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The Honorable James L. Brown, Mayor
and Members of Town Commission
Town of Longboat Key
501 Bay Isles Road
Longboat Key, Florida 34228

RE: Recommendations regarding Order Granting Petition for Writ of Certiorari

Dear Mayor Brown and Commissioners:

I have previously circulated to you the Order entered by Judge Roberts granting IPOC's Petition for Writ of Certiorari. The Judge agreed with Petitioners on all seven issues.

The Judge appears to find that the Zoning Code for the Town is unambiguous and does not require interpretation. If a Code requires interpretation, the law requires the Court to grant deference to the agency making the determination, in this case, the Planning & Zoning Board staff. The Court granted no such deference.

Second, if there is ambiguity within the Zoning Code, the law requires the Town to construe it in the light most favorable to the property owner, in this case, the Applicant. Since the Court apparently does not find the Code ambiguous, it does not grant any deference to the position of the property owners.

Third, the Order does not appear to apply the proper standard for the Court to review the Town's decision. Recent case law appears to grant a highly deferential standard to the Town in making its decision. If an appeal is made and the appellate court agrees with any of these or other issues, the Order will be reversed and the case remanded.

Key Club has notified me that it will appeal. In keeping with the requirements of the Development Order, Key Club will continue to reimburse the Town for its legal expenses should the Town file an appeal.

For a variety of reasons, I recommend that if Key Club files an appeal, the Town appeal as well. First, it is difficult to determine why the Code as currently constructed is not ambiguous, if for no other reason, as there are many reasonable interpretations arising out of the same provisions of the Code. Thus the Town staff's determinations should be granted deference unless clearly erroneous.

Second, as the recent litigation involving the Colony has so dramatically shown, determinations from a first court of review can be dramatically changed by a second court's review. As a practical matter, an appeal leaves open the possibility that the parties could reach a settlement. There is nothing in the Judge's Order that cannot be achieved by the Town to legally and properly grant the Development Order. The Judge did not fault the Development Order, just the language of the Town's existing Code to grant it. In fact, the Order provides a road map to achieve lawful approval of the Development Order should Key Club and the Town so choose.

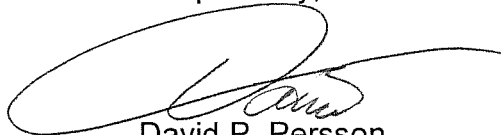
I think this Order does something very important for the Town. Regardless of the Town's and Key Club's legal ability to challenge, the Order dramatically underlines the discussions we have had over the last several years about the need to have clear and definitive codes for the determination of allowable uses on Longboat Key. The policies and direction of the Town have shifted significantly over the last several years and its Code has not adequately followed that shift. Based upon your actions, the implementation process has begun. The Comprehensive Plan and the Land Development Regulations need to clearly articulate how your adopted Mission Statement and Core Values will be implemented and achieved.

In that process, I am hopeful that a more objective set of criteria can be adopted for redevelopment. The frustration in all of this is that no matter what your position, the current process does not lend itself to definitive or explicit results. Thus Key Club believes (and could still be right) that the Town had the ability to grant the Development Order. IPOC believes (and could still be wrong) that the Town did not have the right to grant the Development Order. So regardless of your position, in order to expect substantial investment in Longboat Key, present and future property owners need to be able to discern with particularity what it is they can or cannot do and what their neighbors can and cannot do. If nothing else, my opinion is that Judge Roberts' Order clearly illustrates the need for action by the Town.

At your regular meeting Monday night, I intend to ask you for authority to file an appeal if Key Club files an appeal. I'd also propose that discussion of any Comprehensive Plan and Land Development Regulations modifications be coordinated with the Town Manager and placed on the nearest convenient workshop agenda.

Thank you for any consideration you may grant this letter. I will be pleased to discuss this in greater detail or answer any questions that you might have.

Respectfully,



David P. Persson

DPP/dgb

cc: David Bullock, Town Manager
Chairman Webb, and Members of the Planning and Zoning Board
Steve Schield
Trish Granger