

## 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:** January 16, 2019

**SUBJECT:** Ordinance 2019-02, Privately Initiated Zoning Text Amendment, Amending Chapters 158 and 150, Proposed Revision to Allow for On-Site Real Estate Sales Offices to be Allowed as Temporary Use, Prior to Building Permit

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### **Recommended Action**

Forward Ordinance 2019-02 to March 4, 2019 Regular Meeting for second reading, public hearing and adoption.

### **Background**

Unicorp National Developments Inc., (the “applicant”), on behalf of Brandon Commons, L.L.C., Lake Brandon Shoppes, L.L.C., Metro Pointe, L.L.C., Metro Plaza, L.L.C., WPT Outparcel, L.L.C., CW Family, L.L.C., CW Family, L.L.C., and Unicorp Acquisitions, L.L.C. (collectively hereinafter referred to as “Unicorp”) of 1620 Gulf of Mexico Drive, is seeking approval of a privately-initiated Zoning Text Amendment to Section 158.142(B)(4) (Temporary use and structures: permitted), that would allow for a specific Temporary Use, “Real estate sales offices limited to the sales of dwelling units on those premises,” prior to construction of a project. As currently codified in the Town Zoning Code, temporary real estate sales offices are permitted, “during construction of the project.” The Code presently does not allow real estate development related Temporary Uses prior to construction.

Pursuant to Section 158.030(B), the Town Commission is directed to “amend, supplement, repeal, or leave unchanged the regulations in accordance with applicable provisions of the Charter and this Code.” Town Commission may approve Ordinance 2019-02 as submitted, approve it with changes or special conditions, or disapprove it.

The applicant has proposed to add the underlined language, below, to Section 158.142(B)(4) (Temporary use and structures: permitted) of the Zoning Code:

“158.142 - Temporary use and structures: permit required.

- A) Temporary uses and structures are permitted in any zoning district subject to full payment of an application fee as set forth by resolution of the town commission and to the standards hereinafter established, provided that a permit for such use is obtained from the town.
- B) Permitted temporary uses and structures included:
  - (1) Garage sales, provided that not more than two sales of three days each are conducted at any site during any one calendar year.
  - (2) Indoor and outdoor art and craft shows, bazaars, carnivals, revivals, circuses, sports events and exhibits, in all zoning districts except R-1SF, R-2SF, R-3SF, R-4SF, R-6SF, R-3MX, R-4MX and R-6MX districts, where such events may be approved only where special exceptions for nonprofit cultural centers, public/private preschools or elementary schools or child care services has been approved.

- (3) Christmas tree sales in all zoning districts except R-1SF, R-2SF, R-3SF, R-4SF, R-6SF, R-3MX, R-4MX and R-6MX districts, where such events may be approved only where special exceptions for nonprofit cultural centers, public/private preschools or elementary schools or child care services have been approved and provided that such use shall not exceed 60 days.
  - (4) Real estate development temporary uses for necessary commercial, promotional, storage and fabrication activities which occur during construction of the project and which terminate on completion of the project. The following activities may be permitted under a temporary use permit on the real estate being developed for a period not in excess of six months, provided all setback requirements of the zoning code are met:
    - (a) Model homes or apartments;
    - (b) Real estate sales offices limited to the sales of dwelling units on those premises; and
    - (c) Construction material and equipment storage.

Notwithstanding the forgoing, temporary real estate sales offices may be allowed prior to construction and shall terminate on the date the certificate of occupancy is issued, for certain qualifying projects meeting all of the following criteria:

    - i. The property exceeds ten (10) acres;
    - ii. The project has a minimum of 50 multi-family units; and
    - iii. The project has received approval, per a signed Development Order, Resolution, or Ordinance.
  - (5) Other temporary uses and structures which are, in the opinion of the planning and zoning official, consistent with the provisions of this section.
- C) The applicant for a temporary use permit shall present a written explanation and/or plans indicating the area in which the temporary use permit is to apply, the nature of the activities which will occur, and the time for which the temporary use permit is requested. The application shall be submitted to the planning and zoning official or designee. The application shall be granted, granted with suitable conditions, stipulations and safeguards, or denied. Prior to granting a temporary use permit, the planning and zoning official or designee shall ensure that any nuisance or hazardous feature involved is suitably separated from adjacent uses and excessive vehicular parking problems will not be created. Each temporary use permit shall be granted for a specific period of time, at the end of which, if the use permitted as a temporary use has not been discontinued, it shall be deemed a violation of this Code and subject to the penalties provided for in section 158.049.”

If the Commission were to approve the proposed zoning text amendment, Staff recommends also amending Section 150.19 (A)(2) (Site restoration secured obligation, required for construction), which has similar provisions regarding temporary uses, in order to maintain internal consistency. The proposed language underlined below would address the internal consistency issues:

“150.19 - Site restoration secured obligation, required for construction.

- A) At least ten days prior to the time an application is made for a building permit for any buildings or structures to be constructed within the town, the applicant shall deliver to the town a cash bond or irrevocable letter of credit in a form satisfactory to the town attorney in the sum of \$2,500.00, plus two percent of the cost of construction of the entire building as indicated on the application for building permit. No site restoration cash bond, or

irrevocable letter of credit shall be required for any project for which the costs of improvements do not exceed \$75,000.00; for the construction of any single-family residence, or town-owned government facilities or any governmental facilities to be owned or constructed by the town. The cash bond or irrevocable letter of credit shall guarantee that the site will be either promptly restored to its original state so far as is possible in the event the construction is abandoned or the site secured in order to protect the health, safety, and welfare of the town and its inhabitants. In default thereof, the amount of the security shall be paid, on demand, to the town for its use in effecting the restoration or to secure the building site. Construction shall be deemed to have been abandoned if the applicant, or his successors or assigns, so notifies the planning, zoning and building department, in writing, or if work on the premises ceases prior to the completion of the improvement and is not resumed within 30 days of the expiration or revocation of the building permit. The cash bond or irrevocable letter of credit shall have an expiration date at least one year after the expected construction completion date as reflected on the building permit application.

- (1) Permits for tree removal, clearing of the land (except debrising), excavation, grading or installation of utilities shall not be issued nor undertaken in areas beyond the limits of the area necessary for the construction of the building for which a permit has been issued. The building official shall determine, in writing, the limits of the area necessary for the satisfactory completion of the permitted work, and such determination shall be deemed a condition of the permit. The necessary construction area shall be fenced to avoid damage to other areas.
- (2) Except as provided in subsection (a), below, temporary use permits shall not be issued prior to issuance of a building permit for construction.
  - (a) Temporary use permits for real estate sales offices may be allowed prior to construction, subject to site restoration guarantee requirements in Section 150.19 (A) above, regardless of the cost of improvements, and shall terminate on the date the certificate of occupancy is issued, for certain qualifying projects meeting all of the following criteria:
    1. The property exceeds ten (10) acres;
    2. The project has a minimum of 50 multi-family units; and
    3. The project has received approval, per a signed Development Order, Resolution, or Ordinance.”

Staff is of the opinion that larger-scale entitled developments can be adequately mitigated and/or restored via the bonding provisions of a Temporary Use Permit. The language, above, requires all projects eligible for Temporary Use Permits related to Real Estate Sales offices, regardless of the cost of construction, to obtain a bond. Staff is also of the opinion that a definition of “Temporary Use” and “Temporary Structures” should be included in the Zoning Code, in order to provide a clear understanding of the meaning of temporary uses and structures. The following definitions are proposed:

“Temporary Use.” A non-permanent use which is established for a fixed and limited period of time with the requirement to discontinue such use upon the expiration of such time, and which does not involve the construction or alteration of any permanent structure.

“Temporary Structures.” A non-permanent structure or structures which are placed on a site for a fixed and limited period of time that are required to be removed upon the expiration of such time.

Staff is of the opinion that the combination of the definitions, above, and the revised bonding provisions may provide the Town with protection from negative impacts related to temporary real estate offices. Staff also believes that its authority to approve, disapprove or revoke temporary use permits provide additional controls to not allow, minimize or discontinue any potential negative consequences associated with a temporary use permit request.

### **Planning and Zoning Board Recommendation**

At their January 15, 2019 meeting, the Planning and Zoning Board (P&Z Board) held a public hearing and considered Ordinance 2019-02. The P&Z Board voted 6-0 to recommend approval of Ordinance 2019-02, with the following amendments:

Notwithstanding the forgoing, temporary real estate sales offices may be allowed prior to construction and shall terminate on the date the certificate of occupancy is issued, for certain qualifying projects meeting all of the following criteria:

- i. The property exceeds ~~ten (10)~~ eight (8) acres;
- ii. The project has a minimum of ~~50~~ 40 multi-family units; and
- iii. The project has received approval, per a signed Development Order, Resolution, or Ordinance.

The Planning and Zoning Board recommended eight acres and 40 units, instead of ten acres and 50 multi-family units, in order to provide the option of a temporary sales use to more properties.

### **Staff Recommendation**

Forward Ordinance 2019-02 to the March 4, 2019 Regular Meeting for second reading and public hearing.

### **Attachments:**

- Ordinance 2019-02, Amending Section 158.142, Temporary Use and Structures
- Staff Report (provided to the Planning and Zoning Board)
- Zoning Text Amendment Application
- January 15, 2019 P&Z Board Minutes



**ORDINANCE 2019-02**

**AN ORDINANCE AMENDING CHAPTER 158: ZONING CODE OF THE CODE OF ORDINANCES OF THE TOWN OF LONGBOAT KEY, FLORIDA, AMENDING SECTION 158.006, DEFINITIONS; AMENDING THE CODE TO ESTABLISH DEFINITIONS FOR “TEMPORARY USE” AND “TEMPORARY STRUCTURES”; AMENDING SECTION 158.142, TEMPORARY USE AND STRUCTURES: PERMIT REQUIRED; AMENDING THE CODE TO ALLOW ON-SITE SALES AND PROMOTION OF RESIDENTIAL DWELLING UNITS TO OCCUR PRIOR TO CONSTRUCTION FOR CERTAIN QUALIFYING PROJECTS ON PROPERTIES THAT EXCEED A MINIMUM ACREAGE AND NUMBER OF MULTI-FAMILY UNITS; AMENDING CHAPTER 150: BUILDINGS CODE OF THE ORDINANCES OF THE TOWN OF LONGBOAT KEY, FLORIDA; AMENDING SECTION 150.19, SITE RESTORATION SECURED OBLIGATION, REQUIRED FOR CONSTRUCTION; AMENDING THE CODE TO ESTABLISH AN EXCEPTION TO THE PROHIBITION ON THE ISSUANCE OF TEMPORARY USE PERMITS PRIOR TO ISSUANCE OF A BUILDING PERMIT FOR CONSTRUCTION FOR CERTAIN QUALIFYING PROJECTS ON PROPERTIES THAT EXCEED A MINIMUM ACREAGE AND NUMBER OF MULTI-FAMILY UNITS; PROVIDING FOR ADDITIONAL BONDING REQUIREMENTS; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL OF ALL ORDINANCES IN CONFLICT HEREWITH; PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, Section 158.142, of the Town Zoning Code, allows for the permitting of temporary uses and structures; and

**WHEREAS**, the Town wants to be able to review, consider, approve, approve with conditions, or disapprove all proposed temporary uses and structures using established criteria; and

**WHEREAS**, Section 158.030 (C), of the Town Zoning Code, allows a fee simple owner of any property to make a written application for a change to a regulation of any provision of the Town Zoning Code; and

**WHEREAS**, Unicorp National Developments Inc. on behalf of Brandon Commons, L.L.C., Lake Brandon Shoppes, L.L.C., Metro Pointe, L.L.C., Metro Plaza, L.L.C., WPT Outparcel, L.L.C., CW Family, LLLP, CW Family, L.L.C., and Unicorp Acquisitions, L.L.C. (collectively hereinafter referred to as “Unicorp”) submitted an application for a Zoning Text Amendment on August 29, 2018; and

**WHEREAS**, Unicorp submitted in their application, on behalf of all these entities, warranty deeds evidencing property ownership within the Town of Longboat Key; and

**WHEREAS**, per Code Section 158.030 (C), Unicorp, a private property owner, requests to allow on-site sales and promotion of residential dwelling units to occur prior to construction; and

**WHEREAS**, the Planning and Zoning Board finds that the subject Zoning Code amendment is consistent with the Town of Longboat Key Comprehensive Plan.

**WHEREAS**, the Town's Planning and Zoning Board held a public hearing on January 15, 2019, and considered the evidence and testimony relating to the proposed text amendment provided by the private property owner, Town Staff and public comment regarding the subject zoning code amendment; and

**WHEREAS**, the Town's Planning and Zoning Board found that the proposed zoning text amendment is consistent with the Town of Longboat Key Comprehensive Plan and forwarded the zoning text amendment to the Town Commission for consideration; and

**WHEREAS**, on \_\_\_\_\_, 2019, the Town Commission conducted a duly noticed initial public hearing on the proposed Zoning Code amendment; and

**WHEREAS**, on \_\_\_\_\_, 2019, the Town Commission conducted a duly noticed second public hearing on the proposed Zoning Code amendment and the Town Commission approved the amendments.

**NOW, THEREFORE, BE IT ORDAINED** BY THE TOWN OF LONGBOAT KEY, FLORIDA, THAT:

SECTION 1. The above recitals are true and correct and are hereby incorporated fully by reference.

Section 2. Section 158.006, is hereby modified to read:

"Temporary Use." A non-permanent use which is established for a fixed and limited period of time with the requirement to discontinue such use upon the expiration of such time, and which does not involve the construction or alteration of any permanent structure.

"Temporary Structures." A non-permanent structure or structures which are placed on a site for a fixed and limited period of time that are required to be removed upon the expiration of such time.

Section 3. Section 158.142 (C)(4), is hereby modified to read:

Real estate development temporary uses for necessary commercial, promotional, storage and fabrication activities which occur during construction of the project and

which terminate on completion of the project. The following activities may be permitted under a temporary use permit on the real estate being developed for a period not in excess of six months, provided all setback requirements of the zoning code are met:

- (a) Model homes or apartments;
- (b) Real estate sales offices limited to the sales of dwelling units on those premises; and
- (c) Construction material and equipment storage.

Notwithstanding the forgoing, temporary real estate sales offices may be allowed prior to construction and shall terminate on the date the certificate of occupancy is issued, for certain qualifying projects meeting all of the following criteria:

- i. The property exceeds eight (8) acres;
- ii. The project has a minimum of 40 multi-family units; and
- iii. The project has received approval, per a signed Development Order, Resolution, or Ordinance.

SECTION 4. Section 150.19 (A)(2), is hereby modified to read:

(2) Except as provided in subsection (a), below, temporary use permits shall not be issued prior to issuance of a building permit for construction.

(a) Temporary use permits for real estate sales offices may be allowed prior to construction, subject to site restoration guarantee requirements in Section 150.19 (A) above, regardless of the cost of improvements, and shall terminate on the date the certificate of occupancy is issued, for certain qualifying projects meeting all of the following criteria:

- 1. The property exceeds eight (8) acres;
- 2. The project has a minimum of 40 multi-family units; and
- 3. The project has received approval, per a signed Development Order, Resolution, or Ordinance.

SECTION 5. 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 6. 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 7. Codification. This Ordinance shall be codified and made a part of the official Code of Ordinances of the Town of Longboat Key.

SECTION 8. 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 \_\_\_\_\_, 2019.

Adopted on second reading and public hearing the \_\_\_\_ day of \_\_\_\_\_, 2019.

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George L. Spoll, Mayor

ATTEST:

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Trish Shinkle, Town Clerk



## TOWN OF LONGBOAT KEY PLANNING AND ZONING STAFF REPORT

<b>Proposal:</b>	<b><u>Zoning Text Amendment (Privately-Initiated)</u></b>
<b>Applicant:</b>	Unicorp National Developments Inc.
<b>Landowner:</b>	Brandon Commons, L.L.C., Lake Brandon Shoppes, L.L.C., Metro Pointe, L.L.C., Metro Plaza, L.L.C., WPT Outparcel, L.L.C., CW Family, LLLP, CW Family, L.L.C., and Unicorp Acquisitions, L.L.C. (collectively hereinafter referred to as "Unicorp") - 1620 Gulf of Mexico Drive
<b>Application:</b>	Zoning Text Amendment pursuant to Section 158.030(C) of the Town Zoning Code.
<b>Public Hearing:</b>	Planning and Zoning Board
<b>Date and Time:</b>	<b>January 15, 2019, 9:00 am</b>
<b>Meeting Location:</b>	Town Hall Commission Chambers 501 Bay Isles Road Longboat Key, FL 34228

### **Application Request**

The applicant is seeking approval of a Zoning Text Amendment to Section 158.142(B)(4) (Temporary use and structures: permitted) and 150.19(A)(2) (Site restoration secured obligation, required for construction), that would allow for a specific Temporary Use, "Real estate sales offices," prior to construction of a project.

As currently codified in the Town Zoning Code, temporary real estate sales offices are permitted, "during construction of the project." The Code presently does not allow real estate development related Temporary Uses prior to construction.

### **Town Process**

The applicant has submitted a Zoning Text Amendment request, meeting the requirement set forth in Section 158.030 (Zoning amendments; review of planning and zoning board) of the Zoning Code.

Section 158.030 (C), of the Town Code provides for the filing and review of zoning amendments:

*Whenever the fee simple owner of any property desires a change in zoning classification, a change of the conditions or regulations of any district or any other provision of this chapter, he shall make written application to the planning and zoning official on a form as provided by the town staff together with full payment of an application fee as set forth by resolution of the town commission the written application to be signed by the owner or his agent. The application shall be accompanied by any necessary information or documentation supporting the request and shall be reviewed in accordance with the provisions of this chapter and the Charter.*

Based upon the mechanisms above, the Planning and Zoning Director received a Zoning Text Amendment application from fee simple owner, Unicorp, to change a provision of the Town's Land Development Code, Section 158.142. Pursuant to Code, the Planning and Zoning Board is required hold a public hearing on the proposed Zoning Text Amendment, with due public notice, and submit in writing its recommendation on the proposed change to the Town Commission for official action (see Section 158.030(B)). If the recommendation of the Planning and Zoning Board is adverse to the proposed change, such change cannot become effective except by an affirmative vote of 4 (four) members of the Town Commission. Following consideration by the Planning and Zoning Board on the proposed Zoning Text Amendment, this legislative matter will be forwarded onto the Town Commission for consideration.

#### Proposed Zoning Text Amendment

The applicant is proposing to add the underlined language, below, to Section 158.142(B)(4) (Temporary use and structures: permitted) of the Zoning Code:

*"158.142 - Temporary use and structures: permit required.*

*A) Temporary uses and structures are permitted in any zoning district subject to full payment of an application fee as set forth by resolution of the town commission and to the standards hereinafter established, provided that a permit for such use is obtained from the town.*

*B) Permitted temporary uses and structures included:*

*(1) Garage sales, provided that not more than two sales of three days each are conducted at any site during any one calendar year.*

*(2) Indoor and outdoor art and craft shows, bazaars, carnivals, revivals, circuses, sports events and exhibits, in all zoning districts except R-1SF, R-2SF, R-3SF, R-4SF, R-6SF, R-3MX, R-4MX and R-6MX districts, where such events may be approved only where special exceptions for nonprofit cultural centers, public/private preschools or elementary schools or child care services has been approved.*

- (3) *Christmas tree sales in all zoning districts except R-1SF, R-2SF, R-3SF, R-4SF, R-6SF, R-3MX, R-4MX and R-6MX districts, where such events may be approved only where special exceptions for nonprofit cultural centers, public/private preschools or elementary schools or child care services have been approved and provided that such use shall not exceed 60 days.*
- (4) *Real estate development temporary uses for necessary commercial, promotional, storage and fabrication activities which occur during construction of the project and which terminate on completion of the project. The following activities may be permitted under a temporary use permit on the real estate being developed for a period not in excess of six months, provided all setback requirements of the zoning code are met:*
- (a) *Model homes or apartments;*
  - (b) *Real estate sales offices limited to the sales of dwelling units on those premises; and*
  - (c) *Construction material and equipment storage.*
- Notwithstanding the forgoing, temporary real estate sales offices may be allowed prior to construction and shall terminate on the date the certificate of occupancy is issued, for certain qualifying projects meeting all of the following criteria:*
- i. The property exceeds ten (10) acres;*
  - ii. The project has a minimum of 50 multi-family units; and*
  - iii. The project has received approval, per a signed Development Order, Resolution, or Ordinance.*
- (5) *Other temporary uses and structures which are, in the opinion of the planning and zoning official, consistent with the provisions of this section.*
- C) *The applicant for a temporary use permit shall present a written explanation and/or plans indicating the area in which the temporary use permit is to apply, the nature of the activities which will occur, and the time for which the temporary use permit is requested. The application shall be submitted to the planning and zoning official or designee. The application shall be granted, granted with suitable conditions, stipulations and safeguards, or denied. Prior to granting a temporary use permit, the planning and zoning official or designee shall ensure that any nuisance or hazardous feature involved is suitably separated from adjacent uses and excessive vehicular parking problems will not be created. Each temporary use permit shall be granted for a specific period of time, at the end of which, if the use permitted as a temporary use has not been discontinued, it shall be deemed a violation of this Code and subject to the penalties provided for in section 158.049.*

The applicant is also proposing to add the underlined language, below, to Section 150.19 (A)(2) (Site restoration secured obligation, required for construction) of the Zoning Code:

*(A) At least ten days prior to the time an application is made for a building permit for any buildings or structures to be constructed within the town, the applicant shall deliver to the town a cash bond or irrevocable letter of credit in a form satisfactory to the town attorney in the sum of \$2,500.00, plus two percent of the cost of construction of the entire building as indicated on the application for building permit. No site restoration cash bond, or irrevocable letter of credit shall be required for any project for which the costs of improvements do not exceed \$75,000.00; for the construction of any single-family residence, or town-owned government facilities or any governmental facilities to be owned or constructed by the town. The cash bond or irrevocable letter of credit shall guarantee that the site will be either promptly restored to its original state so far as is possible in the event the construction is abandoned or the site secured in order to protect the health, safety, and welfare of the town and its inhabitants. In default thereof, the amount of the security shall be paid, on demand, to the town for its use in effecting the restoration or to secure the building site. Construction shall be deemed to have been abandoned if the applicant, or his successors or assigns, so notifies the planning, zoning and building department, in writing, or if work on the premises ceases prior to the completion of the improvement and is not resumed within 30 days of the expiration or revocation of the building permit. The cash bond or irrevocable letter of credit shall have an expiration date at least one year after the expected construction completion date as reflected on the building permit application.*

*(1) Permits for tree removal, clearing of the land (except debrushing), excavation, grading or installation of utilities shall not be issued nor undertaken in areas beyond the limits of the area necessary for the construction of the building for which a permit has been issued. The building official shall determine, in writing, the limits of the area necessary for the satisfactory completion of the permitted work, and such determination shall be deemed a condition of the permit. The necessary construction area shall be fenced to avoid damage to other areas.*

*(2) Except as provided in subsection (a), below, temporary use permits shall not be issued prior to issuance of a building permit for construction.*

*(a) Temporary use permits for real estate sales offices may be allowed prior to construction, subject to site restoration quarantee requirements in Section 150.19 (A) above, regardless of the cost of improvements, and shall terminate on the date the certificate of occupancy is issued, for certain qualifying projects meeting all of the following criteria:*

- 1. The property exceeds ten (10) acres;*
- 2. The project has a minimum of 50 multi-family units; and*



3. *The project has received approval, per a signed Development Order, Resolution, or Ordinance.*

### Background information

Section 158.142 (Temporary use and structures: permitted) contains the requirements for the placement of temporary structures on a property. The existing language does not allow for the placement of temporary structures, specifically real estate sales offices, prior to construction of the project. Construction of the project is deemed to commence when a Building Permit is issued. Section 150.30 (Building permit required) states,

*“No person shall erect or construct, or proceed with the erection of any building or structure, nor repair, add to, enlarge, move, improve, alter, convert, extend, or demolish any building or structure in the town, or cause the same to be done without first obtaining a building permit therefor from the building official.”*

The applicant has received Town approval to develop a St. Regis Resort and Residences at 1620 Gulf of Mexico Drive. The applicant is seeking a Zoning Text Amendment in order to allow for the construction of an on-site temporary sales center prior to construction of their particular project (St. Regis), however the proposed Zoning Text Amendment would apply townwide. The applicant’s primary reason for the proposed Zoning Text Amendment is that the proposed text amendment would provide the ability to market the property more effectively with an on-site sales trailer translating into a more accelerated sales pace before the applicant can obtain building permits (as set forth in Condition #15 of Resolution 2018-01 and Ordinance 2018-07), which would help to secure a construction loan to develop the property.

The applicant has also claimed that the existing code language is inconsistent with more typical current sales and marketing methods for resort developments. According to the applicant, the existing language prevents the sale of residential dwelling units prior to construction and delays the overall development and opening of the project.

### History

The Zoning Code has had the existing Temporary Use language since 1970. Ordinance 70-171 amended the Town Zoning Code and created regulations for temporary real estate offices. The existing language has not been revised since 1970. There is no record as to whether the Town specifically intended to prevent temporary real estate sales offices prior to construction for an identified purpose or to prevent undesirable consequences.

### Comparison of Similar Communities

Staff looked at three communities that are similar to Longboat Key, in order to compare temporary use regulations.

1. *The Town of Palm Beach* only allows for temporary storage units and temporary group permits. Temporary group permits are for the assemblage of persons. The Town of Palm Beach does not permit temporary real estate offices prior to construction.
2. *The Town of Jupiter Island* does not allow for any types of development related temporary uses prior to construction.
3. *The City of Naples* allows for certain types of temporary uses with no restriction addressing construction approval specifically. Temporary uses are approved by the City Manager. Section 46.39 of the City of Naples Code of Ordinances states,

*“(2) Real estate development projects. In the case of real estate development projects in any zoning district other than single-family residential, the developer may request a temporary use permit to permit necessary commercial, promotional, storage and construction activities which occur during construction of the project and which terminate upon completion of the project. The following activities may be permitted under the terms of such temporary use permit:*

*a. Real estate sales offices. Provided the developer or applicant owns the subject property, a temporary use permit may be issued for a period not to exceed 180 days prior to the issuance of construction permits for an on-site sales office. The sales office may be used only for the sale of units to be built on the subject site. Upon the termination of the 180-day period, an application may be filed for an extension of the permit for a period not to exceed 90 days.”*

### Staff Analysis

Section 158.002 (A) (Purpose) states that the purpose of the Zoning Code is:

*“to establish comprehensive controls for the development of land in the town based on the comprehensive plan, as defined in chapter 160, and designed to preserve the unique island character of the town and enacted in order to protect, promote and improve the public health, safety, comfort, order, appearance, convenience, morals and general welfare of the people; and to use and strengthen the town's role in establishing and implementing the comprehensive planning process in order to protect natural and man-made resources and to maintain, through orderly growth and development, the character and stability of present and future land use and community development.”*

The proposed Zoning Text Amendment would allow the construction of temporary real estate sales offices prior to construction of a project. The existing regulations set forth in Section 158.142 (Temporary use and structures: permitted) can be viewed as representing an intent to protect and maintain the Town’s character by limiting over-development , the impacts

associated with development and preserving aesthetics. Allowing a temporary use prior to construction could possibly extend the timeframe in which a sales trailer will be on a site and any associated impacts from that temporary use. The limitation on restricting real estate sales offices, prior to construction of a project, appears to align with the Town's intent of promoting orderly growth and development by prohibiting development related activity prior to construction approval.

The Code has other associated regulations that deal with potential impacts from development in which development follows a specific order of approval process that includes restrictions on temporary uses being allowed prior to receiving construction approval associated with site restoration bonds. In furtherance of this finding, Section 150.19 (A)(2) (Site restoration secured obligation, required for construction) states,

*“Temporary use permits shall not be issued prior to issuance of a building permit for construction.”*

The purpose of Section 150.19 (A)(2) (Site restoration secured obligation, required for construction) is to require a cash bond or irrevocable letter of credit in order to guarantee that *“the site will be either promptly restored to its original state so far as is possible in the event the construction is abandoned or the site secured in order to protect the health, safety, and welfare of the town and its inhabitants.”*

The bond or irrevocable letter of credit is due at least ten days prior to the time an application is made for a building permit. Thus, the code prohibits the issuance of any temporary use permits prior to the issuance of a building permit to protect the Town and end consumer from work that may not be completed or otherwise impacting the Town when not receiving the bond. The objective of this existing requirement can be viewed that the Town is maintaining orderly development by limiting work on sites prior to receiving a bond, to ensure that the safety and character of the Town are protected should construction be halted and unsafe conditions result.

There are some temporary uses that could require significant site work in order to place them on a site. For example, real estate offices may require water and sewer connections, along with access to parking, and the provision of landscaping. The requirement for a Site Restoration Bond protects the Town by prohibiting major work on the site until all bonds are secured.

The applicant has proposed to amend Section 150.19 by providing an exception for projects that exceed a minimum acreage and number of multi-family units. The amendment would maintain existing protections provided to the Town from potential site work prior to building permit and associated bonding. Staff has also included language that would require a temporary sales trailer to obtain a bond, regardless of the cost of improvements. This additional requirement would provide the Town with authority to require site restoration bonds for a temporary real estate sales office.

Comprehensive Plan Consistency

The Zoning Text Amendment has been evaluated for consistency with the Comprehensive Plan. The following Comprehensive Plan Elements have been evaluated for consistency with the proposed project:

- Future Land Use (FLU) Element

COMPREHENSIVE PLAN GOAL, OBJECTIVE AND POLICY	STAFF EVALUATION
<p>1. FLU Goal 1. To preserve and enhance the character of the Town of Longboat Key by the following:</p> <p>1) ensuring that the location, density, intensity, and character of 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</p> <p>2) maintaining an environment that is conducive to the health, safety, welfare, and property values of the community.</p>	<p>As stated above, there are a number of policies that have retained an environment that is conducive to the health, safety, welfare and property values of the community.</p> <p>The proposed amendment would maintain the requirements that may be seen to protect the Town from disorderly development for projects that qualify for a temporary use permit. The proposed amendment may not have a negative impact on the Town’s character in some cases.</p>

Staff Recommendation

Based upon the analysis above, Staff is of the opinion that the proposed Zoning Text Amendment is not directly supported by the Goal and Policies noted above. It would, however, not be inconsistent with Goal and Policies noted above. The proposed Zoning Text Amendment would allow for temporary on-site sales and promotion of residential dwelling units prior to construction of a project. The prohibition on the temporary uses prior to construction can be viewed as being consistent with the Town’s policies to maintain character while promoting orderly development. Alternatively, the prohibition on temporary uses prior to construction may not be consistent with current economic conditions and marketing practices. It should be noted that the ability to open a temporary real estate office sales office is not prohibited, however, because there are commercial spaces that exist throughout the Town where such an office could locate. The existing prohibition only applies to on-site facilities. Furthermore, there are no Code provisions that would prohibit visiting the site prior to construction. The

combination of an off-site office, site visits and marketing could be seen as potential ways to mitigate the inability to open an on-site real estate sales center.

Whether to accept, modify or reject the proposed Zoning Text Amendment is a legislative Town Commission policy decision. As mentioned above, the proposed Zoning Text Amendment would allow temporary on-site sales and promotion of residential dwelling units prior to construction of a project, as long as zoning approvals are in place.

It should be noted, this proposed Zoning Text Amendment applies town-wide and not only to the applicant's property. Staff is of the opinion that a definition of "Temporary Use" and "Temporary Structures" should be included in the Zoning Code, in order to provide a clear understanding of the meaning of temporary uses and structures. The following definitions are proposed:

*"Temporary Use." A non-permanent use which is established for a fixed and limited period of time with the requirement to discontinue such use upon the expiration of such time, and which does not involve the construction or alteration of any permanent structure.*

*"Temporary Structures." A non-permanent structure or structures which are placed on a site for a fixed and limited period of time that are required to be removed upon the expiration of such time.*

Staff is of the opinion that the combination of the definitions, above, and the revised bonding provisions may provide the Town with protection from negative impacts related to temporary real estate offices.

Based upon the analysis of the proposed Zoning Text Amendment and the additions of definitions, Staff recommends **APPROVAL** of an amendment to Section 158.142 and 150.19, as proposed.

NOTE: If the Town Commission approves the proposed Zoning Text Amendment, the Town would also need to amend Section 150.19 (Site restoration secured obligation, required for construction) to ensure consistency throughout the Code of Ordinances.



**Planning, Zoning & Building Department** (941) 316-1966  
**501 Bay Isles Road**  
**Longboat Key, Florida 34228**  
**Fax Number: (941) 373-7938**  
**Web: <http://www.longboatkey.org>**

## APPLICATION FOR ZONING CODE AMENDMENT

Date Filed: 12/14/18

Receipt #: 10106  
(\$3,000 deposit from which a \$900.00 filing fee and applicable charges will be billed)

**THE APPLICANT IS REQUIRED TO SUBMIT TWENTY-FIVE (25) (ORIGINAL PLUS TWENTY-FOUR (24) COPIES) INDIVIDUAL, COLLATED SETS OF THIS APPLICATION, SUPPORTING PLANS AND DOCUMENTS.**

(I) (We) Entities identified on attached sheet of 1620 Gulf of Mexico Drive, Longboat Key, FL 34228  
(name) (mailing address)  
(portion as described in the attached legal descriptions) request a zoning code amendment.

PLEASE PROVIDE THE FOLLOWING FOR EACH SECTION OF THE ZONING CODE FOR WHICH AN AMENDMENT IS REQUESTED:

1. Specify the exact section of the Town Zoning Code requested for amendment.
2. State the proposed amendment language. If appropriate, a proposed amendment involving text change should include the impacted code section in legislative format (proposed additions underlined and proposed deletions ~~struck through~~).
3. State the reason why the subject section of the code should be amended. Include not only what benefit the proposed code amendment would have to the applicant (specific project or parcel impact), but also possible town-wide benefits.
4. State why the existing code is invalid or inappropriate.
5. List the goals, objectives and policies from the Town's Comprehensive Plan with which the proposed amendment is consistent. Justification as to how or why the proposed amendment is consistent with the cited portion of the comprehensive plan shall be stated.
6. Submit statistics, studies, background data, and/or analysis in support of the modifications as well as how the proposed regulations will be enforced by the Town of Longboat Key, if applicable.

### CERTIFICATION

I hereby certify that I have read and examined this application and know the same to be true and correct. All provisions of laws and ordinances governing the subject type of development will be complied with whether specified herein or not. Furthermore, I acknowledge that the Town of Longboat Key has the right to inspect the subject property in conjunction with this Zoning Code amendment application. (Please advise the Town of any restrictions or limitations on the inspections.)

( I ) ( WE ) understand that this Petition becomes a part of the permanent records of the Planning, Zoning and Building Department. ( I ) ( WE ) hereby certify that the above statements and the statements or showings made in any paper or plans submitted herein are true to the best of (my) (our) knowledge and belief.



  
\_\_\_\_\_  
(Signature of Owner)

See entities identified on attached sheet

\_\_\_\_\_  
(Please print or type Owner's Name)

Mailing address you wish information sent to and telephone number:

Unicorp National Developments, Inc.

\_\_\_\_\_  
7940 Via Dellagio Way, Suite 200

\_\_\_\_\_  
Orlando, FL 32819

Phone # 407-999-9985

Fax # \_\_\_\_\_

E-Mail (Optional) \_\_\_\_\_

\_\_\_\_\_  
The Owner has hereby designated the above signed person to act as his agent in regard to this Petition. (To be executed when Owner designates another to act on his behalf.)

\_\_\_\_\_  
Print or type Agent Name

\_\_\_\_\_  
Agent Address

\_\_\_\_\_  
Phone # \_\_\_\_\_

Fax # \_\_\_\_\_

E-Mail (Optional) \_\_\_\_\_

**Notarization of Agent's Signature:**

State of Florida

County of Orange

The foregoing instrument was acknowledged before me this 13<sup>th</sup> day of December, 2018

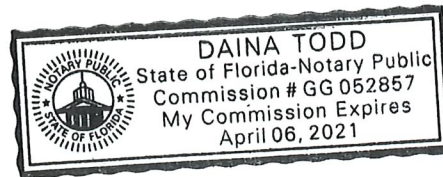
by Charles Whittall

as Manager for Entities identified on attached sheet  
(type of authority) (name of party acting on behalf of)

Daina Todd  
\_\_\_\_\_  
Notary Public

**Daina Todd**

\_\_\_\_\_  
Name of Notary (print, typed or stamped)



Personally know  OR produced identification  Type of Identification \_\_\_\_\_

**At the conclusion of your zoning code amendment by the Town, you will be billed for additional staff time, Town Attorney cost, cost of advertising, and any other miscellaneous costs incurred with the processing of your application(s). Applicants will be invoiced within 30 days of final determination.**



Town of Longboat Key  
 Planning Zoning Building  
 501 Bay Isles Road  
 Longboat Key, FL 34228

**Property Owner Affidavit**

Authorized Agent

941-316-1966  
 941-316-1970 FAX

(I)(W) (Entities identified on attached sheet), as owner(s) of the property whose address and legal description is 1620 Gulf of Mexico Drive Longboat Key Florida 34228 Drive, hereby appoint George Giebel /Unicorp National Developments Inc. our \_\_\_\_\_ agent(s) to act on (my)(our) behalf for the request set forth below. (I)(we) understand that the agent may incur costs and expenses on our behalf in connection with (my)(our) request and agree to pay those fees and expenses in accordance with the Code of Ordinances of the Town of Longboat Key.

The nature of (my)(our) request is: Zoning Code Amendment  
 (Variance, Zoning Determination, Special Exception, Permitting, etc.)

*If this Affidavit is for an Association, please provide a copy of the Board Meeting minutes / authorization allowing the work to be completed.*

\_\_\_\_\_  
 See entities identified on attached sheet  
 Print or Type Property Owner's/Board Member

\_\_\_\_\_  
 Signature of Property Owner/Board Member

Charles Whittall  
 Print or Type Property Owner's Name/Board Member

\_\_\_\_\_  
 Signature of Property Owner/Board Member

**Mailing Address of Property Owner(s) / Association:**

7940 Via Dellagio Way- Suite 200, Orlando, Florida 32819

407-999-9985  
 Telephone Number of Property Owner(s)/Association

407-999-9961  
 Fax Number of Property Owner(s)/ Association

**Mailing Address of Agent(s):** 7940 Via Dellagio Way- Suite 200, Orlando, Florida 32819

407-999-9985  
 Telephone Number of Agent(s)

407-999-9961  
 Fax Number of Agent(s)

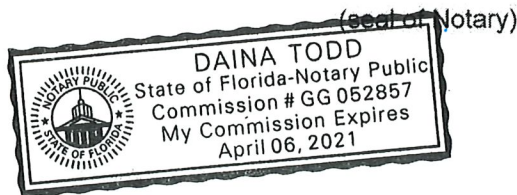
State of: Florida

County of: Orange

The foregoing instrument was acknowledged before me this 13<sup>th</sup> Day of December 2018, by Charles Whittall (name and title), who is personally known to me or who has produced \_\_\_\_\_ as identification.

Daina Todd  
 Signature of Notary  
**Daina Todd**

\_\_\_\_\_  
 Print Name of Notary



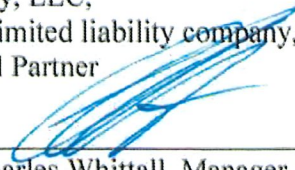


List of Entities with Ownership Interest in  
1620 Gulf of Mexico Drive, Longboat Key, Florida 34228

Brandon Commons, L.L.C., a Florida limited liability company;  
Lake Brandon Shoppes, L.L.C., a Florida limited liability company;  
Metro Pointe, L.L.C., a Florida limited liability company;  
Metro Plaza, L.L.C., a Florida limited liability company; and  
WPT Outparcel, L.L.C., a Florida limited liability company

By: CW Family, LLLP,  
a Florida limited liability limited partnership,  
as Manager of all the foregoing limited liability companies

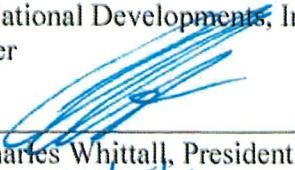
By: CW Family, LLC,  
a Florida limited liability company,  
its General Partner

By:   
\_\_\_\_\_  
Charles Whittall, Manager  
Date: 10/5/18

Unicorp Colony Units, LLC, a Florida limited liability company

By: Unicorp Acquisitions, LLC, a Florida limited liability company,  
its Manager

By: Unicorp National Developments, Inc., a Florida corporation  
its Manager

By:   
\_\_\_\_\_  
Charles Whittall, President  
Date: 10/5/18

## Legal Description

### PARCEL 1:

#### Parcel A

Begin at a point on the North line of U.S. Government Lot 4 in Section 17, Township 36 South, Range 17 East, Sarasota County, Florida, 613.5 feet West of the Northeast corner of said Lot 4, said point being in the center of the John Ringling Parkway pavement; thence South 46 deg West 996.0 feet; thence South 44 deg East, 364.68 feet; thence North 46 deg East, 46.03 feet to the principal PLACE OF BEGINNING; thence along the arc of a curve deflecting left an arc distance of 148.35 feet; thence chord of which bears South 31 deg 49 min 36 sec East, a chord distance of 120.63 feet, said curve having a radius of 68.00 feet; thence along the arc of a curve deflecting to the left an arc distance of 87.65 feet, the chord of which bears North 4 deg 28 min 24 sec East, a chord distance of 61.24 feet; said curve having a radius of 31.00 feet; thence along the arc of a curve deflecting to the right an arc distance of 49.43 feet, the chord which of bears North 47 deg 01 min 36 sec West, a chord distance of 47.27 feet; said curve having a radius of 48.00 feet; thence North 74 deg 31 min 36 sec West, 36.46 feet to the principal PLACE OF BEGINNING.

#### Parcel B

Begin at a point on the North line of U.S. Government Lot 4 in Section 17, Township 36 South, Range 17 East, Sarasota County, Florida, 613.5 feet West of the Northeast corner of said Lot 4, said point being in the center of the John Ringling Parkway pavement; thence South 46 deg West, 50.00 feet to the West right-of-way line of said Parkway (Gulf of Mexico Drive); thence South 44 deg East, 590.00 feet along the West right-of-way line of said Parkway (Gulf of Mexico Drive) to the principal PLACE OF BEGINNING; thence South 46 deg West, 165.00 feet; thence South 44 deg East, 190.00 feet; thence North 46 deg East, 165.00 feet; thence North 44 deg West, 190.00 feet to the principal PLACE OF BEGINNING.

#### Parcel C

Begin on the North line of U.S. Government Lot 4 in Section 17, Township 36 South, Range 17 East, Sarasota County, Florida, 613.5 feet West of the Northeast corner of said Lot 4, said point being in the center of the John Ringling Parkway pavement; thence South 46 deg West, 50.00 feet to the West right-of-way line of said parkway (Gulf of Mexico Drive); thence South 44 deg East, 155.00 feet along the West right-of-way line of said Parkway (Gulf of Mexico Drive); thence South 46 deg West, 120.91 feet; thence South 44 deg East, 65.00 feet; thence South 46 deg West, 90.93 feet; thence South 44 deg East, 62.00 feet; thence South 46 deg West, 50.00 feet to the principal PLACE OF BEGINNING; thence continuing South 46 deg West, 325.00 feet; thence North 44 deg West, 20.00 feet; thence South 46 deg West, 60.00 feet; thence South 44 deg East, 159.00 feet; thence North 46 deg East, 60.00 feet; thence North 44 deg West, 20.00 feet; thence North 46 deg East, 325.00 feet; thence North 44 deg West, 119.00 feet to the principal PLACE OF BEGINNING.



Parcel D

Begin at a point on the North line of Government Lot 4 in Section 17, Township 36 South, Range 17 East, Sarasota County, Florida, 613.5 feet West of the Northeast corner of said Lot 4, said point being in the center of the John Ringling Parkway pavement; thence South 46 deg West, 50.00 feet to the West right-of-way line of said Parkway (Gulf of Mexico Drive); thence South 44 deg East, 155.00 feet along the West right-of-way line of said Parkway (Gulf of Mexico Drive) to the principal PLACE OF BEGINNING; thence South 46 deg West, 120.91 feet; thence South 44 deg East, 65.00 feet; thence South 46 deg West, 90.93 feet; thence South 44 deg East, 245.00 feet; thence North 46 deg East, 90.93 feet; thence North 44 deg West, 65.00 feet; thence North 46 deg East, 120.91 feet to a point on the West right-of-way line of said Parkway (Gulf of Mexico Drive); thence North 44 deg West, 245.00 feet to the principal PLACE OF BEGINNING.

Parcel E

Locker Room Unit B and Meeting Room and Club House Unit D of COLONY BEACH & TENNIS CLUB, a Condominium according to the Declaration thereof recorded in Official Records Book 1025, Pages 200 through 277, inclusive, and as per Condominium Plat Book 7, Pages 12 through 12F, inclusive, public records of Sarasota County, Florida, together with all appurtenances thereto.

PARCEL 2:

Unit A, also known as Bar and Restaurant of COLONY BEACH & TENNIS CLUB, a Condominium according to the Declaration thereof recorded in Official Records Book 1025, Pages 200 through 277, inclusive, and as per Condominium Plat Book 7, Pages 12 through 12F, inclusive, and amendments thereto, public records of Sarasota County, Florida.

PARCEL 3:

Penthouse Unit 501 of COLONY BEACH & TENNIS CLUB, a Condominium according to the Declaration thereof recorded in Official Records Book 1025, Pages 200 through 277, inclusive, and as per Condominium Plat Book 7, Pages 12 through 12F, inclusive, and amendments thereto, public records of Sarasota County, Florida.

PARCEL 4:

Units F and G of COLONY BEACH & TENNIS CLUB, a Condominium according to the Declaration thereof recorded in Official Records Book 1025, Pages 200 through 277, inclusive, and as per Condominium Plat Book 7, Pages 12 through 12F, inclusive, and amendments thereto, public records of Sarasota County, Florida.

**UNITS OWNED BY [REDACTED] UNICORP COLONY UNITS, LLC**

	<u>UNIT NUMBER</u>	<u>VESTING DOCUMENT(S) RECORDED IN THE PUBLIC RECORDS OF SARASOTA COUNTY, FLORIDA</u>
1.	8-B	Warranty Deed recorded at Instrument #2016159884
2.	9-B	Warranty Deed recorded at Instrument #2017073892
3.	101-S	Warranty Deed recorded at Instrument #2016150353
4.	117-S	Warranty Deed recorded at Instrument #2017003512
5.	128-S	Warranty Deed recorded at Instrument #2015104644
6.	129-S	Warranty Deed recorded at Instrument #2017073891
7.	134-S	Warranty Deed recorded at Instrument #2017045587
8.	146-N	Warranty Deed recorded at Instrument #2014148645
9.	148-N	Warranty Deed recorded at Instrument #2016161154
10.	151-S	Warranty Deed recorded at Instrument #2017108494
11.	208-N	Warranty Deed recorded at Instrument #2017067714
12.	208-S	Limited Warranty Deed recorded at Instrument #2016160463
13.	210-N	Warranty Deed recorded at Instrument #2016152067
14.	214-S	Warranty Deed recorded at Instrument #2017028390
15.	217-S	Warranty Deed recorded at Instrument #2014154754
16.	220-N	Warranty Deed recorded at Instrument #2017063504
17.	220-S	Warranty Deed recorded at Instrument #2017041570
18.	224-S	Warranty Deed recorded at Instrument #2017067724
19.	231-N	Warranty Deed recorded at Instrument #2017027757
20.	234-S	Warranty Deed recorded at Instrument #2014145769
21.	236-S	Warranty Deed recorded at Instrument #2015004329
22.	238-S	Warranty Deed recorded at Instrument #2014122730
23.	239-S	Warranty Deed recorded at Instrument #2016160003
24.	240-S	Warranty Deed recorded at Instrument #2017067726
25.	245-S	Warranty Deed recorded at Instrument #2014148645
26.	248-N	Warranty Deed recorded at Instrument #2017041571
27.	248-S	Warranty Deed recorded at Instrument #2017141566
28.	250-S	Warranty Deed recorded at Instrument #2018036044
29.	255-S	Warranty Deed recorded at Instrument #2018074554



## Application for Zoning Code Amendment

Unicorp has provided the following for each section of the code for which an amendment is requested:

1. Specify the exact section of the code requested for amendment. 2. State the proposed amendment language. If appropriate, a proposed amendment involving text change should include the impacted code section in legislative format (proposed additions underlined and proposed deletions ~~struck through~~)

Unicorp is requesting amendment to two sections:

### Section 158.142 (B)(4)

(4) Real estate development temporary uses for necessary commercial, promotional, storage and fabrication activities which occur during construction of the project and which terminate on completion of the project. The following activities may be permitted under a temporary use permit on the real estate being developed for a period not in excess of six months, provided all setback requirements of the zoning code are met:

- (a) Model homes or apartments;
- (b) Real estate sales offices limited to the sales of dwelling units on those premises; and
- (c) Construction material and equipment storage.

Notwithstanding the forgoing, temporary real estate sales offices may be allowed prior to construction and shall terminate on the date the certificate of occupancy is issued, for certain qualifying projects meeting all of the following criteria:

- i. The property exceeds ten (10) acres;
- ii. ii. The project has a minimum of 50 multi-family units; and
- iii. iii. The project has received approval, per a signed Development Order, Resolution, or Ordinance.

### Section 150.19 (A)(2)

(2) Except as provided in subsection (a), below, temporary use permits shall not be issued prior to issuance of a building permit for construction.

(a) Temporary use permits for real estate sales offices may be allowed prior to construction and shall terminate on the date the certificate of occupancy is issued, for certain qualifying projects meeting all of the following criteria:

- 1. The property exceeds ten (10) acres;
- 2. The project has a minimum of 50 multi-family units; and
- 3. The project has received approval, per a signed Development Order, Resolution, or Ordinance.

**3. State the reason why the subject section of the code should be amended. Include not only what benefit the proposed code amendment would have to the applicant (specific project or parcel impact), but also possible town-wide benefits.**

a.) Section 158.142 should be amended as the current wording of the code does not allow an on-site sales center prior to construction. The existing code language has existed since 1970 and should be updated to reflect modern day financing and current sales and marketing methods relating to resort developments. It has been identified that Longboat Key will experience redevelopment. Attached is an analysis that identifies parcels of land on Longboat Key that would significantly benefit from this code change should those parcels undergo redevelopment. A key to successful developments is to allow for the installation of a temporary sales centre prior to construction.

Town-wide benefits of this code amendment:

1. Result in an accelerated sales pace for developers to secure a construction loan to develop the property
2. Allow faster pace pre-sales which facilitates construction loans from risk adverse lenders
3. Allow construction to start and complete as quickly as possible
4. Allow the town quicker receipt of taxes generated from the new development that can provide quicker receipt of benefits to the community
5. Accelerate the esthetics, increased value and other benefits from the projects offerings to the surrounding community

b.) Section 150.19 should be amended to be consistent with the wording for section 158.142.

**4. State why the existing code is invalid or inappropriate.**

a.) Section 158.142 existing language prevents the sale of on-site residential dwelling units prior to construction. Waiting until construction to put a sales center on-site significantly hinders the project's timeliness and potential for success especially for luxury, multiuse and larger projects.

With respect to future development, the current language presents challenges:

1. For securing a construction loan, a developer would need to begin pre-sales off-site
2. Off-site sales centers have significantly slowed sales pace than on-site sales centers
3. The slowed pace of pre-sales results in delays to achieve the threshold of pre-sales needed to secure construction loans. Delays are further amplified by the magnitude and size of the project
4. Delays extends the unsightly conditions of the property
5. Delays in projects result delays in receipt of future tax receipts to the Town of Longboat Key and the benefit to the towns community

b.) Section 150.19 should be amended to be consistent with the proposed amendment for section 158.142.

**5. List the goals, objectives, and policies from the Town's Comprehensive Plan with which the proposed amendment is consistent. Justification as to how or why the proposed amendment is consistent with the cited portion of the comprehensive plan shall be stated.**

Support for the goals, objectives and policies from the Town's Comprehensive Plan for which a.) Section 158.142 and b.) Section 150.19 proposed amendment is consistent:

- Continued orderly development is supported with the code amendment as pre-sales will need to be achieved before construction with off-site sales centers however, on-site sales centers before construction supports larger, multiuse and luxury projects from the increased sales pace of having an on-site sales center
- The impact of town to protect itself with bonds remains intact with a bond required for site restoration and a bond required for temporary permits
- Limiting over-development is supported with the code amendment as the redevelopment of properties will be to current density standards
- The code amendment assists in preserving aesthetics as aiding in the development process increases the likelihood of successful developments

**6. Submit statistics, studies, background data, and/or analysis in support of the modifications as well as how the proposed regulations will be enforced by the Town of Longboat Key, if applicable.**

See the attached power point presentation for statistics, studies and background data and analysis to support the proposed amendment.

# Proposal for a Zoning Text Amendment



UNICORP  
NATIONAL DEVELOPMENTS, INC.

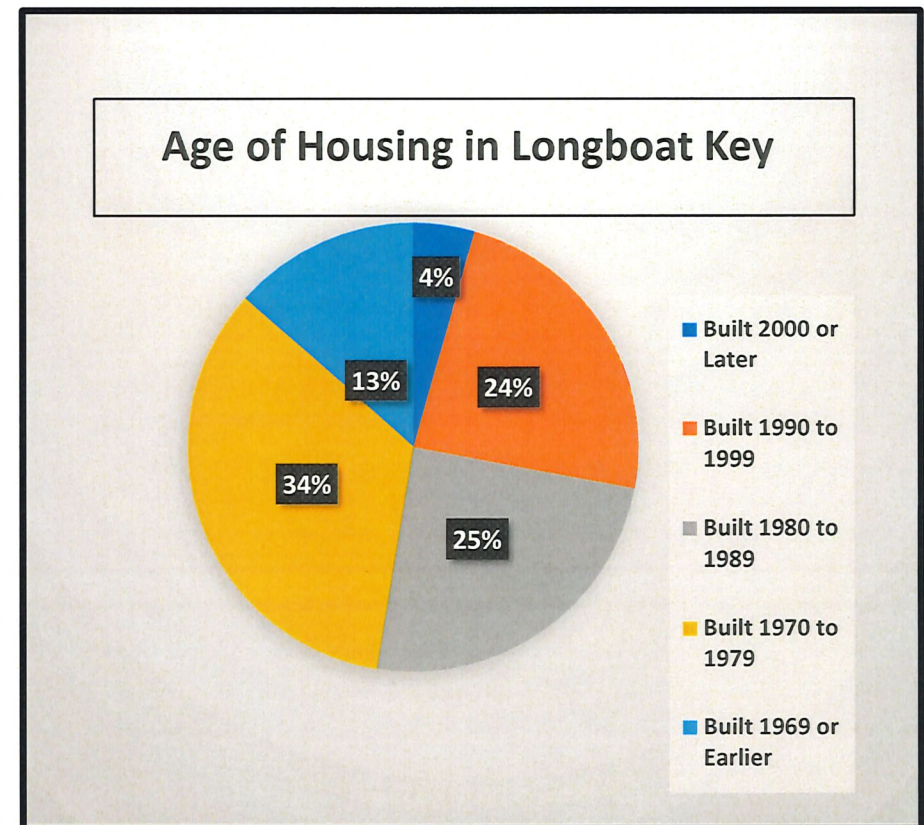


# Proposal for Amendment

- Unicorp National Developments, Inc. is reapplying through the Longboat Key Planning and Zoning Division following “Ordinance 2018-23 Privately Initiated Zoning Text Amendment, Proposed Revision to Allow for On-Site Real Estate Sales Offices Prior to Construction for properties greater than 40 units, Provided the Property is at least 40 Years Old or has been Destroyed beyond repair
- To allow for an on-site sales center prior to construction would be for the benefit of future developments that may be faced with similar constraints.

# Age of Housing in Longboat Key

- Unicorp has found that 47% of buildings in Longboat Key were built prior to 1980 making them 40 years or older
- Older buildings are subject to potential hurricane damage and non-conforming building standards as a result of their age



Source: US Census Bureau, 2007- 2001 American Community Survey



# Impact of Stringent Building Codes

## University of Florida Study 2005

- The study compared homes built before and after Florida's 2002 adoption of a Statewide Building Code & how they held up against Hurricanes Charley (Category 5), Frances (Category 4), Jeanne (Category 3), and Ivan (Category 3).
- The study concluded homes built under the 2002 Florida Building Code sustained less damage than homes built between 1994 and 2001. Homes built prior to 1994, meanwhile, fared much worse.
  - No state-wide uniform building code existed prior to 2002. Stringent code was enacted as a result of catastrophic damage by hurricane Andrew. As evidenced by the recent damage caused by hurricane Michael on Mexico Beach, practically all properties built prior to the 2002 statewide code were destroyed.

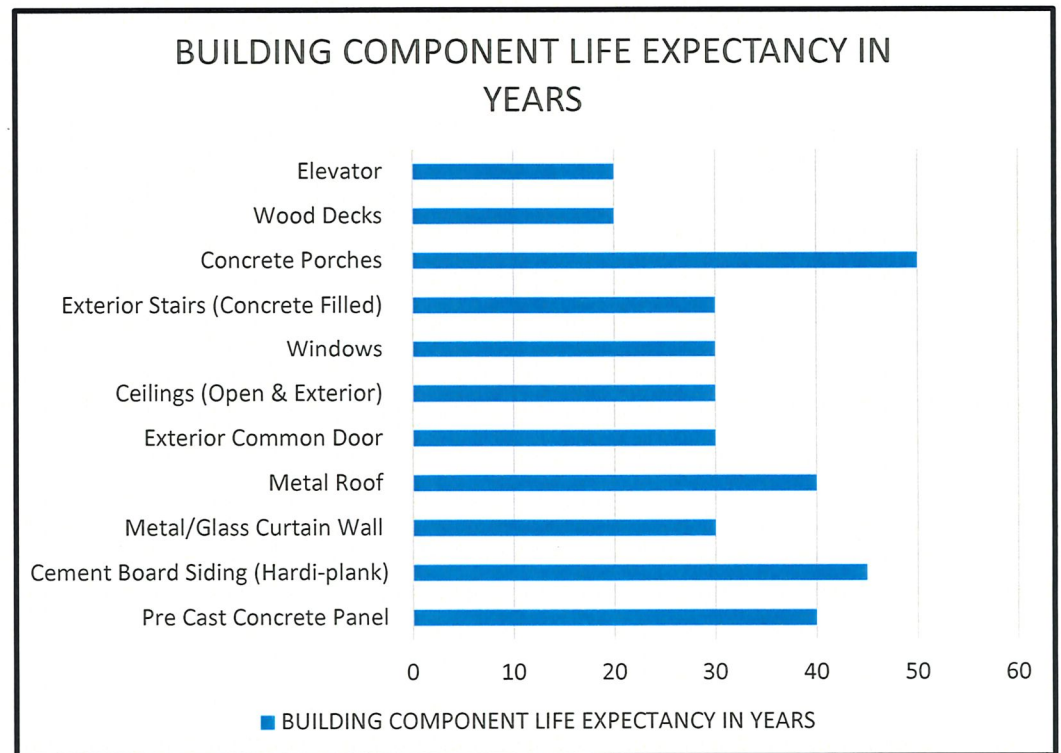


Source: <http://news.ufl.edu/archive/2005/06/research-florida-getting-better-at-protecting-homes-from-hurricanes.html>

# Building Life Expectancy

- Building component life expectancy can terminate at 50 years, per Fanny Mae

13% of the properties in Longboat Key are 50 years or older and 47% are 40 years or older

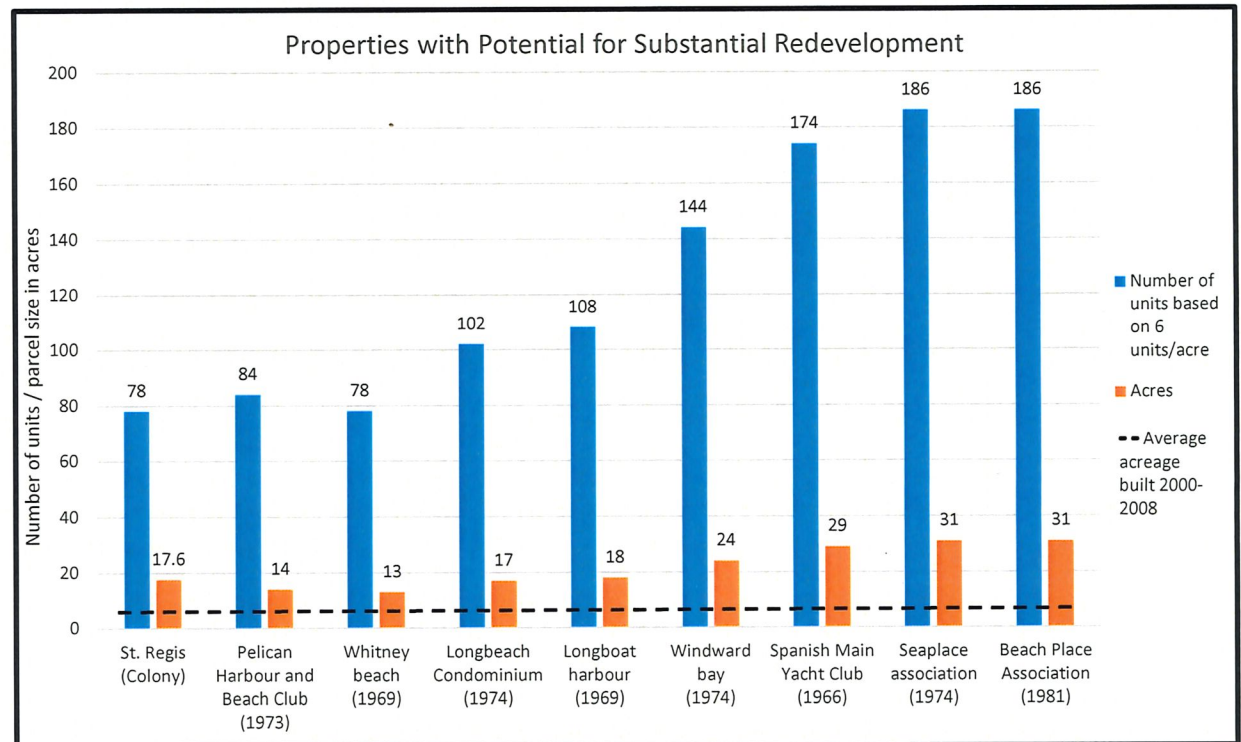


Source: Fannie Mae; [https://www.fanniemae.com/content/guide\\_form/4099f.pdf](https://www.fanniemae.com/content/guide_form/4099f.pdf)



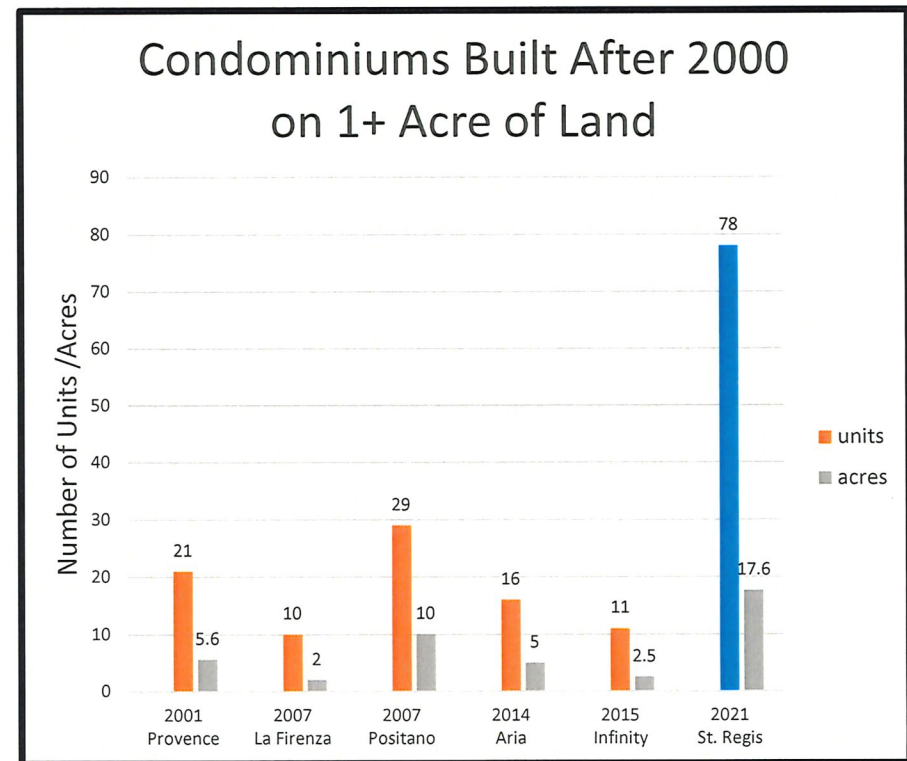
# Longboat Key Properties with Potential for Substantial Future Redevelopment

- The Colony property is one of several properties that meet the criteria
- Redevelopment of large existing properties could occur, forcing the need to have an on-site sales center due to financing requirements for presales

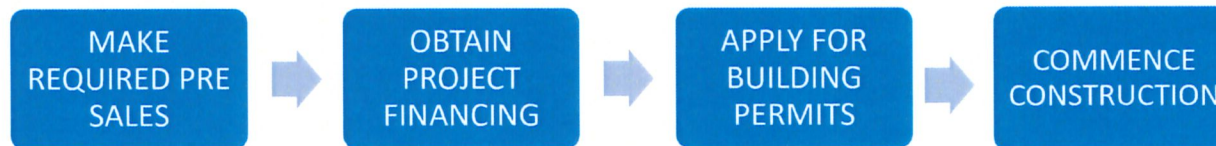


# New Build Condominiums on Longboat Key

- Between 2000 to 2018, only **87** units on Longboat Key have been developed on properties of 2 acres or more (an average of 17 units per development). Although pre-sales were required, these types of more conventional properties posed less risk to developers from an equity stand point due to lower thresholds of pre-sales



# Pre-Sales as it relates to Project Financing



- Condominium Construction Loan Financing requires a substantial amount of pre-sales (50%-60%)
- Condominium Construction Lenders must satisfy itself that if there is a material default in a condominium loan, the lender will be able to assume ownership of the project, complete construction, and ideally market & sell the condominiums.
- Prudent lenders must underwrite the deal as if it will exercise all remedies and become the developer.
- Lenders will NOT approve a condominium construction loan without a thorough analysis of whether the market accepts the project via pre-sales.
- A project cannot reach required pre-sales threshold, as quickly and successfully, if potential buyers are not able to physically discern quality of site of which they're buying into.
- Pre-sale contracts provide significant comfort to lenders that upon project completion, the loan will be quickly reduced by the sale of pre-sold units. Most lenders require 60% unit pre sales prior to providing financing.

# Pre-Sales as it relates to Project Financing

## Email from Prominent Florida Condominium Attorney

You are correct, a successful condominium development will require presales. Most construction lenders will typically require that at least 60% of the units in the development be presold before they will consider making a loan (and that the purchasers place significant deposits). These requirements are to make sure that the project has viability, which should also be a concern of the Town. The risk of having a vacant structure or a project that is not embraced by the community, is something that can be avoided with presales. Additionally, constructing a project without adequate presales leaves the lender vulnerable (since without presales, the developer's ability to repay a construction loan is significantly strained).

For the reasons listed above, having a project commence without presales is taking a significant unnecessary risk.

Gary

**Gary A. Saul**  
Shareholder

Greenberg Traurig, P.A.



# Importance of an On-Site Sales Center Prior to Construction

Michael Saunders & Company.  
LICENSED REAL ESTATE BROKER

December 11, 2018

Chuck Whittall  
President  
Unicorp Companies  
7940 Via Dellagio Way, Ste 200  
Orlando, FL 32819

Dear Chuck,

Our experience over forty-two years in marketing and selling new developments has proved that on-site sales centers are instrumental in creating momentum of sales. We could do a case study on all the communities on the attached list provided to you, which represents all the development communities where Michael Saunders & Company has been the exclusive marketing agent. Please note the asterisks indicating developments with on-site sales facilities. Over sixty percent of the total number of communities successfully marketed by Michael Saunders & Company had on-site sales facilities. The momentum of sales was far greater than those sold from an off-site sales facility under similar market conditions.

Simply put, in all cases where an on-site sales facility was in place, buyers were more motivated to purchase - not just in our market area, but in every market - and this is especially true in waterfront locations. The on-site sales facility is a must have from a standpoint of rapid effective marketing and sales. It is the number one request made to developers by all experienced sales and marketing firms.

A recent example of this involves two luxury developments on Longboat Key - Aria and Infinity. Although both are smaller in size, Aria with 16 units and Infinity with 11 units, both were launched on the market at approximately the same time with similar price points. What is very important to note, is that Aria had a dynamic on-site sales facility that was a converted villa on the beach. This allowed buyers a much more motivating experience as they could touch the sand, see the sunset and feel the gulf breeze at the place where they would live. On the other hand, Infinity had an off-site sales center, whereby the experience had to be recreated through video, floor plans and photographs. This approach was not as effective as evidenced by the strength of the Aria on-site sales experience. Aria sold-out at a much quicker pace; while Infinity took twice as long to sell-out.

[michaelsaunders.com](http://michaelsaunders.com)

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## • Key Notes

- Scope and magnitude of projects like St. Regis is critical to the sales of luxury condominiums
- Motivates prospective buyers as they can see the place where they will live
- Aria had an on-site sales center and sold twice as fast as Infinity's off-site sales center
- Developments with onsite sales centers have proven to be more successful with momentum of sales

# Importance of an On-Site Sales Center

The more residences in a development, the more important on-site sales facilities are to sales. In the case of The Residences on Longboat Key, St. Regis, on-site is critical. The prime location, the magic of Longboat Key, and the amount of drive-by traffic on Gulf of Mexico Drive all will attract the right buyers to this stunning five-star development.

It should be noted by the Commission, that although older, the following successful developments on Longboat Key all had on-site sales facilities:

Water Club  
Sanctuary  
L' Ambiance  
Fairway Bay  
Grand Bay  
Tangerine Bay  
Marina Bay  
Promenade  
Inn on the Beach  
(as well as others noted on the attached list)

It is an expectation of the buyer to have a total experience when making a buying decision, which can only be had on-site.

Warm regards,

  
Michael Saunders  
Founder & CEO

- Previous Longboat Key condominium developments with an on-site sales office
  - Water Club
  - Sanctuary
  - L' Ambiance
  - Fairway Bay
  - Grand Bay
  - Tangerine Bay
  - Marina Bay
  - Promenade
  - Inn on the Beach

# Importance of an On-Site Sales Center

## Michael Saunders & Company.

LICENSED REAL ESTATE BROKER

### New Developments Marketed Exclusively by Michael Saunders & Company

*Ainari at Rosemary Place	Island of Little Gasparilla	Promenade at Riverwalk
*Amberwind	Krytal Key	*Racino Ranches
Anchor Oaks	La Bellasera	Renaissance
*Arlton Oaks Sarasota	*Laguna Riviera Dunes	*Sandhill Lake
*Bayshore Royal (Tampa)	Lawrence Pointe	*Sandhill Point
*Beachwalk	Lido Shores	*Sarasota Bay Club
Beau Ciel	*Legends Bay	Seagrave
*Bel Mare	Longboat Sandpiper	*Giestas Estates
*Boca Giesta	*Mango Park	*Somerset Cay
*Burgundy Condominiums	*Mark Sarasota	Sugar Ridge
*Caroline	Marquee on Ville	*Summer Cove
Citus Square	*Meridian at the Oaks Preserve	*Terra Cota Golf & Tennis Club
*Conrad Beach	Mirabella at Village Green	*The Concession
*Coral Caye	*Oakford	The Phoenix
*Edgewater at Hidden Bay	*Oakley	The Reserve
*En Provence	*Old Hyde Park Village	*The Residences, Tower Residences and Beach Residences at The Ritz- Carlton, Sarasota
*Granada Park	One Hundred Central	The Ritz-Carlton Residences Sarasota
Grand Mariner	*Our House at the Beach	Tides Beach Club (St. Petersburg)
*Grand Oaks Venice	Palm Place	*Tid Islands
*Grand Oaks Preserve	*Palms Sola Bay Club	*Tiffany Plaza
*Gulfstream Villas Del Rey Beach	Palm Place	*Veranda Beach Club
*Hamilton Club	Pelitz Development at Oak Park	VUE Sarasota Bay
*Hammocks Cape Haze	Pelitz Development at Parkwood Lakes	*Vincy Place (St. Petersburg)
Harbour Villa Club	Penhurst	*Vista Bay Point
*Hidden Bay	*Pine Run	*Viscaya
Hudson Crossing	*Placida Harbour	*White Sands of Longboat Key
INFINITY Longboat Key	Plaza at Five Points	
Island Court Venice	Positano on the Gulf	
*Island of Don Pedro	*Promenade	

\*48 successful new developments marketed exclusively by Michael Saunders & Company with on-site sales facilities

# Importance of an On-Site Sales Center Before Construction

- Ability of having an on-site sales center prior to construction accelerates the overall development process by approximately 12 months.
  - Allows faster pace on pre-sales process which facilitates and accelerates construction loan from risk adverse lenders.
  - Accelerates the start of construction thereby reducing unsightly vacant land conditions
  - Allows the developer to minimize risk of putting the project on hold due lack of timely financing prior to securing required pre-sales
  - Provides the Town the ability to receive property tax benefits sooner

# Conclusion

It is evident from the facts brought forward that a large portion of the Longboat Key's properties have reached or will reach their life expectancy within the near future, whether it be from aging or in the event of a catastrophic storm. The proposed zoning text amendment will vastly aid in Longboat Key's impending redevelopment.





**Ordinance 2019-02**  
**Zoning Text Amendment**

Town Commission Public Hearing  
February 4, 2019



# Zoning Text Amendment Process

Application from Landowner, Unicorp National Development, to change a provision of the Town's Land Development Code, Section 158.142.

Planning and Zoning Board, holds a public hearing on the proposed zoning text amendment, with due public notice, and provides a recommendation on the proposed change to the Town Commission for official action.

If the decision of the Planning and Zoning Board is adverse to the proposed change, such change shall not become effective except by an affirmative vote of 4 members of the Town Commission.

Following consideration by the Planning and Zoning Board on the proposed zoning text amendment, this legislative matter will be forwarded onto the Town Commission for consideration. See, Section 158.030(B).



## Application Background

- Applicant is seeking a Zoning Text Amendment (ZTA) in order to allow for the construction of a (temporary use on-site temporary sales center) prior to construction of a project (St. Regis).
- ZTA would apply Town-wide
- Applicant has stated proposed ZTA would provide ability for a more accelerated sales pace (would help to secure a construction loan to develop the property).





## **Application Background, continued**

- Applicant indicated existing code language is inconsistent with current sales and marketing methods for resort developments.
- Applicant indicated existing language prevents the sale of residential dwelling units prior to construction and delays the overall development and opening of the project.



## Background

- Section 158.142 – Requirements for placement of temporary uses and structures on a property
- Existing language does not allow for the placement of temporary structures, specifically real estate sales offices, prior to construction of the project.
- Applicant has received Town approval to develop a St. Regis Resort and Residences at 1620 Gulf of Mexico Drive.



## Town Commission Background

- Prior application: Ordinance 2018-23
- Request to allow temporary sales trailers for properties that exceed ten acres/40 multi-family units/received project approval
- P&Z Board voted 6-0 to recommend denial
- Town Commission tabled Ordinance 2018-23 at their November 5, 2018 meeting
- Town Commission voted 4-3 to deny the ordinance at their December 3, 2018 meeting



## History

- **1970:** Temporary Use language adopted into Code
- Existing language has not been revised since 1970
- Unclear as to whether Town specifically intended to prevent temporary real estate sales offices prior to construction for an identified purpose or to prevent undesirable consequences.



## Application Request

*158.142 (B)(4) Real estate development temporary uses for necessary commercial, promotional, storage and fabrication activities which occur during construction of the project and which terminate on completion of the project. The following activities may be permitted under a temporary use permit on the real estate being developed for a period not in excess of six months, provided all setback requirements of the zoning code are met:*

- (a) Model homes or apartments;*
- (b) Real estate sales offices limited to the sales of dwelling units on those premises; and*
- (c) Construction material and equipment storage.*





## **Applicant Proposed Language (158.142)**

Notwithstanding the forgoing, temporary real estate sales offices may be allowed prior to construction and shall terminate on the date the certificate of occupancy is issued, for certain qualifying projects meeting all of the following criteria:



## Applicant Proposed Language (158.142)

- i. The property exceeds ten (10) acres;
- ii. The project has a minimum of 50 multi-family units; and
- iii. The project has received approval, per a signed Development Order, Resolution, or Ordinance.



## Town of Palm Beach

- Only allows temporary storage units and temporary group permits (for the assemblage of persons).
- Does not permit temporary real estate offices.







## Town of Jupiter Island



- Does not allow for any types of development related temporary uses.



## City of Naples



- Allows for certain types of temporary uses, including real estate sales offices. Temporary uses are approved by the City Manager.

*“Real estate sales offices. Provided the developer or applicant owns the subject property, a temporary use permit may be issued for a period not to exceed 180 days prior to the issuance of construction permits for an on-site sales office. The sales office may be used only for the sale of units to be built on the subject site. Upon the termination of the 180-day period, an application may be filed for an extension of the permit for a period not to exceed 90 days.”*





## Staff Analysis

### Purpose of Zoning Code (158.002 (A))

*“to establish **comprehensive controls** for the development of land in the town based on the comprehensive plan, as defined in chapter 160, and designed to **preserve the unique island character of the town** and enacted in order to **protect, promote and improve the public health, safety, comfort, order, appearance, convenience, morals and general welfare of the people; ...orderly growth and development...**”*



## Staff Analysis

- Proposed ZTA would allow the construction of temporary real estate sales offices prior to construction of a project.
- Existing regulations represent intent to protect and maintain the Town's character by limiting over-development and preserving aesthetics.
- Allowing temporary use prior to construction could possibly extend timeframe in which a sales use will be on site.



## Staff Analysis

- Purpose of cash bond or irrevocable letter of credit:  
*“the site will be either promptly restored to its original state so far as is possible in the event the construction is abandoned or the site secured in order to protect the health, safety, and welfare of the town and its inhabitants.”*
- Bond or irrevocable letter of credit due at least ten days prior to the time an application is made for a building permit.



## Staff Proposed Language (150.19(A)(2))

(2) Except as provided in subsection (a), below,  
temporary use permits shall not be issued prior to  
issuance of a building permit for construction.

(a) Temporary use permits for real estate sales offices  
may be allowed prior to construction, **subject to site  
restoration guarantee requirements in Sec. 150.19(A)  
above, regardless of the cost of improvements,** and  
shall terminate on the date the certificate of occupancy is  
issued, for certain qualifying projects meeting all of the  
following criteria:



## Applicant Proposed Criteria Language (150.19(A)(2))

1. The property exceeds ten (10) acres;
2. The project has a minimum of 50 multi-family units; and
3. The project has received approval, per a signed Development Order, Resolution, or Ordinance.





## Staff Analysis

- Larger-scale entitled developments can be adequately mitigated &/or restored via Bonding Provisions in the Building Code (>\$75,000).
- Additional language provided to require bonding for temporary real estate offices, regardless of construction costs, to protect Town from negative impacts.
- Proposed change would not be inconsistent with Goal and Policies.



## Staff Analysis

- Recommend additional definitions necessary for further clarification:
  1. “Temporary Use.” A non-permanent use which is established for a fixed and limited period of time with the requirement to discontinue such use upon the expiration of such time, and which does not involve the construction or alteration of any permanent structure.



## Staff Analysis

2. “Temporary Structures.” A non-permanent structure or structures which are placed on a site for a fixed and limited period of time that are required to be removed upon the expiration of such time.



## Recommendations

The Planning & Zoning Board unanimously recommended approval at their 1/15/19 meeting, with the following amendments:

- The property exceeds ten ~~(10)~~ **eight (8)** acres;
- The project has a minimum of ~~50~~ **40** multi-family unit



## Recommendations

Based upon the analysis of the proposed Zoning Text Amendment, Staff recommends **APPROVAL** of an amendment to Section 158.142 and 150.19, as proposed.





**End of Agenda Item**