, THE SANCTUARY AT
LONGBOAT KEY CLUB COMMUNITY
ASSOCIATION, INC., a Florida non-profit
corporation, and L'AMBIANCE AT
LONGBOAT KEY CLUB CONDOMINIUM
ASSOCIATION, INC., a Florida non-profit
corporation,

Plaintiffs,

vs.

Case No. 2010 CA 007913 NC

TOWN OF LONGBOAT KEY, FLORIDA,
a municipality of the State of Florida, KEY
CLUB ASSOCIATES, LIMITED
PARTNERSHIP, a Florida limited partnership,
and ISLANDSIDE DEVELOPMENT LLC, a
Delaware limited liability company,

Defendants.

FILED FOR RECORD
2012 NOV 14 AM 9:17
KAREN E. RUSHING
CLERK OF CIRCUIT COURT
SARASOTA COUNTY, FL

**FINAL JUDGMENT ON IPOC'S FOURTH AMENDED COMPLAINT
FOR DECLARATORY AND INJUNCTIVE RELIEF**

THIS ACTION was tried before the court on September 20, 2012. Upon the evidence presented, after argument of counsel and review of controlling legal authority, the court **FINDS**:

I. Background

Islandside Property Owners Coalition, LLC (IPOC), sues the Town of Longboat Key seeking declaratory and injunctive relief for a variety of issues relating to the Town's Comprehensive Plan and Zoning Code.¹

In its Fourth Amended Complaint, IPOC assert eight counts, summarized below. The parties have stipulated that Islandside Property Owners Coalition, LLC, has standing to bring this action and that the Town did not conduct a referendum for Ordinances 2011-28 or 2012-08, as authorized by Article II, § 22 of the Longboat Key Charter. In addition, all affirmative defenses raised by the Town have been withdrawn.

¹ Originally, the action started with two other plaintiffs, The Sanctuary at Longboat Key Club Community Association, Inc., L'Ambiance at Longboat Key Club Condominium Association, Inc., and two additional defendants, Key Club Associates, LP and Islandside Development, LLC. These parties were dropped or their claims voluntarily dismissed prior to trial.

CASE: 2010 CA 007913 NC
00002275914
Dkt: FNCJDMR

In 1976, the Town adopted resolutions creating two large planned unit developments, commonly known as Bay Isles and Islandside. The Town's Zoning Code and Zoning Map were later changed to designate Bay Isles as the "Planned Development" or "PD" zoning district and to designate Islandside as the "Gulf Planned Development" or "GPD" zoning district. The resolutions governing the PD and GPD created "outline development plans" for each of them. An outline development plan is a document submitted by applicants seeking approval of a planned unit development (PUD).

The Town changed the Zoning Code over time to provide that a "planned unit development overlay" could be used in any zone district.

In 1984, the Town adopted a comprehensive plan (the "1984 Comprehensive Plan") that divided the Town into different land use categories. The land use categories differentiated between commercial and residential types, and established separate policies for each. The Future Land Use Map in the 1984 Comprehensive Plan created separate land use categories called "GPD" and "PD", with each including the lands contained in the corresponding GPD and PD zoning districts.

The Town amended the Comprehensive Plan in 1989, 1998 and 2007, including the Future Land Use Map. The Town has adopted several amendments since 2007.

In 2009, the Town received an application for a significant redevelopment proposal in the GPD that would include a hotel and other commercial uses. IPOC objected to the redevelopment, arguing that the proposed uses were inconsistent with the Town's Comprehensive Plan and Zoning Code. In 2010, the Town amended the Zoning Code to support the redevelopment application. IPOC asserted in separate administrative proceedings that these Zoning Code changes, which authorized additional commercial and tourism uses in the GPD, were inconsistent with the 2007 Comprehensive Plan.

In June 2010, the Town approved the redevelopment application and IPOC filed two separate legal challenges. In a certiorari action filed in Sarasota circuit court, IPOC challenged the Town's approval as inconsistent with the Zoning Code. In the instant case, IPOC claimed that the approval was inconsistent with the 2007 Comprehensive Plan.

In the administrative proceedings regarding the Zoning Code, the Florida Department of Community Affairs made an initial determination in favor of IPOC. Later, the circuit court in the certiorari action also agreed with IPOC that the Town's development approval violated the Zoning Code and quashed the Town's approval.

As a result of the outcome of the proceedings involving the 2007 Comprehensive Plan and the Zoning Code, the Town amended both. In August of 2011 the Town amended the Comprehensive Plan through Ordinance 2011-28 (the "Plan Amendments"). In July of 2012 the Town amended the Zoning Code through Ordinance 2012-08 (the "Zoning Code Amendments"). These two ordinances are the target of IPOC's Fourth Amended Complaint, filed in July of 2012.

II. The Pleadings

At issue are aspects of the August, 2011, Ordinance 2011-28 amending the Comprehensive Plan (the "Plan Amendments"), and the July, 2012, Ordinance 2012-08, amending the Zoning Code ("Zoning Code Amendments").²

Plaintiff seeks declaratory relief on the following allegations, summarized from the complaint. Seven counts challenge the Zoning Code Amendments and one count challenges the Comprehensive Plan:

Count I: The Plan Amendments violated Article II, § 22, of the Town Charter because the voters did not approve the increased tourism density permitted in the GPD and CH categories.

Count II: The MUC-2 and CH-3 districts in the Zoning Code are void because the voters did not approve the increased tourism densities.

Count III: The Zoning Code grants legislative authority and unfettered discretion to a quasi-judicial tribunal to establish the permissible commercial uses in the MUC-1 and MUC-2 zone districts in violation of the Florida Constitution and §158.044(D) of the Zoning Code.

Count IV: The Zoning Code as amended grants the Town Commission unfettered authority to establish lot sizes and setbacks in the MUC-1, MUC-2, and MUC-3 Zoning Districts in violation of Florida law and §158.002 (D) of the Zoning Code.

Count V: The "departure" process set forth in the Zoning Code illegally and unconstitutionally delegates authority to revise legislatively adopted standards to the Town Commission when sitting in its quasi-judicial capacity.

Count VI: The Zoning Code violates due process by authorizing the Town Commission to approve or amend an application for Outline Development Plans for a Planned Unit Development without written findings.

Count VII: Ordinance 2012-08 did not amend the Town's Zoning Map and did not rezone any property to MUC-1, MUC-2, or MUC-3.

Count VIII: Lands Zoned NPD, PD, or GPD cannot obtain any development orders or development permits because Ordinance 2012-08, which created new MUC-1, MUC-2, and MUC-3 zoning districts, removed all references to NPD, PD, and GPD districts from the Zoning Code, and the Zoning Code contains no uses, standards, or regulations authorizing development for those lands.

III. Findings of Fact and Conclusions of Law

A. Findings of Fact and Conclusions of Law As to Counts I and II

² On June 21, 2012, the Town amended the Comprehensive Plan in Ordinance 2012-06, but it is not being challenged in this litigation.

In Counts I and II IPOC alleges the Town failed to comply with the voter referendum requirements of Article II, § 22, of the Town Charter when it approved new tourism density in two land use categories and their associated zoning districts in the Plan Amendments and Zoning Code Amendments. The Charter stipulates that the “present density limitations provided in the existing comprehensive plan as adopted March 12, 1984 shall not be increased without the referendum approval of the electors of Longboat Key.” Under Florida law, the Town has the power to adopt such a provision into its charter, and compliance with such a provision is mandatory. Fla. Land Co. v. City of Winter Springs, 427 So.2d 170, 172 (Fla. 1983); Citizens for Responsible Growth v. City of St. Pete Beach, 940 So.2d 1144, 1149 (Fla. 2d DCA 2006).

As explained below, the court finds that the “density limitations” in the 1984 Comprehensive Plan included a limitation against the use of density identified as “dwelling unit” density for tourism uses and units, and that the Town was required to obtain approval of the electors of the Town before adding tourism uses to the residential density permitted in the MUC-2 land use category and zoning district. The court similarly finds that the Town was required to obtain approval of the electors before adding three units per acre of tourism density to the CH land use category and C-3 zone district, where no tourism unit density was established in the 1984 Comprehensive Plan’s Future Land Use Map. As was stipulated by the parties, the Town has not held such a referendum.

When the Town first established the outline development plan for the GPD, the Zoning Code permitted hotel and motel uses in planned units developments. In 1980, the Town approved an amendment to the outline development plan for the GDP that approved the Inn on the Beach condominium for hotel uses.

In 1982, the Town adopted Ordinance 82-10, amending the Zoning Code to distinguish between tourism units and uses, which are occupied for 30 days or less, and residential uses and dwelling units, which are occupied for more than 30 days. [Ex. J-5]. Ordinance 82-10 also created zoning districts for tourism uses, and adopted amendments to the 1978 Comprehensive Plan to separate tourism and residential uses. The effect of Ordinance 82-10 was to prohibit tourism uses in residential districts, while allowing multi-family uses in tourism districts, and to make the tourism uses approved for the Inn on the Beach non-conforming.

The Town’s 1984 Comprehensive Plan treated tourism uses as commercial uses, and assigned those uses to the TRC-3 and TRC-6 land use categories, with densities of three and six “tourism units” per acre, respectively. [Ex. J. 7, P. 56-57]. The 1984 Comprehensive Plan required the adoption of regulations to control the tourism development, “realizing that trip generation for transient residential facilities is generally higher than year round accommodations.” The Town, in the text of the 1984 Comprehensive Plan, treated tourism uses as commercial, recognized their greater impact, and described their densities as “tourism units per acre.” Thus, the Town established that tourism uses and densities were not included in residential land use categories and densities.

The 1984 Comprehensive Plan also created the Commercial Highway (“CH”) land use category. The description for this commercial category included hotel and motel uses, but did not prescribe any density for those uses. [Ex. J-7, P. 60].

The Town’s 1984 Comprehensive Plan included the GPD and PD with the “residential” land use categories. [Ex. J-2, P. 53]. The description of those categories notes that their density is defined

with respect to vested rights, which can only refer to rights previously granted. [Ex. J-7, P. 53]. The 1984 Comprehensive Plan also includes a policy that requires previously approved resolutions for the GPD and PD to be treated as consistent with the 1984 Comprehensive Plan. [Ex. J-7, P. 26-27]. This provision would not have been necessary if those prior resolutions were otherwise consistent with the 1984 Comprehensive Plan, leading to the conclusion that at least some of the uses approved prior to 1984 were not consistent with the GPD and PD provisions of the 1984 Comprehensive Plan. The 1984 Comprehensive Plan policies governing the PD, GPD and NPD also required that “the density of all Planned Unit Development proposals submitted in the future *shall comply with the density designations denoted on the Comprehensive Land Use Plan Map. . . .*” (emphasis added). [Ex. J. 7, P. 54].

The Future Land Use Map is critical to understanding the density limitations imposed by the Town in its 1984 Comprehensive Plan. The Future Land Use Map reflects the Town’s policies for managing development and redevelopment. [J-7, P. 44]. All development is required to be consistent with the Comprehensive Plan. [J-7, P. 2]. As noted, within the PD, GPD and NPD, all future proposals had to comply with the density designations on the Future Land Use Map. The 1984 Future Land Use Map graphically depicts the boundaries of the different land use categories, including the PD, GPD and NPD. [Ex. J-7, P. 129].

The 1984 Future Land Use Map legend includes a description for each land use category, along with any permitted density. All of the land use categories that are described “as residential” in the text of the Comprehensive Plan have densities expressed as “du/ac” or dwelling units per acre on the 1984 Future Land Use Map. As residential land use categories, the PD, GPD and NPD density designations on the 1984 Future Land Use map are as “du/ac.” The two tourism land use categories have density designations described as “tu/ac” or tourism units per acre on the 1984 Future Land Use Map. The CH land use category has no density on the 1984 Future Land Use Map.

The Town adopted new or amended Comprehensive Plans in 1989, 1998, and 2007. [Ex. P-1, foldout at back; J-8, P. 11; J-9, P. 27]. The Future Land Use Maps adopted in those plans maintain the distinction established in the 1984 Comprehensive Plan between residential density, designated as “du/ac,” and tourism density, designated as “tu/ac.” All depict the GPD with density as “du/ac.” All depict the TRC-3 and TRC-6 categories with density as “tu/ac.” None of those Future Land Use Maps assigned any density to the CH land use category.

The court finds that the “present density limitations” in the 1984 Comprehensive Plan, as referenced in the Town Charter, include both the amount and type of density for each land use category and do not permit residential “dwelling unit” density to be used for tourism units. The 1984 Comprehensive Plan expressly required future proposals in the GPD to comply with the density designation on the Future Land Use Map, and that designation was for “dwelling units” and not for “tourism units.”

The Charter requires that increases in the Town’s “density limitations,” must be subject to voter approval. The drafters of the Charter intended the referendum requirement to reach the broader delineations of density in the 1984 Comprehensive Plan, rather than simply the numerical amount of density authorized. Any other interpretation would make the inclusion of the word “limitations” superfluous, and would be contrary to the canons of statutory construction that require all provisions of a statute to be given meaning.

The court finds that in the 1984 Comprehensive Plan, the Town treated tourism units and tourism density different from residential dwelling units and density. Any other interpretation ignores the terminology in the text and the distinct use of different density designations on the Future Land Use Map. Such an interpretation is impermissible because it fails to give meaning to the entire text and would render the use of different density designations on the Future Land Use Map meaningless.

The court finds that the 1984 Comprehensive Plan imposed a density limitation of 5.05 residential dwelling units per acre on the GPD land use category, and that this limitation did not permit tourism units or uses. The tourism units and uses at the Inn on the Beach were grandfathered in the residential density assigned to the GPD. [1984 Comprehensive Plan, pp. 26 – 27.] The 1984 Comprehensive Plan therefore limited any future development in the GPD to residential uses, and excluded tourism uses and density. Any other interpretation is inconsistent with the Town's treatment of the GPD as a residential category, the Town's provisions for grandfathering prior approvals, and the Town's Future Land Use Map designation of GPD density in the form of "du/ac" rather than "tu/ac."

The court finds the 1984 Comprehensive Plan did not allocate any tourism or residential density to the CH land use category, and that the 1984 Future Land Use Map imposed a density limitation of zero dwelling or tourism units per acre on the CH land use category. In 1986, the Town assigned three tourism units per acre to the C-3 zoning district that implements the CH land. [Ex. D-1]. This was not consistent with the lack of any density on the 1984 Comprehensive Plan's Future Land Use Map.

The Plan Amendments adopted in Ordinance 2011-28 amended the Town's Comprehensive Plan to allow tourism uses and units to be included in the 5.05 unit per acre density allocated to the MUC-2 land use category and amended the Future Land Use Map to change the former GPD land use category to MUC-2. [Ex. J-3, P. 5-7, 10, 11]. The Plan Amendments also allow tourism units at 3 units per acre in the CH land use category. [Ex. J-3, P. 8, 10, 11]. The court finds the Plan Amendments increased the density limitations imposed on those same land use categories under the 1984 Comprehensive Plan. The Town's Comprehensive Plan, as amended recently by Ordinance 2012-06, maintains these increased density limitations. [Ex. J-4, P. 7, 9].

The Zoning Code Amendments adopted in Ordinance 2012-08 amended the Town's Zoning Code to allow tourism uses and units in the MUC-2 zoning district, which will be applied to the lands formerly zoned GPD. [Ex. J-2, P. 2, 4-5]. The Zoning Code Amendments continue to grant the C-3 zone district three tourism units per acre in density. [Ex. J-2, P. 2]. The court finds the Zoning Code Amendments increased the density limitations applicable to the MUC-2 and C-3 zone districts, over the limits permitted in the 1984 Comprehensive Plan.

The Town stipulated that it did not hold a referendum prior to adopting Ordinances 2011-28 and 2012-08.

IPOC is entitled to a declaration enforcing the requirements of the Town Charter. The court finds that Article II, § 22 of the Town Charter requires the Town to obtain the approval of the electors before approving new tourism units or uses in the MUC-2 land use category or zoning district. The court finds that Article II, § 22, of the Town Charter requires the Town to obtain the approval of the electors before approving new tourism units or uses in the CH land use category or C-3 zoning district.

B. Findings of Fact and Conclusions of Law as to Counts III, IV and V

Counts III, IV and V of the Fourth Amended Complaint allege that the Zoning Code Amendments grant the Town Commission illegal and unfettered discretion in the outline development plan approval process, to determine the uses permitted in the MUC zone districts, establish lot size and setback requirements in the MUC zone districts, and approve departures from the Zoning Code for all districts. At issue is the sufficiency of the standards that govern the approval or amendment of the "outline development plans" that govern planned unit developments and the MUC zone districts.

The Town Commission sits and acts in its legislative capacity when it adopts or amends the Town's Comprehensive Plan. Martin County v. Yusem, 690 So.2d 1288 (Fla. 1997). The Commission also sits and acts in its legislative capacity when it adopts or amends the Zoning Code. State v. Roberts, 419 So.2d 1164, 1167 (Fla. 2d DCA 1982). However, when the Town Commission applies the Zoning Code to particular parcels or applications, its decisions are quasi-judicial. Park of Commerce Assocs. v. City of Delray Beach, 636 So.2d 12, 15 (Fla.1994). When the Town Commission, or any board or official appointed by the Commission, makes quasi-judicial decisions, they are acting in an administrative capacity. North Bay Village v. Blackwell, 88 So.2d 524, 526 (Fla. 1956).

Ordinances that delegate administrative decisions cannot grant unfettered discretion. As observed in City of Homestead v. Schild, 227 So.2d 540, 543 (Fla. 3d DCA 1969):

The law of Florida is committed to the doctrine of the requirement that zoning ordinances and their exceptions must be predicated upon legislative standards which can be applied to all cases, rather than to the theory of granting an administrative board or even a legislative body the power to arbitrarily decide each case entirely within the discretion of the members of the administrative board of legislative body, or to shift a particular parcel of property arbitrarily from one zoning classification to another, whether by 'variance,' 'exception' or 'special use.' Drexel vs. City of Miami Beach, Fla.1953, 64 So.2d 317; Josephson vs. Autrey, Fla.1957, 96 So.2d 784; Mayflower Property, Inc. v. City of Fort Lauderdale, Fla.App.1962, 137 So.2d 849.

The supreme court noted in Delta Truck Brokers, Inc. v. King, 142 So. 2d 273, 275 (Fla. 1962) that a zoning code, like other legislation,

cannot delegate to an administrative agency, even one clothed with certain quasi-judicial powers, the unbridled discretion to adjudicate private rights. It is essential that the act which delegates the power likewise defines with reasonable certainty the standards which shall guide the agency in the exercise of the power.

To limit discretion within permissible bounds and to ensure that decisions do not arbitrarily discriminate, "a municipal ordinance should be clear, definite and certain in its terms." Hartnett v. Austin, 93 So.2d 86, 88 (Fla. 1956). Zoning ordinances "must prescribe definite standards for the guidance and control of the building inspector, the zoning officials and indeed the municipal council, when by the ordinance it reserves to itself various administrative zoning

powers." N. Bay Village, 88 So.2d at 526. Standards that are wholly subjective and whose application may vary based on the personal views of individual commissioners are insufficient. In Drexel v. City of Miami Beach, 64 So.2d 317, 319 (Fla. 1953), the Florida Supreme Court invalidated an ordinance that required parking garages to be approved by the City Commission "after due consideration to the effect upon traffic." The court found that the term "due consideration" "could be construed to allow all matter of latitude in the grant of a permit in one case and the denial of a permit in a similar one, and would give every opportunity for the exercise of the power with partiality." Drexel, 64 So.2d at 319.

Ordinances that delegate decision making to quasi-judicial tribunals cannot allow the tribunal to add other considerations, or to ignore the stated standards. Where an ordinance sets out a list of approval criteria, it must provide guidance to the tribunal on how to measure or weigh those criteria. In Effie, Inc. v. City of Ocala, 438 So.2d 506 (Fla. 5th DCA 1983), the court held that an ordinance that "requires the council to 'take into account; certain enumerated criteria, but with no other standard, leaves each member of the council free to arbitrarily decide how to weigh each factor, if at all,' . . . 'suffers from the same evil as did the ordinance in Drexel' and was void. Effie, 438 So.2d at 509. The Second District Court of Appeal rejected an ordinance that set out criteria, but stated that the commission were to "be influenced by any or all of these factors to approve, reject, or defer for modification of the item." City of St. Petersburg v. Schweitzer, 297 So.2d 74, 75 (Fla. 2d DCA 1974).

An ordinance that contains insufficient standards is unenforceable. Hartnet v. Austin, supra; City of Miami v. Save Brickell Avenue, Inc., 426 So.2d 1100, 1102-03 (Fla. 3d DCA 1983). Such challenges go to the facial validity of the ordinance, rather than its application to a particular case because "it is the opportunity [to act capriciously or arbitrarily], not the fact itself, which will render an ordinance vulnerable." ABC Liquors, Inc. v. City of Ocala, 366 So. 2d 146, 150 (Fla. 1st DCA 1979); Drexel, 64 So.2d at 319 (voiding ordinance even though record did not indicate any favoritism had been exhibited because ordinance could become an "instrument of discrimination" even where council members were acting conscientiously).

Regardless of whether there are adequate standards, a "legislative body of a city cannot delegate its function to legislate - that is, to exercise discretion as to the content of the law." Amara v. Town of Daytona Beach Shores, 181 So.2d 722, 725 (Fla. 1st DCA 1966). The power to establish or amend the uses or standards permitted in zoning districts is a legislative power that may not be delegated to quasi-judicial boards. State v. Roberts, 419 So.2d 1164, 1165-66 (Fla. 2d DCA 1982); Save Brickell Avenue, supra; Mayflower Property, Inc. v. City of Ft. Lauderdale, 137 So.2d 849, 852-53 (Fla. 2d DCA 1962); Josephson v. Autrey, 96 So.2d 784 (Fla. 1957). While variances based on hardship may be granted, boards with quasi-judicial powers cannot be granted the legislative authority to establish or amend the uses or standards permitted in a zone district. N. Bay Vill. 88 So.2d at 526 (ordinance could not delegate to the city council "the arbitrary and unfettered authority to decide where and how a particular structure shall be built or where located without at the same time setting up reasonable standards which would be applicable alike to all property owners similarly conditioned").

Clarke v. Morgan, 327 So.2d 769 (Fla. 1975) is consistent with these cases and principles. Clarke held that a statute authorizing variances, including use variances, did not constitute an illegal delegation based on the standards provided. The variance provision, however, was limited to previously constructed properties where, based on special conditions on the property, literal application of the ordinance would result in unnecessary hardship, and where the variance

would allow substantial justice to be done. Clarke, 327 So.2d at 770. The statute in that case only granted authority to vary the application of the existing standards under defined circumstances and to a defined extent such that a reviewing court could “determine whether the administrative agency has exceeded its authority and is acting in a legislative capacity.” Clarke, 327 So.2d at 773-74.

Under §158.065 of the Zoning Code, planned unit developments are established and governed by an “outline development plan,” which may be amended. [J-2, P. 5-6]. Section 158.067(B) sets forth the requirements for an application to adopt or amend an outline development plan. [Ex. J-2, P. 6-9]. Section 158.067(C) sets out procedures for the consideration of the application by the Planning and Zoning Board. [Ex. J-2, P. 9]. Finally, §158.067(D) sets out the process and requirements for the Town Commission’s consideration of the application, and §158.067 (D)(3) provides the criteria by which the Town Commission is to grant or deny the application, including any “departures” from the Zoning Code requested by the Applicant. [Ex. J-2, P. 9-12].

For the reasons set forth below, the court finds that §167.067(D)(3) does not provide the clear and definite standards necessary to guide the Town Commission in approving or denying outline development plans with respect to the uses permitted in the MUC zone districts, the lot sizes and setbacks in the MUC zone districts, and the granting of departures in any zone district. The court also finds that the quasi-judicial outline development plan process that is set out in the Zoning Code improperly grants the Town Commission legislative authority to enact, adopt or amend uses, lot sizes and setbacks in the MUC zone districts, and to amend the Zoning Code through the granting of departures.

1. Count III – §158.067(D)(3) Illegally Delegates Unfettered Discretion and Legislative Authority to Establish Uses within the MUC Districts

The Zoning Code Amendments amended §158.009(L). This section deletes all references to the PD, GPD and NP zone districts and replaces them with new “Mixed Use Community” zone districts identified as MUC-1, MUC-2 and MUC-3, respectively. [Ex. J-2, P. 3-5]. The three new MUC districts allow “a mix of residential and nonresidential uses in planned communities developed through the planned unit development procedures and standards contained in §§ 158.065 through 158.071. [Ex. J-2, P. 4] In the three MUC districts, “acreage for recreational uses is not limited.” [Ex. J-2, P. 5]. Amended §158.009(L) provides for a “mix of uses” for the districts by setting out for each the percentage of the total land area for “Residential,” “Tourism (units and associated resort/tourism uses),” “Commercial/Office,” and “Institutional uses.” These provisions mirror the land use descriptions for the MUC-1, MUC-2 and MUC-3 land use categories established in the Comprehensive Plan Amendments. [Ex. J-3, P. 5-7].

The Zoning Code Amendments also amended the “Use Table” set forth in §158.125, which establishes for each district authorized in the Zoning Code, the uses that are 1) permitted without site plan review, 2) permitted with site plan review, 3) permitted through special exception, and 4) permitted as accessory uses. [Ex. J-2, P. 19-23.]. The entries in the Use Table column for “uses permitted with site plan approval” for the MUC-1, MUC-2 and MUC-3 zone districts, all refer back to the uses allowed in §158.009(L). Therefore, under the Zoning Code Amendments to §§158.009(L) and 158.125, the particular Recreational, Residential, Tourism, Commercial/Office or Institutional uses permitted in the MUC districts are established through the approval of an outline development plan.

Under the "Use Table" set out in §125.125 of the Zoning Code, Recreational, Residential, Tourism, Commercial/Office and Institutional are not uses in and of themselves, and none of the entries in the Use Table describe permitted, special exception, or accessory uses in those terms. The Zoning Code defines a broad array of particular uses in §158.006, and these uses are then permitted in different zone districts in the Use Table. Many of these particular uses might be classified as "Commercial/Office," including auto rental lot, bar, barber-beauty salon, charter fishing, florist shop, grocery stores, laundry and dry cleaning pickup station, lawn and garden center, neighborhood convenience store, personal services, restaurants, while different types of office uses include business and professional offices, medical clinic, and banks and other financial institutions.

The Zoning Code also defines multiple types of residential dwelling units, including single family, multi-family, townhouse and mobile home, and these uses are identified as permitted uses in the Use Table. Similarly, Recreational uses defined in the Zoning Code and appearing in the Use Table include active or passive parks, or youth recreational centers. "Institutional use" is neither defined in the Zoning Code nor permitted in any district in the Use Table.

The Zoning Code, as amended by the Zoning Code Amendments, illegally delegates the fundamental legislative power to establish the particular uses permitted in the MUC zone districts to the Town Commission, which sits in a quasi-judicial capacity when it considers an application for outline development plan approval. The task of deciding whether, for example, auto body shops or mobile homes are permitted uses in the MUC districts, cannot be delegated to the Town Commission sitting as a quasi-judicial body. Roberts, 419 So.2d at 1165-66; Amara, 191 So.2d at 725.

Even if the Town could delegate the right to establish particular uses under appropriate standards, the Zoning Code, as amended, grants unfettered, subjective discretion to the Town Commission to determine which Recreational, Residential, Tourism, Commercial/Office or Institutional uses may be permitted or denied. Section 158.067(D)(3)(a) requires the Town Commission to determine, in part, "in what respect the plan is or is not consistent with the statement of objectives of the planned unit development in §158.065 . . ." [Ex. J-2, P. 10]. Section 158.065, in turn, states that planned unit development approvals are intended to "encourage flexibility in the design and development of land *in order to promote its most appropriate use.*" (emphasis added). [Ex. J-2, P. 6].

The Florida Supreme Court's rejection of language requiring "due consideration to the effect of traffic" applies to the Zoning Code's language allowing the Town Commission to determine whether a proposed outline development plan "promotes" the "most appropriate use" of land. This language impermissibly grants the Town Commission the right to discriminate between applicants and deny (or grant) applications based on the entirely personal and subjective assessment by each commissioner in deciding which uses are the "most appropriate." Drexel, 64 So.2d at 319; see also Effie, 438 So.2d at 509 (ordinance directing commissioners to "take into account" described factors impermissibly provided the opportunity for the exercise of unbridled discretion). Contrary to the Town's suggestion, the percentage limits on Residential, Tourism, Commercial/Office or Institutional uses set forth in §158.009(L) for each MUC district provide no clear or discerning standards for establishing which particular uses should or should not be permitted.

The Zoning Code unlawfully delegates the essential legislative power to establish permissible uses in the MUC districts through the quasi-judicial outline development plan process instead of fully designating them in §158.009(L) or in the Use Table. The Zoning Code also unlawfully delegates unfettered discretion to the Town Commission to determine which uses are the “most appropriate uses” in the MUC districts through the outline development plan process.

2. Count IV – §158.067(D)(3) Unlawfully Delegates Unfettered Discretion and Legislative Authority to Establish Lot Sizes and Setbacks within the MUC Districts

The Zoning Code, §158.145, includes a table that sets out the required lot size, width and depth, as well as front, side and rear yard (setback) requirements for each zoning district. The entries in this table for the MUC districts do not include a fixed number, but instead only a reference to footnote (g). [Ex. J-2, P. 24-26]. Footnote (g) was not amended and it states that these items will be “determined at the time of outline development plan approval and site plan approval.” [Ex. J-1, P. 126].

The Zoning Code Amendments deleted language from §158.067(D)(3)(g) which would have stated that the site standards for the PD, GPD and NPD zone districts would be determined based on the “requirements of the zoning district most similar to the proposed project.” [Ex. J-2, P. 10]. Under the Town’s prior Code, if a developer in one of the MUC districts requested approval for a multi-family use, the lot size and setback standards from one of the multi-family zone districts would be applied at the time of outline development plan approval and site plan approval. The Zoning Code previously provided clear and direct standards for determining the relevant standards.

As amended, the Zoning Code unlawfully delegates the legislative task of establishing lot size and setback standards to the Town Commission sitting in its quasi-judicial capacity when it considers an outline development plan application. Currently, the Zoning Code contains no clear and direct standards to guide the Town Commission in determining lot size and setback requirements. As noted above, pursuant to §§ 158.067(D)(3)(a) and 158.065, the Town Commission can deny an outline development plan if it does not “promote” the “most appropriate use” of the land. The unbridled discretion granted by that standard grants the Town Commission the opportunity to arbitrarily set lot sizes or setbacks, and to discriminate between similarly situated developers.”

Section 158.067(D)(3)(h) asks the Town Commission to consider “the extent to which the plan provides for *an effective and unified treatment of the development possibilities on the project site* making appropriate provision for the preservation of scenic features and amenities of the site and the surrounding areas.” (emphasis added). [Ex. J-2, P. 11]. There is no clear and direct relationship between the setbacks that may be suggested by an applicant and this standard: the Town Commission could deny a requested outline development plan based on the wholly subjective view of commissioners that a particular lot size or setback included in an outline development pan did not provide an “effective and unified treatment of the development possibilities.” This standard also creates the opportunity for arbitrary or discriminatory decisions by the Town Commission.

The criteria in §158.067(D)(3) do not establish clear and direct standards to guide the Town Commission in determining, for example, whether a 20 foot front yard setback should be applied to a particular proposal versus a 10 foot or 50 foot setback in another proposal. The Town

Commission could demand a 20 foot setback for one application and a 50 foot setback for another, without reason or consistency. The Zoning Code delegates to the Town Commission the potential for arbitrary or discriminatory treatment that the Florida Supreme Court rejected in Drexel and that was rejected by the district court in Effie.

The failure of the Zoning Code to include lot sizes and setbacks for the MUC zone districts unlawfully delegates essential legislative authority to the Town Commission to arbitrarily decide those standards during the quasi-judicial outline development plan process. The Zoning Code also fails to establish legally sufficient, clear and direct criteria for the Town Commission to apply in establishing lot sizes and setbacks for the MUC districts during the review of applications for outline development plan approval.

3. Count V – §158.067(D)(3)(g) Unlawfully Delegates Unfettered Discretion and Legislative Authority to Vary Development Standards in Any Zone District through the Departure Process

The planned unit development/outline development plan approval process allows applicants to request “departures” from any of the standards set out in Article IV of the Zoning Code, which contains the various development standards and limitations for each zone district, or from §158.102 of the Zoning Code, which establishes separate standards and limitations for the approval of site plans. Section 158.067(B)(1)(o) requires an application for a departure to include “a statement specifically indicating any departures” from those portions of the Zoning Code, as well as a “a statement of any existing hardship and/or clear and specific statement of how the code departures are necessary or desirable to accomplish one or more of the stated purposes of the planned unit development as set forth in §158.065.”

The approval criteria for departures, as set forth in §158.067(D)(3)(g), do not limit the number or extent of permissible departures. The “departures” authorized by the Zoning Code are far more expansive than “variances,” which are limited alterations to a standard that are found necessary to avoid undue or unnecessary hardship. Clarke, supra; Zoning Code §158.029. [Ex. J-1, P. 36]. Instead, the Town Commission is authorized to amend, delete, or replace any of the development standards applicable to a given zone district, including the uses permitted under the Use Table in §158.125, and to amend, delete or replace any of the site plan standards.

Section 158.067(D)(3)(g) directs the Town Commission to “determine by competent substantial evidence of record that the requested departures either meet or have no material adverse impact on the following criteria *as deemed applicable to the request by the town commission:*” (emphasis added). [Ex. J-2, P. 11]. This language grants the Town Commission limitless discretion to ignore the stated Zoning Code criteria. There are no standards or required findings to guide or limit the Town Commission in determining whether and when a criterion should or should not be applied. The Town Commission could approve a request for a departure that did not meet one of the specified criteria and then simply assert that the criterion was not applicable. The discretion to simply ignore the published criteria is impermissible under Effie and Schweitzer.

The first departure criteria the Town Commission is allowed to consider under §158.067(D)(3)(g) is whether the requested departures “promote the most appropriate use of the land upon which the project is to be located, adequately protecting against adverse impacts to adjacent parcels and the surrounding area.” This largely restates the language set forth in

§158.065 and is legally insufficient for the reasons set forth above. Under this section, the Town Commission can deny any departure request because the commissioners do not like the use - or the developer. Alternatively, it empowers the Commission to grant what amounts to a waiver from any of the applicable development standards to a favored developer upon the subjective assessment that a proposed use is the "most appropriate." The additional criteria enumerated in §158.067(D) add little clarity to the limits of the Commission's discretion.

Because this grant of power is not constrained by clear and direct standards for its use, it is contrary to Florida law.

4. Findings of Fact and Conclusions of Law as to Count VI

Count VI of the Fourth Amended Complaint asserts that the Zoning Code, as amended by the Zoning Code Amendments, violates due process under the Florida Constitution because the Town Commission is not required to issue written findings and conclusions when approving or denying applications for outline development plans. For the reasons set forth below, the court finds there is no due process violation.

Prior to the adoption of the Zoning Code Amendments, §158.067(D)(3) stated the Town Commission's ordinance adopting or denying an outline development plan must "include not only conclusions but also findings of fact related to the specific proposal and shall set forth the reasons for the grant of approval, with or without changes or special conditions, or for the disapproval. . . ." [J. Ex. 2, P. 10]. This language was deleted by the Zoning Code Amendments.

Section 158.067(D)(3) now provides:

"The Commission shall base its decision on competent, substantial evidence of record, but shall not be required to make written findings of fact to support approval or disapproval of an outline development plan application"

IPOC's contention is that new section eliminates the need for written findings when the Commission approves or disapproves an outline development plan. In support it cites the dissent of Judge Zehmer in *Irvin v. Duval County Planning Commission*, 419 So. 2d 624, 626 (Fla. 3d DCA 1985), adopted by the supreme court in *Irvin v. Duval County Planning Commission*, 495 So. 2d 167 (Fla. 1986), and the Fifth District Court of Appeal on remand, *Irvin v. Duval County Planning Commission* 504 So. 2d 1265 (Fla. 5th DCA 1986).

Irvin requires an adequate record, so that on review the appellate court can exercise its informed judgment as to whether the quasi-judicial decision was based on competent substantial evidence, and in *Irvin* the Duval County zoning regulations required a record of "sufficient degree to disclose the factual basis for its final determination." *Id.* p. 362. The current version of §158.067(D)(3) does not mandate findings in written form. However, neither does it forbid such findings. In other words, the Commission has the option of making written findings should it choose to do so.

Given the due process imperative of providing a clear evidentiary foundation for administrative decision, a commission that opts not to make such findings may find its action consistent with the Longboat Key Zoning Code but running afoul of *Irvin* and its progeny. However, because the Code grants the Commission the discretion to enter written findings and thus be compliant

with the *Irvin* requirement that the agency provide an acceptable record upon which a reviewing court can make a qualitative assessment of the evidence, this court cannot find §158.067(D)(3) facially unconstitutional on this basis. See *Orange County v. Costco Wholesale Corp.*, 823 So.2d 732, 737 (Fla.2002) (specifying that ordinances reflecting legislative action are entitled to a presumption of validity); *State v. Hanna*, 901 So.2d 201, 204 (Fla. 5th DCA 2005) (holding that statutes and ordinances are presumed to be constitutional and all reasonable doubts must be resolved in favor of constitutionality). The issue of whether the failure to make such findings provides a viable basis for an “as-applied” constitutional challenge must await an actual decision granting or denying an outline development plan, and cannot be resolved in this action.

5. Findings of Fact and Conclusions of Law as to Counts VII and VIII

Counts VII and VIII of the Fourth Amended Complaint assert that the Zoning Code Amendments did not “rezone” the PD, GPD and NPD zoned lands within the Town to the new MUC-1, MUC-2 and MUC-3 zone districts, and that the Town cannot apply the MUC zone district standards to approving development within the PD, GPD and NPD zoned lands until they are rezoned to the proper new zone districts.

For the reasons set forth below, the court finds that the provisions of Ordinance 2012-08 (the Zoning Code Amendments) did not rezone lands to the MUC zone districts, and the Town must first properly rezone the lands before approving any development orders for the PD, GPD and NPD zone districts to the respective MUC zone districts.

The court finds the Zoning Map [Exhibit J-16] remains the valid and enforceable Zoning Map of the Town. The court rejects the Town’s assertion that Exhibit J-17 is the valid Zoning Map of the Town pursuant to Ordinance 2012-08.

The Town’s Zoning Map is legislatively adopted by §158.007 of the Zoning Code. Section 158.007(A) not only identifies the Zoning Map, but identifies specific language that must appear on the Zoning Map, stating that it is the map referred to in Ordinance 05-13. [Ex. J-1, P. 19, Ex. P-8].

Section 158.007(A) also states that the actual application of the various zoning districts to particular lands within the Town is as shown on the Zoning Map. Under the clear and unambiguous language that the Town has adopted in this section, the only official Zoning Map of the Town is the specific map referenced in Ordinance 05-13.

Section 166.041 (2), Florida Statutes, sets out requirements for amendments to ordinances. It states “Ordinances to revise or amend shall set out in full the revised or amended act or section or subsection or paragraph of a section or subsection.” To comply with this statutory requirement, any ordinance that amends the Zoning Map or §158.007(A) must set out the amendment specifically and in full. Neither the Zoning Map nor §158.007(A) can be amended indirectly by changes to the language of other sections of the Zoning Code.

To be legally effective, any amendment to the Town’s Official Zoning Map must amend the language in §158.007 to reference the amending ordinance. Furthermore, any ordinance amending the Zoning Map must specifically state that it is amending the Zoning Map, and must either adopt a revised map or identify with specificity the alteration to the prior map so that a valid new map can be properly certified.

Nothing in the notices published for Ordinance 2012-08 state that the Zoning Map will be amended or that the existing zoning of the PD, GPD or NPD districts will be changed. [Ex. P-2; P-3]. The title of Ordinance 2012-08 does not state that it will make any change to the Zoning Map. [Ex. J-2, P.1; Ex. P. 9]. The title of Ordinance 2012-08 does not state that it will make any change to §158.007. [Ex. J-2, P. 1; Ex. P. 9]. Nothing in any of the “whereas” clauses in Ordinance 2012-08 demonstrates any intent to amend the Zoning Map. Nothing in any of the sections of Ordinance 2012-08 states that it will amend the Zoning Map or §158.007. The court can only conclude that Ordinance 2012-08 did not adopt amendments to the Zoning Map that would change the PD, GPD or NPD zone districts to the MUC-1, MUC-2 and MUC-3 zone districts.

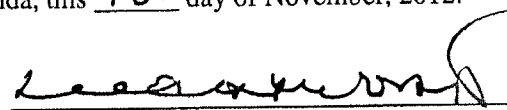
Because the Town has deleted the zoning code provisions governing the PD, GPD and NPD without properly amending the Zoning Map to apply the new districts there are no standards to govern an application for outline development plan approval for those districts at this time. No new applications for outline development plan approvals can be considered or approved for those districts until either the Zoning Code is amended to provide for standards or the Zoning Map is properly amended to apply a new zoning district to those lands. The court rejects the Town’s assertion that this means that there are no zoning restriction that can be applied and that the Town must permit any use or development proposed for those lands. Instead, those outline development plans for the PD, GPD and NPD zone districts that were validly approved prior to adoption of the Zoning Code Amendments remain in force and effect.

NOW, THEREFORE, THE COURT ORDERS AND ADJUDGES:

1. The court grants plaintiff’s demand for relief in Count I. The court declares that the Town may not approve any tourism uses or density for lands in the MUC-2 land use category until it secures elector approval for such uses and density pursuant to Article II, § 22 of the Town Charter. The court further declares that, except for tourism uses or density that may be authorized pursuant to the Town’s 2008 referendum for adding 250 tourism units outside of the GPD zone district, the Town may not approve any tourism uses or density for lands in the CH land use category until it secures voter approval for such uses and density pursuant to Article II, § 22 of the Town Charter.
2. The court grants plaintiff’s demand for relief in Count II. The court declares that the Town may not approve any tourism uses or density for lands in the MUC-2 zoning district until it secures voter approval for such uses and density pursuant to Article II, § 22 of the Town Charter. Except for tourism uses or density that may be authorized pursuant to the Town’s 2008 referendum for 250 tourism units outside of the GPD zone district, the Town may not approve any tourism uses or density for lands in the C-3 zoning district until it secures voter approval for such uses and density pursuant to Article II, § 22 of the Town Charter.
3. The court grants Plaintiff’s demand for relief in Count III. The court declares that the Town may not adopt or amend outline development plans for any MUC zone district until the Town amends the Zoning Code to identify the particular uses that may be permitted in the MUC zone districts, and provides clear and direct standards to guide whether the identified uses should be permitted under a particular outline development plan application.

4. The court grants plaintiff's demand for relief in Count IV. The court declares that the Town may not adopt or amend outline development plans for any MUC zone district until the Town amends the Zoning Code to identify the minimum lot sizes, widths and depths, and minimum front, side and rear yards, that may be permitted in the MUC zone districts, and also adopts clear and direct standards to guide the Town Commission in granting or denying the approval of outline development plans.
5. The court grants plaintiff's demand for relief in County V. The court declares that the Town may not adopt or amend any outline development plan that grants departures from Article IV or §158.102, of the Zoning Code, until the Town amends the Zoning Code to provide clear and direct criteria that the Town Commission must consider and apply in determining whether to grant or deny a request for a departure.
6. The court denies plaintiff's demand for relief in Count VI.
7. The court grants plaintiff's demand for relief in Counts VII and VIII. The Town may not consider any applications for site plan or outline development plans for lands in the PD, GPD or NPD zoning districts, as depicted on the Zoning Map adopted in Ordinance 05-13, until it properly amends the Zoning Map and §158.007(A) to reflect the rezoning of these lands to the appropriate MUC zone districts. The lands within the PD, GPD and NPD zone districts remain subject to the outline development plans validly approved and in force prior to the adoption of Ordinance 2012-08.
8. The court reserves jurisdiction to assess costs, and if appropriate, attorney fees, and to enforce the provisions of this Final Judgment.

DONE AND ORDERED in Sarasota County, Florida, this 13TH day of November, 2012.

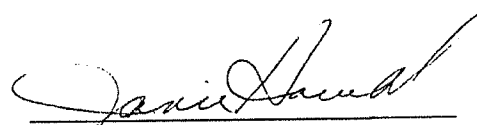

LEE E. HAWORTH, CIRCUIT JUDGE

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that true and correct copies of the foregoing Order have been furnished by U.S. Mail this 13 day of Nov, 2012, to:

Kelly Martinson Fernandez, Esquire
1820 Ringling Blvd.
Sarasota, FL 34236

Robert K. Lincoln, Esquire
Michael J. Furen, Esquire
2033 Main Street, Suite 600
Sarasota, FL 34237


Janice Houchell, Judicial Assistant

IN THE CIRCUIT COURT OF THE TWELFTH JUDICIAL CIRCUIT
IN AND FOR SARASOTA COUNTY, FLORIDA

ISLANDSIDE PROPERTY OWNERS
COALITION, LLC, a Florida limited liability
company, THE SANCTUARY AT
LONGBOAT KEY CLUB COMMUNITY
ASSOCIATION, INC., a Florida non-profit
corporation, and L'AMBIANCE AT
LONGBOAT KEY CLUB CONDOMINIUM
ASSOCIATION, INC., a Florida non-profit
corporation,

Plaintiffs,

vs.

Case No. 2010 CA 007913 NC

TOWN OF LONGBOAT KEY, FLORIDA,
a municipality of the State of Florida, KEY
CLUB ASSOCIATES, LIMITED
PARTNERSHIP, a Florida limited partnership,
and ISLANDSIDE DEVELOPMENT LLC, a
Delaware limited liability company,

Defendants.

FILED FOR RECORD
2012 DEC -5 AM 9:01
KAREN E. RUSHING
CLERK OF CIRCUIT COURT
SARASOTA COUNTY, FL

ORDER GRANTING MOTION TO AMEND FINAL JUDGMENT

THIS CAUSE, having come before this Court on Defendant, Town of Longboat Key's
Uncontested Motion to Amend Final Judgment or, in the alternative, Motion for Rehearing, and
this Court having reviewed the file and being otherwise fully advised in the premises, it is
hereby,

ORDERED AND ADJUDGED that:

1. Defendant's Motion is hereby GRANTED.
2. Paragraphs 1. and 2. on page 15 of the Final Judgment on IPOC's Fourth Amended Complaint for Declaratory and Injunctive Relief are amended to state as follows:

1. The court grants plaintiff's demand for relief in Count I. Except for

Case: 2010 CA 007913 NC
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Dkt: 0ADR

tourism uses or density that may be authorized pursuant to the Town's 2008 referendum for adding 250 tourism units, the court declares that the Town may not approve any tourism uses or density for lands in the MUC-2 land use category until it secures elector approval for such uses and density pursuant to Article II, §22 of the Town Charter. The court further declares that, except for tourism uses or density that may be authorized pursuant to the Town's 2008 referendum for adding 250 tourism units, the Town may not approve any tourism units or density for lands in the CH land use category until it secures voter approval for such uses and density pursuant to Article II, §22 of the Town Charter.

2. The court grants plaintiff's demand for relief in Count II. Except for tourism uses or density that may be authorized pursuant to the Town's 2008 referendum for adding 250 tourism units, the court declares that the Town may not approve any tourism uses or density for lands in the MUC-2 zoning district until it secures voter approval for such uses and density pursuant to Article II, §22 of the Town Charter. Except for tourism uses or density that may be authorized pursuant to the Town's 2008 referendum for 250 tourism units, the Town may not approve any tourism units or density for lands in the C-3 zoning district until it secures voter approval for such uses and density pursuant to Article II, §22 of the Town Charter.

3. In all other respects the Final Judgment entered by this Court on November 13,

2012, shall remain in full force and effect. **THIS ORDER IS ENTERED WITHOUT OBJECTION FROM PLAINTIFF.**

DONE AND ORDERED in Sarasota, Sarasota County, Florida this _____ day of

LEW
12.4, 2012.



Lee E. Haworth
Circuit Court Judge

cc:
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To: Tom Harmer, Allen Parsons, Maggie Mooney-Portale

From: Ed Zunz Nov. 9, 2018

Please comment on suggested edits to Option 2.

(C) Option 2 - Nonconforming Redevelopment in Conformance with Zone District Requirements

(The opening paragraph would remain the same, but the numbered paragraphs that follow would be changed to read as follows:)

(1) Intent. The purpose of Option 2 is to accommodate redevelopment of existing legal nonconforming properties that could retain their existing nonconforming densities but, through redesign of their site, the substitution of smaller buildings, or other means, could achieve conformity with all applicable building heights and all other town codes, regulations and ordinances.

(2) Building cubic content. Structures can be rebuilt to the same total building cubic content as before, which volume can also be increased to an extent consistent with section (C)(1). Additional building volume and height created as a result of compliance with flood control laws shall not be included in determining building cubic content. Additional areas and volume created for elevators, stairs, landings, mechanical areas and walkways, which were not included in the former structures, also shall not be included in building cubic content, provided that the addition of any of these elements does not create a nonconformity as to open space or required setback. Owners may elect to reduce the number of nonconforming units in order to achieve compliance with Option 2.

(3) Substitute prior (2)

(4) Substitute prior (3)

(5) Substitute prior (4)

(Is there any way to make Option 2 fully conforming?)

RECEIVED

NOV 09 2018

TOWN OF LONGBOAT KEY
Planning, Zoning and Building

MEMORANDUM

DATE: September 18, 2018

TO: Planning and Zoning Board

FROM: Allen Parsons, AICP, Director
Planning, Zoning and Building Department

SUBJECT: 158.139 – Reconstruction of nonconformities in the event of voluntary reconstruction or involuntary destruction or damage

The Town Commission held a series of three special workshops, in April, May and June 2018, on the historically challenging subject of redevelopment of properties that contain more dwelling units per acre than their underlying zoning district densities would allow for (a/k/a “Non-Conforming” Densities). At their June 4, 2018 Special Workshop Meeting, the Town Commission reached consensus on a series of goals and options (i.e. methods) for the redevelopment of legally nonconforming properties.

The Commission’s overall goals, in no particular order, for redevelopment of legally nonconforming properties are:

- Goal 1- No new density will be allowed (without a referendum approval).
- Goal 2- Any redevelopment of legally nonconforming properties will use their best efforts to meet the existing zone district requirements (i.e. providing options and potential for flexibility).
- Goal 3- A property’s use and its structures, in any redevelopment, would meet existing zone district standards (i.e. other than density, redevelopment will ideally meet all applicable zoning requirements).

Among the topics discussed, the Commission raised the question as to whether there needed to continue to be distinctions between the existing zoning code provisions that govern legally nonconforming redevelopment depending on whether the redevelopment is a result of either “voluntary” or “involuntary” actions of a property owner(s). Given the Town’s approval of a March 2008 Referendum that posed the question to voters:

For the properties that have more dwelling or tourism units than currently allowed, but which were legal at the time they were created, may the Town consider and grant approval to allow those properties to rebuild to their current dwelling or tourism unit levels in the event of involuntary or voluntary destruction?

Staff is of the opinion that separate and slightly different requirements, based on the origin of a property’s redevelopment, need no longer apply.

For the Planning and Zoning Board’s consideration, the existing Redevelopment Regulations (Zoning Code Sections 158.139 and 158.140) have been combined and a draft new “Floating Zone District” are proposed to address updated non-conforming

redevelopment regulations that attain the methods (described as a series of 3 options) arrived at by Commission consensus:

- Option 1- Redevelopment of nonconforming density and *structures* with existing limitations for additional cubic content.
- Option 2- Redevelopment via meeting Zone District standards (allowing additional cubic content).
- Option 3- Redevelopment Under New “Floating Zone District” (allowing additional cubic content):

Staff has addressed the first two of the options above in the combined sections of the Zoning Code which were formerly sections 158.139 (Involuntary Destruction) and 158.140 (Voluntary Reconstruction) into just one section, which as drafted is **Sec. 158.139 – Reconstruction of nonconformities in the event of voluntary reconstruction or involuntary destruction or damage**. This ordinance retains the same intent as the provisions of the previous sections but combines the types of destruction, whether voluntary or involuntary, into one single intent. This intent, which remains unchanged, is to allow existing, legally nonconforming residential or tourism properties that exceed the current allowable density, to be rebuilt for the existing use and density.

Option 1 allows legally nonconforming residential or tourism properties that exceed the current allowable density, to be rebuilt for the existing use, density and cubic content, along with aspects of the structure(s) that may be nonconforming such as height, setbacks and open space in existence prior to their removal. In short, Option 1 allows nonconforming properties to build back exactly what they previously had, but no more.

Option 2 in the draft proposes new language to the text. This option labeled - **Nonconforming Redevelopment in Conformance with Zone District Requirements** would allow legally nonconforming density multifamily or tourism properties that rebuild and meet all of the zoning requirements for the site to add additional cubic content. This option provides more flexibility than Option 1, in that it would permit the redevelopment of a property to configure the buildings differently than what was existing on the property previously, and to add cubic content to those buildings, as long as all of the requirements of the zoning district for the property (height, open space, setbacks, etc.) are met. This option, however, still would retain a nonconforming status with regard to density.

Option 3, referenced in the draft, is also new language addition to the text. This option labeled - **Nonconforming Redevelopment Seeking Modifications from Zone District Requirements** provides the opportunity for nonconforming properties to seek rezoning to a new floating overlay zone district in order to obtain conforming status and modification(s) to the existing zone district standards on the property. The proposed new overlay zone district tentatively referred to as the Conformance Overlay Redevelopment District (CORD) is addressed as a separate item for the PZB to consider.

One difference to note in the draft text, 158.139 (Involuntary Destruction) applies to all nonconforming properties in the Town, where 158.140 (Voluntary Reconstruction) only applies to multifamily and tourism properties. Thus, under the existing code provisions, a nonconforming single family or two-family property can only rebuild to its nonconforming

extent under the existing *involuntary* destruction provision. The draft text would permit nonconforming single family or two-family properties to rebuild under either voluntary or involuntary reconstruction circumstances under the provision of Option 1 (to existing nonconforming extents and cubic content) or Option 3 (via rezoning to the CORD).

The Town Commission further directed that the Planning and Zoning Board consider and review the draft redevelopment regulations. Town staff will be presenting an overview of the draft text which incorporates concepts and input received by staff from the recent Town Commission special workshops.

AGENDA ITEM 5

ORDINANCE 2018-20, RECONSTRUCTION OF NONCONFORMITIES IN THE EVENT OF VOLUNTARY RECONSTRUCTION OR INVOLUNTARY DESTRUCTION OR DAMAGE

Pursuant to published notice, the public hearing was opened.

Mr. Parsons reviewed proposed Ordinance 2018-20 noting:

- The Town Commission initiated workshops on this subject to review the discussions that had taken place on redevelopment over the last ten years
- Goals were established from the three workshops:
 - Goal 1- No new density will be allowed (without a referendum approval).
 - Goal 2- Any redevelopment of legally nonconforming properties will use their best efforts to meet the existing zone district requirements (i.e. providing options and potential for flexibility).
 - Goal 3- A property's use and its structures, in any redevelopment, would meet existing zone district standards (i.e. other than density, redevelopment will ideally meet all applicable zoning requirements)
- The proposed ordinance combined Sections 158.159 and 158.140

Discussion ensued on:

- The Town Charter and the density set in the 1984 Comprehensive Plan
- Language in the referendum
- the ordinance would allow someone to request a change, but did not grant them the right
- the 1984 Charter 'locked in' density, which was the measure in which the Town tracked density
- the properties in question were nonconforming as a result of the downzoning in the 1984 Charter
- referendum was only to density; the Town Commission were not restricted from their ability to regulate items such as, height, open space, etc.
- concern with the addition of a 'floating zone'
- the differences between Option 2 and Option 3 and what they accomplished
- concerns with Option 1
- properties having a 'nonconforming' status and possible inability to obtain financing
- providing user-friendly ordinances
- Public Records laws and the Town's responsibility in terms of retaining documents when originally submitted
- Removing the words 'voluntary' and 'involuntary' from the proposed code

MR. YOUNGER MOVED TO STRIKE ALL REFERENCES TO ‘VOLUNTARY’ AND ‘INVOLUNTARY’ FROM THE ORDINANCE. MR. MARSH SECONDED THE MOTION. MOTION CARRIED ON ROLL CALL VOTE: BISHOP, AYE; GARNER, AYE; HAYCOCK, AYE; MARSH, AYE; WILLIAMS, AYE; YOUNGER, AYE.

MR. MARSH MOVED TO RECOMMEND APPROVAL OF ORDINANCE 2018-20, AS AMENDED.

MR. YOUNGER MOVED THAT OPTION 1 BE STRICKEN FROM THE ORDINANCE.

Discussions were held with Mr. Younger, Mr. Marsh, Mr. Garner and Mr. Haycock on Option 1:

- Option 1 would place the Town in a ‘status quo’ with limiting everything to cubic content, contrary to previous board discussions
- The Town Attorney had commented regarding Option 1 being integral to the ordinance
- Should not have three options in the ordinance
- The three options would allow property owners to determine which process was appropriate for their situation
- Believed the board had agreed to preserve the ability of the homeowner to build ‘in-kind’ if the structure were damaged or destroyed
- Whether Option 1 should be removed from the list
- The three options offer a choice to pursue, but did not grant the owner any rights

MR. YOUNGER’S MOTION DIED FOR LACK OF SECOND.

Steve Schield, St. Judes Drive North, addressed the board regarding his letter, which he previously submitted, outlining his concerns with the ordinance, and the impact it could have on his neighborhood. He suggested the Board revise the language in Option 2 to state, “...existing multifamily and tourism zoned properties...”

Mr. Marsh inquired of Attorney Mooney as to Mr. Schield’s suggestion. Attorney Mooney explained if the board believed there was an issue, then staff could revisit the language and address the concern. Mr. Younger questioned if any rights would be taken. Attorney Mooney responded it was not taking away rights, but was granting new rights.

MR. GARNER REQUESTED A FRIENDLY AMENDMENT TO ADD THE WORD ‘ZONED’ TO (C), OPTION 2, ON PAGE 6 OF 11, IN THE FIRST SENTENCE, TO STATE “EXISTING MULTIFAMILY AND TOURISM ‘ZONED’ PROPERTIES...” MR. MARSH ACCEPTED THE AMENDMENT.

Further discussion took place related to:

- Concern with allowing large structures to be built, similar to Anna Maria Island

- In those areas, the Town would want to encourage single-family homes and not multi-family
- How someone would apply for the ‘floating district’ overlay

The board discussed the connection between Ordinance 2018-20 and Ordinance 2018-14 and believed they should table discussion of Ordinance 2018-20 until after Ordinance 2018-14.

MR. YOUNGER MOVED TO TABLE DISCUSSION OF ORDINANCE 2018-20 PENDING ACTION ON ORDINANCE 2018-14. MR. HAYCOCK SECONDED THE MOTION. MOTION CARRIED UNANIMOUSLY.

The Board recessed from 10:45 am – 11:00 am.

AGENDA ITEM 5 (CONTINUED)

ORDINANCE 2018-20, RECONSTRUCTION OF NONCONFORMITIES IN THE EVENT OF VOLUNTARY RECONSTRUCTION OR INVOLUNTARY DESTRUCTION OR DAMAGE

Mr. Parsons provided a summary of the ordinance and discussions from earlier in the meeting.

Chair Bishop noted that the amendments included: 1) removal of references to ‘voluntary’ and ‘involuntarily’ throughout the document; and 2) acronyms should reflect their meaning. Discussion followed with Mr. Garner, Mr. Parsons, Chair Bishop, Mr. Haycock and Attorney Mooney on:

- the issue of abandonment of nonconformities, and its definition, referenced in Section 158.139.
- the addition of the word ‘zoned’ in Option 2
- Mobile Home parks and the provisions in the reconstruction portion of the code, which specifically referenced mobile home parks

MOTION TO RECOMMEND APPROVAL OF ORDINANCE 2018-20, AS AMENDED, CARRIED ON ROLL CALL VOTE: BISHOP, AYE; GARNER, AYE; HAYCOCK, AYE; MARSH, AYE; WILLIAMS, AYE; YOUNGER NO.

**MINUTES
LONGBOAT KEY TOWN COMMISSION
SPECIAL WORKSHOP MEETING
APRIL 16, 2018**

Present: Mayor George Spoll, Vice Mayor Ed Zunz, Commrs. Jim Brown, Randy Clair, Jack Daly, Irwin Pastor, Ken Schneier

Also Present: Town Manager Tom Harmer, Town Attorney Maggie Mooney-Portale, Deputy Town Clerk Savannah Schield

CALL TO ORDER/PLEDGE OF ALLEGIANCE

Mayor Spoll called the April 16, 2018, Special Workshop to order at 9:00 a.m. in the Town Commission Chamber, 501 Bay Isles Road, Longboat Key, Florida, noted the Town's Civility Code, and read the Pledge of Public Conduct.

1. Opportunity for Public to Address Town Commission - No items were presented.

2. Discussion Regarding Redevelopment of Non-Conforming Properties

At their March 28, 2018, Regular Workshop Meeting the Town Commission requested that the subject of Redevelopment of Nonconforming Properties be placed on a Special Workshop Meeting to afford adequate time for discussion, prior to remanding to the Planning & Zoning (P&Z) Board for their consideration. Members of the P&Z Board have been invited to attend this Special Workshop Meeting. Recommended Action: Pending discussion, provide direction to Manager.

Following comments by Town Manager Tom Harmer and Mayor Spoll, discussions were held on the following topics/issues:

- history of labeling properties non-conforming
- tourist-zone T6 – separating classes
- conforming units
- down zoning in the 80s - 1984
- history of what Longboat Key residents wanted to preserve
- Vision Plan 2007 - 2008
- public referendums regarding density
- density and intensity
- principles and concepts to move forward on issue
- population of Longboat Key decreasing
- loss of restaurants/vitality of island
- preserving non-conforming properties/providing flexibility
- properties use and size before down-zoning
- results oriented approach
- hurricane recovery
- redevelopment during involuntary destruction
- changes to zoning code/adding non-conforming
- condominiums voluntarily redeveloping
- accommodating revitalization
- Proposed Ordinance 2016-32

2. Discussion Regarding Redevelopment of Non-Conforming Properties - Continued

- PUD (Planned Unit Development) Process
- accommodating older buildings on the Key
- condominium and hotel revitalization
- lack of maintenance on properties leading to redevelopment
- "Keep Longboat Longboat"
- Identification of non-conforming properties/explanation of non-conformance
- site specific zoning
- zone districts
- reconfiguration of buildings for density.

Planning, Zoning, and Building Department Director Allen Parsons commented on conforming and non-conforming properties as they relate to density.

RECESS: 10:32 a.m. - 10:41 a.m.

The following individuals commented on redevelopment:

Ms. B.J. Bishop, Buttonwood Drive
Mr. Mike Haycock, Gulf of Mexico Drive
Attorney Robert Lincoln, Wood Street, Sarasota
Mr. Phillip Younger, Bayou Sound

Subsequent to discussion, there was consensus for new terminology for non-conformities.

Discussion ensued on the following topics/issues:

- Quasi-Judicial hearing needed for changing zoning districts
- Legislation Policy Setting
- rebuilding structures voluntarily and involuntarily in Code
- eliminating flexibility of PUD
- Consent Judgements mechanism
- grandfathering properties
- height provisions
- description of zoning districts.

Subsequent to comments by Mr. Parsons, there was a consensus for less flexibility and more specific standards if a new zone district is created.

Ms. Pat Zunz, Lands End, commented on property owners' rights.

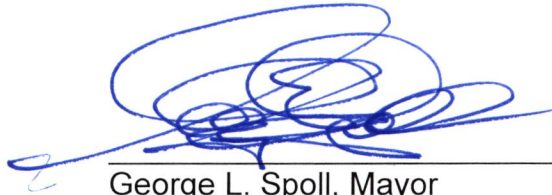
Town Manager Tom Harmer commented on staff's response to the issues raised and advised that an additional meeting date and time will be presented at the April 23, 2018, Regular Workshop.

ADJOURNMENT

Mayor Spoll adjourned the April 16, 2018, Special Workshop at 12:13 p.m.



Savannah Schield, Deputy Town Clerk



George L. Spoll, Mayor

Minutes Approved: 05-07-18

**MINUTES
LONGBOAT KEY TOWN COMMISSION
SPECIAL WORKSHOP MEETING
MAY 14, 2018**

Present: Mayor George Spoll, Vice Mayor Ed Zunz, Commrs. Jim Brown, Randy Clair, Jack Daly, Ken Schneier

Absent: Commr. Irwin Pastor

Also Present: Town Manager Tom Harmer, Town Attorney Maggie Mooney-Portale, Deputy Town Clerk Savannah Schield

CALL TO ORDER

Mayor Spoll called the May 14, 2018, Special Workshop to order at 1:00 p.m. in the Town Commission Chamber, 501 Bay Isles Road, Longboat Key, Florida, noted the Town's Civility Code, and read the Pledge of Public Conduct.

1. Opportunity for Public to Address Town Commission

A. Code Enforcement

Ms. B.J. Bishop, Buttonwood Drive, commented on the condition of the property at the entrance of Buttonwood (Drive) and the complaints from the neighborhood residents.

2. Discussion Regarding Redevelopment of Non-Conforming Properties

Following discussion at the April 16, 2018, Special Workshop Meeting, the Town Commission requested that staff summarize key issues and investigate options for consideration on the subject of redevelopment of non-conforming properties. They also asked for a future Special Workshop Meeting to afford adequate time for continued discussion. Members of the P&Z Board have been invited to attend the May 14, 2018, Special Workshop Meeting. Recommended Action: Pending discussion, provide direction to Manager.

Following a PowerPoint presentation by Planning, Zoning and Building Department Director Allen Parsons, discussions were held on the following topics/issues:

- stigma of non-conforming properties
- implementing a certification process
- documentation of existing built conditions
- reconfiguration of properties
- voluntary redevelopment
- rebuilding after involuntary destruction
- rebuilding in accordance with current code
- cubic volume
- process of eliminating non-conforming properties
- amending code for allowance of rebuilding after natural disaster
- LiDAR (Light Detection and Ranging) mapping technology
- zone district heights
- lower-scale buildings redevelopment

2. Discussion Regarding Redevelopment of Non-Conforming Properties - Continued

- proposed Ordinance 2016-32
- height allowances with FEMA (Federal Emergency Management Agency) standards
- additional height than zone district allows
- limitation on lot coverage/setback requirements
- density.

Mr. Parsons provided a PowerPoint presentation on examples of redevelopment challenges with taller versus lower-scale buildings.

There was a consensus for additional height for lower-scale buildings.

RECESS: 2:56 p.m. – 3:09 p.m.

Discussions were held on the following topics/issues:

- maximum building heights
- reviewing and amending the Zoning Code
- PUD (Planned Unit Development) process
- rebuilding after voluntary destruction with code
- building heights with FEMA standards
- options for new Zoning districts
- additional cubic content in lower-scale buildings.

The following individuals commented on redevelopment of non-conforming properties:

Ms. B.J. Bishop, Buttonwood Drive
Mr. Tom Freiwald, Spanish Drive

Following comments by Town Manager Tom Harmer, Mr. Parsons noted the following consensus items:

- **follow up on the certification process for properties**
- **no additional height for buildings currently higher than zoning districts provides**
- **follow up on potential to limit those buildings to not include FEMA height**
- **any expansion would be in conformance with the zoning district**
- **removing cubic content regulations for buildings taller than zoning district, when new or additional development meets zone district requirements**
- **explore options for lower buildings to exceed zoning district heights with criteria**
- **allow for additional cubic content in the redevelopment scenario for buildings that are lower height than zoning district provides for.**

Town Manager Harmer suggested that the Comprehensive Plan also be reviewed, commented on the next steps, and following comments, noted that an additional workshop would be scheduled regarding redevelopment of non-conforming properties.

3. Other Business

A. Town Commission

Town Attorney Maggie Mooney-Portale requested an Attorney-Client session and provided date options for scheduling a Special Meeting.

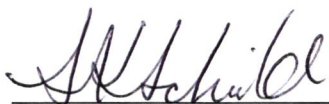
Following comments, there was consensus to schedule a Special Meeting on May 22, 2018, at 9:00 a.m., in the Town Commission Chamber (501 Bay Isles Road, Longboat Key).

2. Discussion Regarding Redevelopment of Non-Conforming Properties - Continued

Following comments, there was consensus to schedule a Special Workshop on June 4, 2018, at 9:00 a.m. for continued discussion on redevelopment of non-conforming properties.

ADJOURNMENT

Mayor Spoll adjourned the May 14, 2018, Special Workshop at 4:19 p.m.



Savannah Schield, Deputy Town Clerk



George L. Spoll, Mayor

Minutes Approved: 06-04-2018



**MINUTES
LONGBOAT KEY TOWN COMMISSION
SPECIAL WORKSHOP MEETING
JUNE 4, 2018**

Present: Mayor George Spoll, Vice Mayor Ed Zunz, Commrs. Jim Brown, Randy Clair, Jack Daly, Irwin Pastor, Ken Schneier

Also Present: Town Manager Tom Harmer, Town Attorney Maggie Mooney-Portale
Deputy Town Clerk Savannah Schield

CALL TO ORDER

Mayor Spoll called the June 4, 2018, Special Workshop to order at 9:01 a.m. in the Town Commission Chamber, 501 Bay Isles Road, Longboat Key, Florida, noted the Town's Civility Code, and read the Pledge of Public Conduct.

PUBLIC TO BE HEARD

1. Opportunity for Public to Address Town Commission – No items were presented

2. Discussion Regarding Redevelopment of Non-Conforming Properties

Following discussion at the April 16 and May 14, 2018, Special Workshop Meetings, the Town Commission requested that staff summarize key issues and investigate options for consideration on the subject of redevelopment of non-conforming properties. They also asked for a future Special Workshop Meeting to afford for continued discussion. Members of the P&Z Board have been invited to attend the June 4, 2018, Special Workshop Meeting. Recommended Action: Pending discussion, provide direction to Manager.

(Note: Town Attorney arrived at 9:26 a.m.)

Following a PowerPoint presentation by Planning, Zoning, and Building Department Director Allen Parsons, discussions were held on the following topics/issues:

- voluntary versus involuntary redevelopment
- taller buildings
- expansion of non-conforming uses
- preserving density
- maximum building heights.

Following comments by Mayor Spoll, there was a consensus on the following items:

- redevelopment would use best efforts to meet zone districts
- result of redevelopment of any non-conforming property would be a fully conforming use and structure, regardless of redevelopment option chosen
- allow development flexibility when redevelopment may not meet zone district standards due to site constraints or market demonstration made
- will attempt to have all properties to be conforming.

RECESS: 10:48 a.m. – 11:00 a.m.

2. Discussion Regarding Redevelopment of Non-Conforming Properties - Continued
Discussions continued on the following topics/issues:

- redevelopment within existing zone district standards
- no new density allowed
- use and structures in redevelopment meeting zone district standards
- redevelopment and consideration of FEMA (Federal Emergency Management Agency) requirements
- redevelopment under new "Floating Zone District"
- reducing height
- inventory creation efforts
- allow development flexibility
- voluntary redevelopment ordinance changes
- updating and rewriting Code of Ordinances.

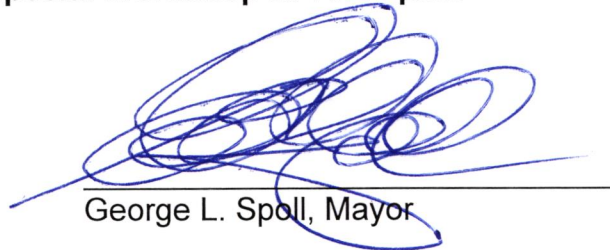
Staff reviewed the discussions and noted the next steps in the process.

ADJOURNMENT

Mayor Spoll adjourned the June 4, 2018, Special Workshop at 11:24 p.m.



Savannah Schield, Deputy Town Clerk



George L. Spoll, Mayor

Minutes Approved: 9/11/2018





End of Agenda Item