

JUDD, ULRICH & DEAN, P.A.
ATTORNEYS AT LAW

STEVEN H. JUDD
BOARD CERTIFIED REAL ESTATE LAWYER
CORPORATE AND BUSINESS LAW
RICHARD A. ULRICH
ROY E. DEAN

2940 SOUTH TAMiami TRAIL
SARASOTA, FLORIDA 34239

FACSIMILE (813) 953-2485
TELEPHONE (813) 955-5100

May 2, 1995

Via Facsimile - 365-3259

David P. Persson, Esquire
DAVIS, PERSSON, SMITH & DARNELL
2033 Main Street, Suite 406
Sarasota, Florida 34237

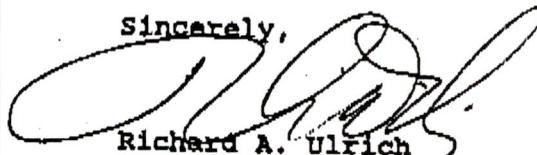
Re: Rainer W. Josenhanss vs. The Town of Longboat Key
Case No. 95-2459-CA-01

Dear David:

Pursuant to our telephone conversation this morning, attached please find a courtesy copy of the Complaint that was today filed by my client, Rainer W. Josenhanss, against the Town of Longboat Key.

Once you have had an opportunity to review the complaint, please call me.

Sincerely,



Richard A. Ulrich

RAU:lcr

Attachment



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

RAINER W. JOSEPHANSS,
Plaintiff,

vs.

Case No. 95-2459-CA-01

THE TOWN OF LONGBOAT KEY, a
political subdivision of the
State of Florida,
Defendant.

COMPLAINT

COMES NOW the Plaintiff, RAINER W. JOSEPHANSS, by and through his undersigned attorneys and sues the Defendant, THE TOWN OF LONGBOAT KEY, a political subdivision of the State of Florida, and as grounds therefor states as follows:

1. This is an action for declaratory judgment pursuant to Chapter 86, Florida Statutes.
2. Plaintiff is a resident and taxpayer of Longboat Key, Florida.
3. Defendant is the Town of Longboat Key, Florida, a political subdivision of the state of Florida.
4. On or about April 20, 1995, the Town Commission of Longboat Key approved a site plan submitted by The Whelan Group for the construction of a tennis complex on property located in Manatee County, Florida, more commonly referred to as the South Ansel Tract.
5. The South Ansel Tract is approximately 13.8 acres of vacant land and, at present, is zoned R-3MX for residential use.

The Town paid approximately \$1,720,000.00 for the South Ansel Tract in 1990.

6. Subsequent to purchasing the South Ansel Tract, the Town Commission decided to construct a ten court, fifty parking space tennis complex with restrooms, showers, offices and observation deck on the South Ansel Tract. The tennis complex would be open fourteen hours per day, seven days a week. The Town Commission intends to lease the tennis complex to a lessee operator. In addition to selling memberships in the tennis complex, the lessee operator purportedly would sell tennis lessons and tennis equipment and accessories at the complex.

7. In order for a portion of the South Ansel Tract to be used for a tennis complex, it was necessary for the Town Commission to obtain a special exception for park and recreation use since the portion of the tract on which the tennis complex is to be located is zoned residential.

8. On or about March 21, 1995, the Planning and Zoning Board of the Town of Longboat Key voted seven to zero to grant the special exception to permit the proposed tennis complex to be constructed on the South Ansel Tract located in a residentially zoned district.

9. On or about April 20, 1995, Longboat Cove Condominium Association, Inc., a non-profit corporation representing the unit owners at Longboat Cove, a Condominium, which is located across the street from the proposed tennis complex, filed a Petition for Certiorari against the Planning and Zoning Board of the Town of Longboat Key, requesting that the Circuit Court quash the Planning and Zoning Board's grant of the special exception for the reason

that Longboat Cove did not receive procedural due process, that the grant of the special exception departs from the essential requirements of law, and that no competent substantial evidence supported the granting of the special exception.

10. Despite having knowledge that the petition had been filed, the Town Commission voted five to two to approve a site plan for the proposed tennis complex on the South Ansel Tract.

11. Pursuant to §158.125, Town of Longboat Key Zoning Code, the R-3MX Zoning District permits various residential uses, with and without site plan review, accessory uses and special exception uses. None of the approved uses permit a commercial use of the property. A copy of the applicable Longboat Key Zoning Code for R-3MX zoning regulations is marked composite Exhibit "A" and is attached hereto.

12. Pursuant to §158.006, Town of Longboat Key Zoning Code, commercial use is defined as

"An activity involving the purchase and sale or exchange of goods, commodities or services carried out primarily for the purpose of gaining a profit." (Emphasis added).

A copy of the applicable Longboat Key Zoning Code containing the definition is marked composite Exhibit "A" and is attached hereto.

13. §158.127(A), Town of Longboat Key Zoning Code, states, in part, as follows:

". . . no commercial accessory use will be permitted in an R (residential) district except in accordance with §158.135 (home occupations). . ." (sic).

A copy of the applicable Longboat Key Zoning Code containing the above provision is marked composite Exhibit "A" and is attached hereto.

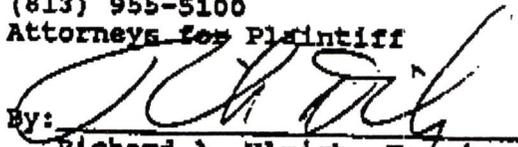
14. The tennis complex as proposed is in violation of the Town of Longboat Key Zoning Code in that it is a commercial venture or use located in a residentially zoned area.

15. Plaintiff is in doubt as to the existence of the rights, powers and privileges under the provisions of the Zoning Code of the Town of Longboat Key, including §158.006, §158.125 and §158.127(A), and its application to the tennis complex. Plaintiff is entitled to have such doubts resolved by appropriate judicial declaration. This is especially true when the total cost to the tax payers of Longboat Key, including Plaintiff, for the tennis complex is in excess of \$1,300,000.00.

16. All conditions precedent to the declaration and enforcement of Plaintiff's rights herein and the maintenance of this suit, have been performed, have occurred or have been waived.

WHEREFORE, the Plaintiff, RAINER W. JOSENHANSS, respectfully requests this court enter a judicial decision declaring that the tennis complex is a commercial use which is prohibited in a residential area as provided in the Zoning Code of the Town of Longboat Key, and for any and such other relief as the court deems just and proper.

JUDD, ULRICH & DEAN, P.A.
2940 South Tamiami Trail
Sarasota, Florida 34239
(813) 955-5100
Attorneys for Plaintiff

By: 

Richard A. Ulrich, Esquire
Florida Bar No. 0547182

§ 158.008

LONGBOAT KEY - ZONING CODE

114

the building. Visible elevation shall not include elevator shafts, stairwells and other mechanical equipment areas, so long as such areas do not exceed 10% of the area under the building.

"BUILDING LINE." The line, established by law, beyond which any part of a building shall not extend, except as specifically provided by law.

"BULK." Height and percentage of land coverage of a building.

"CABANA (POOL HOUSE)." An accessory structure usually used in connection with outdoor bathing or recreation providing enclosed space for showering or changing clothes, with recreational cooking or bar facilities including storage facilities, but no sleeping rooms.

"CHURCH." A building or structure, or groups of buildings or structures, which by design and construction are primarily intended for the conducting of organized religious services and accessory uses associated therewith.

"CLUB, PRIVATE." Buildings or facilities, not open to the general public, owned and operated by an individual, corporation, or association of persons for social or recreational purposes for members and their bona fide guests, not operated or maintained primarily for the purpose of gaining a profit and not including casinos, nightclubs, bottle clubs or other establishments operated or maintained primarily for the purpose of gaining a profit.

"COMMERCIAL USE." An activity involving the purchase and sale or exchange of goods, commodities or services carried out primarily for the purpose of gaining a profit.

"COMMUNITY RESIDENTIAL HOME." A dwelling unit licensed to serve clients of the Department of Health and Rehabilitative Services, which provides a living environment for 7 to 14 unrelated residents who operate as the functional equivalent of a family, including such supervision and care by supportive staff as may be necessary to meet the physical, emotional, and social needs of the residents.

"COMPREHENSIVE PLAN." A comprehensive plan, which may consist of several maps, data, and other descriptive matter, for the physical development of the town or any portion thereof, including any amendments, extensions, or additions thereto indicating the general location for major streets, parks, or other public utilities, zoning districts, or other similar information. The comprehensive plan shall be based on and include appropriate studies of the location and extent of present and anticipated population, social and economic resources and problems, and other useful data regarding the future development of the town.

"CONTIGUOUS." To physically touch or border upon; or to share a common property line.

"DAVIT." A structure designated to hoist watercraft from a dock, seawall, or from the water.

"DENSITY, MAXIMUM GROSS RESIDENTIAL." The maximum allowable number of dwelling or tourism units per acre of gross land area, as determined by this Zoning Code. (See "Gross Land Area.")

LONGBOAT KEY - ZONING CODE

§ 158.125

SPECIAL EXCEPTION USES

1. Home occupations, pods or cubicles and in single-family dwellings.
2. Servant's quarters.
3. Government build-ings and service.
4. Windwall.
5. Parks and recre-ation areas. (Ord. 63443)

ACCESSORY USES

1. Private swimming pools or cabanas and related structures.
2. Private recreational facilities designed for the exclusive use of occupants or per-mitted use, use per- mitted with site plan review, or spe- cial exception var- iant.
3. Private docks.
4. Off-street parking.
5. Other accessory uses customarily incident to a permitted use, use permitted with site plan review or special exception var- iant.
6. Private commercial, industrial or profes- sional offices.

PERMITTED USES WITH SITE PLAN REVIEW

1. Planned unit devel- opment overlays (see §§ 158.065 through 158.071)
2. Multifamily devel- opments with 10 or more dwelling units.
3. Community residen- tial homes.

PERMITTED USES WITHOUT SITE PLAN REVIEW

1. Single-family dwell- ings.
2. Two-family dwell- ings.
3. Multifamily devel- opments with less than 10 dwelling units.
4. Essential services.
5. Community residen- tial homes with six or fewer residen- tial units.

PURPOSE

The purpose of this de- scription is to delineate those areas suitable for mixed residential development of a low-medium density character together with the associated accessory uses.

(R-3)(M) Low-Medium-Density Mixed Residen- tial District (D.U.A.)

DISTRICT
Platinum Green
Residential
Density

shall show that commencement of the use is being actively pursued by evidence of an application for a building permit, preliminary plat, or site and development plan, or other evidence satisfactory to the Town Commission; said extension shall not exceed six months.

(C) Discontinuance. Any special exception shall expire 12 months following the discontinuance of the use for which the special exception was granted.

(Ord. 90-06, passed 3-19-90)

§ 158.127 ACCESSORY USE OR BUILDING.

(A) Accessory uses shall be clearly supplementary and incidental to the principal use of the lot and shall be located on the same lot as the principal use to which it is subordinate except as provided for in §§ 158.151(F) (bench shelters), 158.128(E) (location of parking spaces), or § 158.152 (walls, fences, hedges, berms, landscape logs and firewood). No permit shall be issued for any accessory use or building, excluding davits, docks, or boat lifts, until the principal use or building has been established or constructed. This provision shall not be applicable to seawalls or other duly authorized erosion control structures. No commercial accessory use will be permitted in an R District except in accordance with § 158.135 (home occupations). Where a principal use within a T District is other than a tourism use, no commercial accessory use will be permitted. In addition, no permit shall be issued for any accessory use until a determination is made by the Planning and Zoning Official that such use is in accord with applicable site land development plan performance standards set out in § 158.102.

(B) Swimming Pools.

(1) Swimming pools, not to be enclosed by a structure other than fences or screening (§ 158.154) as required or permitted by the town, may be constructed within the required yard areas, except the required street yard as prescribed by this chapter. However, no part of the pool structure may protrude more than six inches above finished grade in the required yard (excluding gulf side or pass waterfront yards), and the pool walls shall be at least eight feet from the lot lines. No swimming pools shall be permitted within the required gulf or required pass waterfront yards unless:

(a) The swimming pool shall meet the requirements of the Department of Natural Resources; and

(b) The swimming pool location must be a minimum of 100 feet from the mean high-water line.

Swimming pools may be permitted within required bay or required canal waterfront yards but shall not be located within 20 feet of the mean high-water line in required bay waterfront yards and 15 feet of the mean high-water line in a required canal waterfront yard. (Ord. 91-10, passed 6-20-91)

(2) (a) In determining the percentage of coverage of a lot by buildings, swimming pools and decks surrounding the pool shall not be counted in the computation if they are not more than six inches above finished grade. (See § 158.102(F).) However, residential single-family buildings with a pool cage over a swimming pool and deck to surround the pool shall be