

Memo

TO: Jill A. Jeglie, Planning Zoning and Building Director
FROM: Nancy E. Stroud, Special Counsel
DATE: April 13, 2004
RE: Gulf Planned Development (GPD) District Density Restrictions

You have asked us to review the requirements of the Town of Longboat Key Zoning Code (Zoning Code) as it relates to the densities in the Gulf Planned Development District to advise you as to whether the Town Commission may amend the Outline Development Plan (ODP) to allow the redevelopment of the existing tennis complex into a multifamily residential development proposed as the Ca d' Cuore. We have reviewed the Zoning Code, the resolutions establishing and amending the ODP for the Longboat Key Club GPD District, minutes of various public meetings discussing the density issue, and various correspondence and memoranda related to the issue. It is my opinion that the redevelopment of the tennis courts for the additional residential density proposed is allowable under the Zoning Code.

The Proposal's Density Does Not Exceed the Zoning Code Restriction of 5.05 Units/acre. The GPD is zoned for a density of 5.05 dwelling units per acre, under Sections 158.009 (L) and 158.070 (A) of the Zoning Code. The Ca d' Cuore development proposes an additional twenty units in the Gulf Planned Development District. Pursuant to a study conducted in 2002 of the history of the approved densities for the GPD and the Bay Isles PD,

the GPD has been approved for a total of 892 residential units, which translates to an approved density of 2.83 (dividing 892 units by 315.28 acres).¹ An additional 20 units will result in a density of 2.89, which will not cause the GPD's overall density to exceed 5.05.

Transfer of Density under Section 158.071 (D) Town Zoning Code. Section 158.071 (D) of the Zoning Code provides the following:

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 density shall be considered a transfer of density under the governing resolutions and ordinances of the planned unit development. In no event shall the densities exceed the maximum densities set forth in this Code or the Comprehensive Plan.

This provision of the Zoning Code was amended in 2002 by Ordinance 02-17. It sought to clarify the operation of the Zoning Code, in response to a concern about how additional densities could be approved within existing PUDs. Before the amendment, a particular project had proposed a change from a nonresidential to a residential designation within a PUD. It had been suggested that the conversion of the nonresidential intensities could be based on the residential densities of the overall PUD, and there was some confusion about whether such a change was a "transfer" of density between parcels that was prohibited by the ODP. The Town staff consistently opined that any change in density for any particular part of a PUD must be approved both as part of an amendment to the Outline

¹ The most recent Land Intensity Schedule for the GPD actually shows an authorized total of 1407 units, adopted by Resolution 85-12. The GPD subsequently has been amended to reduce the allowable units within the GPD, but no modified Land Intensity Schedule has been adopted by Resolution to show the overall changes enacted by the amendments. Resolution 92-17 established the density of 892 units that currently are permitted in the GPD. See Report on Density and Use Issue, Longboat Key Club GPD Bay Isles PD, June 27, 2002.

Development Plan and as part of a site plan approval. The Zoning Code amendment was intended to confirm this requirement.

An applicant may request approval for additional residential units for the GDP, up to an overall density of 5.05. If the existing density is currently 2.83, then theoretically there is an unallocated 2.22 units per acre still available before the Zoning Code density restrictions take effect. The additional density is allocated from this residual density under the Zoning Code, but only upon approval of the Town Commission as an ODP amendment and not above the overall Zoning Code density of 5.05.²

In addition to the restrictions of the Zoning Code, the Gulf Planned Development District is governed in part by a Land Intensity Schedule that is incorporated as part of the ODP. The Land Intensity Schedule currently states in relevant part that:

It is specifically understood and agreed by the parties hereto that the setting of the aforementioned maximum densities will prohibit the transfer *from any one said parcels to another*. (Emphasis added).

Thus, if any one parcel does not build out to the density for that parcel as permitted under the Land Intensity Schedule, a developer cannot simply use those approved but unbuilt densities in another parcel. Instead, the developer must obtain approval of a change of density for that parcel, by amending the Land Intensity Schedule through the ODP process. It is important to note, however, that the Ca d' Cuore proposal does not seek to transfer density from any one parcel in the GDP to the Ca d' Cuore parcel.

² Of course, the density of the Zoning Code may be exceeded if the density is approved by referendum as required by the Town Charter, and the Comprehensive Plan is amended.

In this case, where the proposal seeks to add density from the overall density allowable under the Zoning Code, the mechanism for change is an ODP amendment, including a change to the Land Intensity Schedule. The Town Commission always retains the authority to amend the ODP up to 5.05 units per acre if the substantial competent evidence demonstrates that the criteria of the Zoning Code are met.

Conclusion. The Ca d' Cuore development proposal does not request a transfer of density from one parcel to another, but rather it requests additional density allowed under the Zoning Code and the Comprehensive Plan. We recommend, should the Town Commission approve the Ca d' Cuore development, that the approving ordinance also adopts a fully updated Land Intensity Schedule. The Schedule should reflect not only the Ca d' Cuore development, but also the cumulative changes that have occurred over several years. We also suggest for clarity that the adopting Ordinance specifically indicate that the Ca d' Cuore development is permitted as within the densities allowed under the Zoning Code and the Comprehensive Plan and is not a transfer of density from one parcel to another.