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The Honorable George Spoll, Mayor
and Members of Town Commission
Town of Longboat Key
501 Bay Isles Road
Longboat Key, Florida 34228

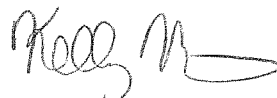
Re: Overview of Process for Challenging Land Development Regulations

Dear Mayor Spoll and Commissioners:

On July 14, 2010, the Islandside Property Owners Coalition, LLC ("Islandside") filed the attached Petition with the Department of Community Affairs ("DCA") alleging that amendments to the Town's Land Development Code adopted by Ordinance No. 2010-16 are inconsistent with the Town's Comprehensive Plan. DCA will soon notify the Town that it has received the Petition and provide it and Islandside an opportunity to present written and/or oral testimony. As part of the opportunity to provide testimony, DCA staff will likely hold a meeting with the parties locally. Pursuant to Section 163.3213(4), Florida Statutes, DCA should issue a written decision as to whether the amendments are consistent with the Town's Comprehensive Plan within 30-60 days after receiving the Petition.

Should you have any questions or wish further elaboration, please let me know.

Respectfully,



Kelly A. Martinson

cc: Bruce St. Denis, Town Manager
Monica Simpson, Planning, Zoning & Building Director
Trish Granger, Town Clerk

DEPARTMENT OF COMMUNITY AFFAIRS
STATE OF FLORIDA

ISLANDSIDE PROPERTY OWNERS
COALITION, LLC, a Florida limited liability company,

Petitioner,

DCA Case No.:

vs.

THE TOWN OF LONGBOAT KEY, FLORIDA,
a municipal corporation under the laws of the
State of Florida, and THE TOWN COMMISSION
OF THE TOWN OF LONGBOAT KEY, FLORIDA,
the local governing body of the Town,

Respondents.

PETITION CHALLENGING CONSISTENCY OF CERTAIN
AMENDMENTS TO A LOCAL GOVERNMENT'S LAND
DEVELOPMENT REGULATIONS WITH THE LOCAL GOVERNMENT'S
COMPREHENSIVE PLAN PURSUANT TO
§ 163.3213, FLORIDA STATUTES

The Petitioner, ISLANDSIDE PROPERTY OWNERS COALITION, LLC,
a Florida limited liability company (the "Petitioner"), by and through their
undersigned attorneys, petitions The Department of Community Affairs of the
State of Florida (the "Agency") pursuant to Subsection 163.3213(4), Florida
Statutes, and alleges:

NATURE OF PETITION

1. This is a Petition for relief pursuant to Subsection 163.3213(4), Florida Statutes, that challenges certain recently adopted amendments to the land development regulations of the Town of Longboat Key, Florida (the "Town") on the basis they are inconsistent with the Comprehensive Plan of the Town.

JURISDICTION

2. The jurisdiction of the Agency over this Petition, and subsequently the jurisdiction of the Division of Administrative Hearings ("DOAH"), the Florida Administration Commission and the Florida judiciary is based upon and granted by Section 163.3213, Florida Statutes.

PARTIES

3. The Petitioner is an active Florida limited liability company in good standing with the State of Florida.

4. IPOC is represented in these proceedings by Michael J. Furen, Esq. and Robert K. Lincoln, Esq. of Icard, Merrill, Cullis, Timm, Furen & Ginsburg, P.A., 2033 Main Street, Suite 600, Sarasota, Florida 34237.

5. The Petitioner and its members are "substantially affected persons" as defined by Section 163.3213(2)(a), Florida Statutes.

6. Each member of IPOC is either a homeowners association or condominium association, who manages and operates a residential development that is located within the land area commonly known as the "GPD" or "Longboat Key Club-Islandside" or that is immediately adjacent to it. Several of the associations that are members of IPOC also own property within the GPD in their own name. As condominium associations or homeowners associations, IPOCs members are authorized to represent the common interests of their members, including the right to appoint agents and to sue or be sued.

7. Each of the residential developments represented by the IPOC's members is required to be a part of the Longboat Key Association, Inc., a Florida non-profit corporation, (also known as the "Road Association"), and is subject to assessments by the Road Association for the maintenance, repair and replacement of Longboat Club Road, a private road that provides the primary means of access to and from all development within the GPD, and that will be materially and directly impacted by the Amendments as hereinafter defined and the development that the Amendments were intended to permit.

8. Article 2 of the Articles of Organization of the Petitioner setting forth the purpose and powers of the Petitioner provides:

"The purpose for which the Company is organized is to transact all lawful business as a not for profit "business", to serve as agent for the participating property

owners' Associations regarding any and all matters directly related or incidental to the residents of Islandside Gulf Planned Development ("GPD"), including, without limitation, any and all land use and/or zoning matters affecting the residents, the participating Associations and/or the Longboat Key Club or GPD, and to engage in such other lawful activities as are reasonably necessary, convenient, or incidental to that purpose."

9. The Respondent Town is a municipal corporation under the laws of the State of Florida, and exercises governmental, corporate and proprietary powers pursuant to Section 2(b), Article VIII, of the Constitution of the State of Florida, and, its charter, adopted pursuant to Part I, Chapter 166, Florida Statutes. The Town is also a "local government" under the "Local Government Comprehensive Planning and Land Development Regulation Act", Part II, Chapter 163, Florida Statutes.

10. The Respondent Town Commission is the legislative or governing body of the Town pursuant to the Town's municipal charter, Part II, Chapter 163, Florida Statutes and Part I, Chapter 166, Florida Statutes.

LONGBOAT KEY CLUB - ISLANDSIDE

11. The lands comprising the Longboat Key Club-Islandside are designated "GPD" (Gulf Planned Development) under the Town's Comprehensive

Plan (the "Plan") and are zoned "GPD" (Gulf Planned Development) under the Town's Land Development Code (the "LDC").

12. The "GPD" zone district is a "planned development district" and lands within the GPD zone district, including certain lands owned by IPOC's members and/or their homeowners, are subject to and governed and regulated by a master development plan known as an Outline Development Plan ("ODP") and a Land Intensity Schedule ("LIS") reflecting the approved uses, densities and intensities of the various development parcels within the GPD that were previously approved by the Town pursuant to the "planned unit development" provisions and regulations of the LDC.

13. Key Club Associates, Limited Partnership and Islandside Development, LLC (collectively "Key Club") applied for approval of a major amendment to the historic ODP and LIS for the GPD planned unit development that was first approved by the Town in 1976. The proposed amendments to the ODP and LIS would convert existing recreational areas and uses into high density/high intensity mixed used residential, commercial recreation and commercial tourism areas and uses, respectively.

14. During the hearings on Key Club's ODP and LIS amendments, IPOC raised a number of objections asserting that the proposed changes were not consistent with the Plan or the LDC. These objections included, but were not

limited to: objections that the proposed commercial and commercial tourism uses were not permitted by the Plan, the provisions of the LDC applicable to the GPD zone district and the provisions governing the adoption and amendment of ODPs; objections that Key Club was seeking “departures” from the LDC that were not authorized by the LDC; and objections that the amount of non-residential development proposed exceeded a five percent (5%) cap on non-residential development in a planned unit development that is contained in the LDC.

15. The Petitioner was granted party status in these hearings by the Town without objection by Key Club and fully participated in each of the numerous hearings.

16. Key Club then proposed numerous amendments to the substance of the LDC to address these and other objections.

17. The Town, on May 20, 2010 adopted Ordinance 2010-016 amending the LDC to incorporate the substance of Key Club’s proposed amendments into the LDC. A copy of Ordinance 2010-16 containing and reflecting the amendments to the LDC is attached as Exhibit "A" (the "Amendments"). The clear purpose of the Amendments was a clear attempt to ensure that the major amendments to the ODP and LIS for the GPD proposed by Key Club and that significantly expanded the density and intensity of the land uses existing and allowed at the time the Plan was

adopted in December 2007 could be found to be permitted by and consistent with the LDC and could withstand a judicial challenge by IPOC.

18. The Amendments materially alter and change numerous provisions of the LDC governing the GPD zoning district, including provisions that govern the adoption of and amendments to the ODP and LIS for any planned unit development. The Amendments include provisions that liberalize the granting of “departures” from provisions of the LDC for planned unit developments, including development within the GPD. The Amendments also include provisions that change the uses, density, intensity and development standards that apply to the GPD and that allow density and intensity on land areas within the GPD that were limited to recreational uses and facilities at the time the Plan was adopted at densities and intensities not authorized or permitted by the Plan.

19. The Petitioner fully participated in the public hearings on the Amendments both before the Town Planning and Zoning Board sitting as the Town's "local planning agency" and the Town Commission.

20. On June 3, 2010, the Petitioner filed a Petition with the Town pursuant to Subsection 163.3213, Florida Statutes, challenging the Amendments as inconsistent with the Town's Plan.

21. On June 16, 2010, the Petitioner filed an Amendment to its Petition with the Town.

22. The Petitioner's Petition to the Town was placed on the agenda of a special meeting of the Town Commission held on June 17, 2010, but the Town Commission took no action with respect to it.

23. Each of IPOC's member associations and their respective members are "substantially affected persons" as defined in Section 163.3213(2)(a), Florida Statutes and Chapter 120, Florida Statutes. Each of IPOC's member associations and their respective members have substantial interests that were and are affected by the adoption of the Amendments. IPOC, thus, has "associational standing" to file and process this challenge to the Amendments as being inconsistent with the Plan and its "associational standing" has been recognized by both the Town and Key Club.

24. The Amendments are inconsistent with the provisions of the Plan set forth below for the reasons set forth below.

25. This Petition is being filed within the 30 day window set forth in Subsection 163.3213(3), Florida Statutes.

RELEVANT PROVISIONS OF THE TOWN'S COMPREHENSIVE PLAN

26. As stated in the Plan, the intent and purpose of the Town in adopting the Plan is to:

- Improve physical environment for the community as a setting for human and natural resource activities;

- Protect the public health, safety and welfare;
- Insure that long-range considerations are included in the determination of short range actions;
- Promote political cooperation by bringing professional and technical knowledge to bear on government decisions concerning the physical development of the Town; and,
- To ensure appropriate protection of public interest with consideration of private property rights as determined by the Town Commission and state law.

27. Goal 1 of the Future Land Use Element is:

"To preserve and enhance the character of the Town of Longboat Key by the following: 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 2) maintaining an environment that is conducive to the health, safety, welfare, and property values of the community."

28. Policy 1.1.1 of the Future Land Use Element of the Plan provides:

"The Town has adopted land development regulations, which address the location and extent of land uses, in accordance with the Future Land Use Map and the policies and descriptions of types, sizes, densities and intensities of land uses contain in this element."

29. Policy 1.1.2 of the Future Land Use Element of the Plan provides in

relevant part:

"The Town will utilize its land development regulations to implement the adopted Comprehensive Plan, which as a minimum will: . . .

- 3) Ensure the compatibility of adjacent land uses; . . .

8) Provide buffering and open space requirements;"

(emphasis supplied)

30. Policy 1.1.4 of the Future Land Use Element of the Plan provides:

"As required or as necessary, the Town will review and update its land development regulations implementing this Comprehensive Plan, which will be based on and consistent with the standards for land use densities and intensities, as indicated on Table 1." (emphasis supplied)

31. Table 1 of the Future Land Use Element of the Plan describes the GPD land use category or classification as only allowing residential uses having a density of no greater than 5.05 dwelling units per acre. A copy of Table 1 is attached as Exhibit "C". The GPD land use category or classification, unlike the two (2) Tourist Resort/Commercial land use categories or classifications, i.e., TRC-3(Medium Density Tourist Resort/Commercial) and TRC-6 (High Density Tourist Resort/Commercial), is not described as having any commercial or mixed uses or as being a commercial or mixed use land use category or classification.

32. Policy 1.1.6 of the Future Land Use Element provides:

Buildings, lots, structures, or uses which were lawful at the effective date of the applicable zoning regulation, but were prohibited, regulated, or restricted under the terms of the zoning regulations promulgated thereafter, shall be permitted to continue until they are voluntarily removed, determined to be unsafe, or abandoned. *The non-conformities shall not be enlarged, expanded, intensified or extended except in conformance with the goals, objectives and policies of this comprehensive plan and a strict application of the Town's land development regulations.*" (emphasis supplied)

33. Policy 1.1.7 of the Future Land Use Element of the Plan provides:

"In development planning efforts, emphasis will be placed upon the protection of the visual and aesthetic character of neighborhoods, including open space." (emphasis supplied)

34. Policy 1.4.6 of the Housing Element of the Plan provides:

"The Town will protect the visual and aesthetic quality of neighborhoods through design standards." (emphasis supplied)

INCONSISTENCY OF THE AMENDMENTS WITH THE PLAN

35. Section 2 of the Amendments apply to § 158.009(L) of the LDC. The Amendments expand the uses permitted in the GPD, PD and NPD planned development zoning districts and authorize clustering of density on parcels in excess of that permitted by the Plan. The Plan reflects and includes "GPD," "PD" and "NPD" land use categories or classifications that apply to and encompass the same land areas as the corresponding "GPD," "PD" and "NPD" zone districts. Nothing in the adopted portions of the Plan defines or describe any non-residential uses as permitted uses in the GPD, PD or NPD land use categories. Nothing in the Plan defines or prescribes standards and development intensity for non-residential uses. Therefore, the "mix of uses" permitted in these zone districts must be restricted (as the use table in §158.025 of the LDC restricts them) to residential

uses, group homes, wireless personal communication towers,¹ and by implication to other uses that are customarily and reasonably accessory to those uses. Any other interpretation is inconsistent with the actual provisions of the Plan.²

36. The amendment to § 158.009(L) is inconsistent with the Plan, and specifically with Policy 1.1.1 and Table 1 of the Future Land Use Element, because it expressly permits commercial tourism uses and is interpreted by the Town to permit any and all commercial uses, commercial tourism uses, office uses, commercial recreational uses and other non-residential uses that are described anywhere in the LDC in the GPD, PD and NPD zone districts. That is, based on the representations made at the time of the Amendments, tourism uses are permitted (even though they are described as commercial uses in two other plan categories) and the “mix of uses” permitted under the amended language includes *any* use that is “set forth in this chapter.” Therefore, the amended provisions of § 158.009(L) permit uses within the GPD that are not described and defined as permitted uses, and for which there is not defined intensity of use. The Amendments therefore permit uses and intensities within these zone districts that are inconsistent with the corresponding land use categories, and are inconsistent

¹ Under federal law, group homes and personal wireless communication towers must be permitted under some circumstances in residential districts and land use categories.

² Any interpretation of the Plan to include such uses would be inconsistent with Section 166.3177(6)(a), Fla. Stat. and Rule 9J-5.006(3)(a) and (c), which require all land use categories to be defined and described in terms of the permitted uses, densities and intensities

with Goal, 1, Policy 1.1.1, 1.1.4 and Table 1 of the Future Land Use Element (the "FLUE"), and do not further FLUE Policy 1.1.7 or Housing Policy 1.4.6.

37. Furthermore, the amendment to § 158.009(L) of the LDC that adds language regarding the clustering of density is directly inconsistent with the Plan because it allows individual parcels in the GPD and PD zone districts to use and cluster density from any and all property included within the zone district, including lands not under the ownership or control of the owner of the "clustered" development parcel. Under the Amendment, a developer can cluster density not only from the developer's own parcel (or from another owner's property based on a mutual development plan), but from lands owned by other, non-consenting landowners. Put another way, under the Amendment the "sending" parcel for density includes the entire district, not just property controlled by the developer seeking to cluster units on part of the developer's property. In this way, the Amendment allows a developer to achieve both a gross and net density in the GPD land use category that exceeds the 5.05 dwelling units per acre permitted by the Plan. Nothing in the Plan indicates, provides or permits gross or net densities of parcels within the GPD, PD or NPD future land use categories or classifications to be based on and determined by the entire land area of the category, including lands owned by others. Nothing in the Plan permits densities to be clustered on individual development parcels such that the gross density of a development parcel

can exceed the maximum density as defined in Table 1 for those land use categories. The Amendments therefore make § 158.009(L) inconsistent with FLUE Goal 1, Policy 1.1.1, 1.1.2, 1.1.4 and Table 1.

38. The amendment to § 158.071(A)(2) of the LDC changes the permitted amount of non-residential land within the GPD from 5% of the area to 15%. As noted above, the Town interprets “non-residential development” for the purpose of this section to mean the “mix” of development permitted in the amended provisions of §158.009(L) discussed above. Therefore, the Amendment increases the amount of commercial, commercial tourism, commercial recreation, office and other non-residential uses from 5% to 15% of the land area in the GPD, a significant increase in intensity.³ This increase inconsistent with the Plan because nothing in the Plan permits any non-residential uses in the GPD, PD or NPD future land use categories or classifications, and nothing in the Plan provides for any intensity of such non-residential uses. The Amendments therefore are not compatible with and do not further FLUE Goal 1, Table 1 and Policies 1.1.1, 1.1.2, 1.1.4 and 1.1.7.

³ While the justification for the 15% figure is that it represents the current amount of non-residential use within the GPD, this measurement includes the recreational parcels (other than the golf course). The effect of the Amendment is to permit the redevelopment of parcels currently developed with relatively small structures supporting recreational uses that are accessory to the residential uses in the GPD with very intense commercial tourism, office and commercial recreational uses, with no limits on the intensity of those uses.

39. Furthermore, the amendment to § 158.071(A)(2) were purportedly proposed to mitigate concerns that existing non-residential properties in the PD and GPD are nonconforming with respect to compliance with the previous 5% limit on nonresidential development in a planned unit development. However, the Amendments go far beyond any attempt to “vest” or protect the existing non-residential uses insofar as they may be non-conforming under the Plan or the LDC. Instead, the changes to § 158.071(A)(2) are intended to and clearly allow new non-conforming development and allow existing non-conformities to be “enlarged, expanded, intensified or extended.” The practical and actual effect of the amendment to Section 158.071(A)(2) is to allow the conversion of a golf course driving range in the GPD that contains a significant amount of open space to be converted into intensive commercial uses. This is in direct conflict with the Future Land Use Policy 1.1.6, which requires any expansion of intensification of a non-conforming use to comply with both the Plan and a “strict” application of the LDC and with FLUE Policy 1.1.7 providing that "In development planning efforts, emphasis will be placed upon visual and aesthetic character of neighborhoods, including open space." The Amendments therefore are inconsistent with the Plan. See Gateway Southeast Proper., Inc. v. Town of Medley, 960 So. 2d 771 (Fla. 3d DCA 2007) (ordinance permitting expansion of a non-conformity under the Plan violates plan policy requiring phase-out of such uses).

40. The amendment to § 158.071(D) is inconsistent with the GPD and PD land use categories as defined in the Plan because it permits the clustering of density on development parcels in the GPD zone district to exceed a gross density of 5.05 dwelling units per acre. The amendment allows a developer to cluster density from other sites within the GPD, not owned or controlled by the developer, such that both gross and net densities of the developer's parcel exceeds the permitted density. Nothing in the Plan permits clustering of density on parcels to allow a particular development parcel under single ownership or control to exceed those density limits. The Amendments therefore are not compatible with and do not further FLUE Goal 1, Table 1, Policies 1.1.1, 1.1.2, 1.1.4 and 1.1.7 and Housing Element Policy 1.4.6.

41. The amendments to § 158.102(L) authorize the Town Commission to grant departures from specific design provisions of the LDC through the planned unit development approval process. More particularly, these changes allow "departures" from standards adopted to regulate the compatibility of multi-family and tourism uses of ten (10) or more units without establishing a hardship and without meeting any other meaningful or objective criteria. These amendments are inconsistent with FLUE Policy 1.1.2's requirement that the LDC ensure the compatibility of adjacent land uses, FLUE Policy 1.1.2's requirement that in development planning efforts, emphasis will be placed upon the protection of the



visual and aesthetic character of neighborhoods, including open space, and Housing Policy 1.4.6's requirement that the Town protect the visual and aesthetic quality of the neighborhoods through design standards. The Amendments therefore are not compatible with and do not further FLUE Goal 1, Table 1 and Policies 1.1.1, 1.1.2, 1.1.4 and 1.1.7, or Housing Element Policy 1.4.6.

42. The amendment to § 158.132(B) makes commercial tourism uses (i.e., hotels/motels) permissible uses not only within the GPD, PD and NPD zone districts, but also in all other existing and future planned unit developments within the Town. Commercial tourism uses have their own land use category and zoning districts and are acknowledged to be commercial uses in Plan Table 1, the Plan/Data and Analyses, and in the LDC. Nothing in the Plan permits such uses within the GPD, PD and NPD land use categories. The Amendments therefore are not compatible with and do not further FLUE Goal 1, Table 1 and Policies 1.1.1, 1.1.2, 1.1.4 and 1.1.7.

43. The Amendments are not compatible with the Plan because they conflict with the Plan, do not further the Plan and do not take action in the direction of realizing goals or policies of the Plan. (See Rule 9J-5.023, Florida Administrative Code.) The Amendments therefore are inconsistent with the Plan and this inconsistency is not fairly debatable.

WHEREFORE, the Petitioner requests the Agency to determine that the amendments are inconsistent with the Town's comprehensive plan and refer the matter to the Division of Administrative Hearings pursuant to § 163.3213, Florida Statutes.


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FUREN & GINSBURG, P.A.
2033 Main Street, Suite 600
Sarasota, Florida 34237
(941) 366-8100
Attorneys for Petitioner


MICHAEL J. FUREN

ROBERT K. LINCOLN

CERTIFICATE OF FILING

I DO HEREBY CERTIFY that the foregoing Petition was sent to Paula Ford, Agency Clerk, Florida Department of Community Affairs via Federal Express for filing this 14 day of July, 2010, in accordance with and pursuant to the provisions of Section 163.3213(3), Florida Statutes.

ICARD, MERRILL, CULLIS, TIMM,
FUREN & GINSBURG, P.A.
2033 Main Street - Suite 600
Sarasota, Florida 34237
(941) 366-8100
Attorneys for Petitioner


MICHAEL J. FUREN

CERTIFICATE OF SERVICE

I DO HEREBY CERTIFY that a copy of the foregoing Petition was sent via U.S. Mail to David P. Persson, Esq., Town Attorney, Town of Longboat Key, Hankin, Persson, Davis, McClenathen & Darnell, 1820 Ringling Boulevard, Sarasota, FL 34236 and to Nancy E. Stroud, Esq., Special Town Counsel, Lewis, Stroud & Deutsch, P.L., One Lincoln Place, 1900 Glades Road, Suite 251, Boca Raton, FL 33431 this 14 day of JULY, 2010.

ICARD, MERRILL, CULLIS, TIMM,
FUREN & GINSBURG, P.A.
2033 Main Street - Suite 600
Sarasota, Florida 34237
(941) 366-8100
Attorneys for Petitioner



MICHAEL J. FUREN

EXHIBIT "A"

A Copy of Ordinance 2010-16 Containing and Reflecting
the Amendments to the LDC

ORDINANCE 2010-16

AN ORDINANCE AMENDING CHAPTER 158, THE ZONING CODE, OF THE CODE OF ORDINANCES OF THE TOWN OF LONGBOAT KEY, FLORIDA, TO AMEND SECTION 158.009, *DESCRIPTION OF DISTRICTS AND DISTRICT POLICIES*, SUBSECTION (L), SECTION 158.067, *DESCRIPTION OF DISTRICTS AND DISTRICT POLICIES*, SUBSECTIONS (B)(1)(o) AND (D)(3)(G), SECTION 158.071, *PROPOSED LAND USES*, SUBSECTION (A)(2) AND (A)(3), SECTION 158.071, *PROPOSED LAND USES*, SUBSECTION (D), SECTION 158.102, *PERFORMANCE STANDARDS FOR SITE AND DEVELOPMENT*, SUBSECTION (L) AND SUBSECTION (L)(3), AND SECTION 158.132, *TOURISM USES*, SUBSECTION (B); PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL OF ALL ORDINANCES IN CONFLICT HEREWITH; PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, on March 1, 2010, at the regularly scheduled Town Commission meeting, the Longboat Key Club (Club) requested that the Town Commission consider granting the Planning and Zoning Board authority to hold public hearings related to zoning code amendments desired by the Club; and

WHEREAS, the Town Commission granted the Planning and Zoning Board such authority pursuant to Section 158.030 (A)(1) of the Zoning Code; and

WHEREAS, the Club provided the Town with an application and supporting materials for requested amendments to the Town of Longboat Key Zoning Code on March 16, 2010; and

WHEREAS, the Club requests amendments to the zoning code specifically impacting the Planned Development District (PD), Gulf Planned Development District (GPD), Negotiated Planned Development District (NPD), and Planned Unit Developments (PUD) in the Town of Longboat Key; and

WHEREAS, the maximum allowable nonresidential percentages for the PD and GPD have been established based on the land area calculations as set forth in Exhibits "A" and "B" of this ordinance; 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.

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

SECTION 1. The Whereas clauses above are ratified and approved as true and correct.

SECTION 2. Chapter 158, Section 158.009, *Description of districts and district policies*, subsection (L) is hereby amended as follows:

- (L) Planned Development District (PD), Gulf Planned Development District (GPD), and Negotiated Planned Development District (NPD) - Established for areas which may be developed pursuant to special conditions of a resolution or other legal instruments duly approved by the Town Commission pursuant to this chapter. The density for the respective Planned Development Districts reflect the following density schedule after considering vested rights issues:

<u>Planned Development District Designation</u>	<u>Density</u>
Planned Development (PD)	3.26
Gulf Planned Development (GPD)	5.05
Negotiated Planned Development (NPD)	4.80

~~Such PUDs approved in a planned development district may include a mix of land uses as identified in the regulations of this chapter, including community residential homes, and such regulations shall not be interpreted as prohibiting mixed uses in duly approved PUDs set forth in the regulations of this chapter.~~ The following standards for regulating residential development in planned unit developments shall be used and is intended to accommodate planned unit developments with or without mixed uses:

- (1) Notwithstanding the terms of any other section of this zoning code related to the calculation of density for residential or tourism uses, the respective densities for the PD and the GPD districts reflect the average overall density per acre of all properties included within such districts, including recreational areas, open space areas, road rights-of-way, wetland areas and other nonresidential lands. It is understood that under these zoning regulations, the density of development sites within the PUD PD and GPD may vary, such that the clustering of density on one or more parcels within a site may be allowed.

SECTION 3. Chapter 158, Section 158.067, *Description of districts and district policies*, subsection (D)(3)(g) is hereby amended as follows:

- (g) Departures from Article IV of this chapter and Section 158.102 the code of ordinances which would otherwise be applicable to the planned unit development if the plan were not approved, ~~(or if in the PD, GPD or NPD district, departures from the requirement of a zoning district most similar to the use approved for the proposed project)~~ and a statement of any existing hardship and/or a 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 Section 158.065. For a planned unit development without an underlying zoning district (PD, GPD or NPD districts), departures shall be evaluated from the requirements of the zoning district most similar to the proposed project.

SECTION 4. Chapter 158, Section 158.071, *Proposed land uses*, subsection (A)(2) is hereby amended as follows:

- (2) Where mixed uses, residential and nonresidential, are proposed, nonresidential development may be permitted to occupy up to five percent of the gross area of the planned unit development, except that commercial uses shall not be permitted in a PUD overlay unless they are permitted uses within the underlying zoning district. Notwithstanding the foregoing, nonresidential development in the PD approved by Resolution 75-27, as amended, may be permitted to occupy up to 13.60 percent of the total land area of the PD and nonresidential development in the GPD approved by Resolution 76-7, as amended, may be permitted to occupy up to 15.00 percent of the total land area of the GPD.

SECTION 5. Chapter 158, Section 158.071, *Proposed land uses*, subsection (D) is hereby amended as follows:

- (D) Once development rights, whether residential or non-residential, have been assigned to a parcel within a planned unit development, any subsequent request for new or additional residential or tourism density shall be considered a transfer of density under the governing resolutions and ordinances of the planned unit development which shall require amendment of the outline development plan for the planned unit development in accordance with the procedures of Section 158.067. In no event shall the average overall densities density of a planned unit development exceed the maximum average overall densities density set forth in this Code or the Comprehensive Plan for the planned unit development.

SECTION 6. Chapter 158, Section 158.102, *Performance standards for site and development*, subsection (L) is hereby amended as follows:

- (L) Supplemental Controls for Multifamily Residential or Tourism Uses. In reviewing the proposed site plan for ten or more multifamily or tourism units, the Town shall be guided by the following controls. The supplemental control relating to the maximum length of buildings, as provided for in Subsection (3) of this section, shall be taken as a mandatory requirement which cannot be waived by the Town Commission. The remaining controls in this section shall be taken as mandatory requirements, except that the Town Commission may waive one or more of these requirements where it ~~deems~~ determines a hardship exists ~~or such waiver is necessary to ensure a more strict adherence to those performance standards set forth herein, which are deemed most critical, notwithstanding any other provisions of this ordinance to the contrary.~~ Notwithstanding any provision of this section to the contrary, for properties located in a planned unit development, the Town Commission may consider and grant a departure, under the standards for a requested departure as outlined in Section 158.067 (D)(3)(g), for one or more of the supplemental controls of this Section 158.102 (L), including Subsection (3) for the maximum length of buildings.

In any development order approving a site plan, the Town Commission shall make specific findings of facts constituting a hardship, if a hardship is found to exist, and shall make specific findings of any facts constituting the basis for a waiver of these supplemental controls ~~and shall specifically state the performance standards as set forth herein which are deemed most critical and are being more strictly adhered to by granting the waiver.~~

The provisions of Section 158.029 shall apply in determining whether a waiver shall be granted upon a finding that a hardship exists, except that the Town Commission, rather than the Zoning Board of Adjustment, shall determine whether a hardship exists or not. The facts forming the basis for the grant of a waiver under the provisions of this section shall be specifically set forth in the development order.

SECTION 7. Chapter 158, Section 158.102, *Performance standards for site and development*, subsection (L)(3) is hereby amended as follows:

- (3) Maximum Length. No portion of any individual building shall extend beyond a line drawn from the front lot line 30 degrees either side of a line through ~~centered on the building~~ and perpendicular to the front lot line.

SECTION 8. Chapter 158, Section 158.132, *Tourism uses*, subsection (B) is hereby amended as follows:

- (B) Tourism Use of property for remuneration is allowed within T-3 and T-6 Zoning Districts or as ~~a~~ may be permitted use in a ~~PD~~ planned unit development within the Town of Longboat Key.

SECTION 9. Chapter 158, Section 158.071, *Proposed land uses*, subsection (A)(3) is hereby amended as follows:

- (3) Outdoor recreation areas shall not be included in the computation of permitted nonresidential areas of a planned unit development, except that recreation buildings, as well as accessory buildings, land areas, driveways, and parking areas associated with such buildings ~~and accessory buildings~~ shall be included in such computation.

SECTION 10. Chapter 158, Section 158.067, *Review and approval procedure*, subsection (B)(1)(o) is hereby amended as follows:

- (o) A statement specifically indicating departures from ~~the requirements of this Article IV of this chapter and Section 158.102 code of ordinances which would otherwise be applicable to the project if a planned unit development were not granted by the Town~~ and a clear and specific statement of any existing hardship which might exist making the departure from the ~~code~~ code necessary and/or ~~a~~ 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 Section 158.065.

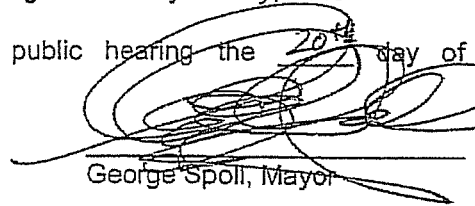
SECTION 11. If any section, subsection, sentence, clause or provision of this Ordinance is held invalid, the remainder of the Ordinance shall not be affected.

SECTION 12. All ordinances or parts of ordinances in conflict herewith shall be and the same are hereby repealed.

SECTION 13. This Ordinance shall take effect upon second reading in accordance with Law and the Charter of the Town of Longboat Key.

Passed on the first reading and public hearing the 3rd day of May, 2010.

Adopted on the second reading and public hearing the 20th day of May, 2010.



George Spill, Mayor

ATTEST:



Trish Granger, Town Clerk

Attachments:

- Exhibit "A" – Bay Isles Planned Development (PD) Nonresidential Land Area
- Exhibit "B" – Islandside Gulf Planned Development (GPD) Nonresidential Land Area

EXHIBIT A

EXISTING NONRESIDENTIAL DEVELOPMENT IN THE BAY ISLES PD ¹

TRACT	AREA ACRES	ACREAGE SUBTOTAL
Civic Area		
Town Hall	5.12 *	
Church Sites	8.70	
Public Safety Bldg. (fire station)	1.00	
Subtotal Civic	14.82	14.82
Commercial Area		
Offices (Mediterranean Plaza)	2.50 *	
Main Shopping		
Parcel B-1 South (MODA) ²	3.80	
Parcel B-2 (Avenue of Flowers II)	3.18	
Parcel C (restaurant)	0.35	
Parcel A (Avenue of Flowers I, Publix)	9.70	
Post Office	1.57	
SunTrust Bank	1.00 *	
Bank of America	2.70	
Northern Trust	1.06 *	
Marina Commercial Complex	2.80	
Subtotal Commercial	28.66	28.66
Miscellaneous Nonresidential Uses		
Boat Basin- Parcel O (Harbourside Moorings Marina)	32.68	
Tennis Gardens Building and parking lot (tennis center site of 12.66 acres less 20 courts at 60' x 120')	9.36	
Harbourside Golf Clubhouse area, parking lot and driveway (800' x 500')	9.18	
Harbourside Golf maintenance Area (425' x 390')	3.80	
Subtotal Miscellaneous Nonresidential Uses	55.02	55.02
TOTAL NONRESIDENTIAL USES		98.50
GRAND TOTAL BAY ISLES PD	725.92	
Percentage of nonresidential acreage in Bay Isles PD		13.56%

¹ The above nonresidential land uses were taken from the Land Intensity Schedule ("LIS") for the Bay Isles Planned Development adopted by Ordinance 2008-06. The Land Intensity Schedule adopted by Ordinance 2008-06 does not describe the commercial land uses in detail.

² Parcel B-1 South (MODA) currently has a residential use under the Land Intensity Schedule; previously commercial

* Acreage figure taken from data on the Sarasota County Property Appraiser.

EXHIBIT B

EXISTING NONRESIDENTIAL DEVELOPMENT IN THE ISLANDSIDE GPD ¹

TRACT	AREA ACRES	ACREAGE SUBTOTAL
MF "B-2" (Inn on the Beach)	20.74 ²	
Commercial Office		
Parcel C-2 (Chart House)	3.00	
Parcel C-1 (Arvida Sales Office on GMD) ³	1.16	
Golf Maintenance Area (Tract II)	5.16	
Golf Course Accessory Acreage (Tract III)	0.41	
Islandside Golf Clubhouse (Tract I less driving range, 730 x 410)	10.37	
Islandside Tennis Center (Parcel REC-1 less courts, 18 x 60 x 120)	6.30	
TOTAL NONRESIDENTIAL USES		47.14
GRAND TOTAL ISLANDSIDE GPD	314.59 ⁴	
Percentage of nonresidential acreage in Islandside GPD		14.98%

¹ The above nonresidential land uses were taken from the Land Intensity Schedule ("LIS") for the Islandside GPD adopted by Resolution 85-27. The Land Intensity Schedule adopted by Resolution 85-27 does not describe the nonresidential land uses in detail

² The acreage of Inn on the Beach was updated based on a survey prepared by George F. Young, Inc. dated 09-27-07.

³ The current acreage for the Arvida Sales Office is 1.16 acres. It was 2 acres at the time of adoption of Resolution 85-27.

⁴ The current total acreage of the Islandside GPD is based on a survey prepared by George F. Young, Inc. dated 11-05-08.

EXHIBIT "B"

Table 1 of the Future Land Use Element of the Plan

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

Symbol	Category	Density
<u>Densities</u>		
OS	Open Space	0 du/ac (passive & active recreation permitted)
▪ OS-A	Open Space – Active	
▪ OS-P	Open Space – Passive	
▪ OS-C	Open Space – Conservation	
IP	Island Preserve	1 du/5 ac
RL-1	Low Density SF Residential	1 du/ac
RL-2	Low Density SF Residential	2 du/ac
RM-3	Medium Density SF/Mixed Residential	3 du/ac
RM-4	Medium Density SF/Mixed Residential	4 du/ac
RH-6	High Density SF/Mixed Residential	6 du/ac
PD	Planned Development	3.26 du/ac
GPD	Gulf Planned Development	5.05 du/ac
NPD	Negotiated Planned Development	4.80 du/ac
TRC-3	Medium Density Tourist Resort/Commercial	3 du/ac
TRC-6	High Density Tourist Resort/Commercial	6 du/ac
<u>Intensities</u>		
		<u>Max. Lot Coverage</u>
INS	Institutional	30%
OI	Office-Institutional	30%
C-1	Limited Commercial	30%
C-2	General Commercial	30%
C-3	Highway-Oriented Commercial	40%
M-1	Marine Commercial Service	40%
RO	Commercial Revitalization Applies to developed C-1, C-2, C-3, O-1 and M-1 properties	Existing at time of site plan submittal. Up to 5% lot coverage increase for state/federal (ADA) compliance: Up to 10% lot coverage increase for C-1, C-2 and O-1 meeting certain standards.
		<u>Max. Height (stories/feet)</u>
		2/30
		2/30
		2/30
		3/40
		3/40
		2/30
		C-1, O-1, M-1: 2/30
		C-2, C-3: 3/40

Note: Calculations of density are based on Chapter 158 137 of the Town of Longboat Key Zoning Code, 2005.