

**STATE OF FLORIDA
DEPARTMENT OF COMMUNITY AFFAIRS**

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

Petitioner,

vs.

Case No. DCA10-GM-202

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.

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**DETERMINATION OF CONSISTENCY
OF A LAND DEVELOPMENT REGULATION**

Petitioner challenges, pursuant to section 163.3213, *Fla. Stat.*, five of the nine modifications to the Town of Longboat Key's ("Town") land development regulations adopted by Ordinance No. 2010-16 ("Ordinance"). Petitioner alleges the Ordinance is a land development regulation ("LDR") and that it is inconsistent with the Town's Comprehensive Plan. The Department of Community Affairs ("Department" or "DCA") conducted an informal investigation as directed by section 163.3213(4), *Fla. Stat.*, which included an informal meeting with representatives of the Petitioners and the Town on August 24, 2010, in Longboat Key, Florida, a response by the Town, and the submission of supporting documentation. Based on that informal investigation, review of the LDRs, and review of the Comprehensive Plan, the Department makes the following findings of fact and conclusions of law.

FINDINGS OF FACT

1. Ordinance No. 2010-16 modifying the Town's LDRs was adopted on May 20, 2010. Petitioner, as a condition precedent, filed a Petition with the Town on June 3, 2010. 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. Petitioner then filed its Petition with the Department on July 15, 2010.

2. Islandside Property Owners Coalition, LLC, ("Petitioner" or "IPOC") is an active Florida limited liability company in good standing with the State of Florida. Each member of IPOC is either a homeowners association or condominium association, who manages and operates a residential development that is located within or immediately adjacent to the land area commonly known as the "GPD." Several of the associations that are members of IPOC also own property within the GPD in their own name.

3. 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, *Fla. Stat.* The Town is also a "local government" under the "Local Government Comprehensive Planning and Land Development Regulation Act," Part II, Chapter 163, *Fla. Stat.* The Respondent Town Commission is the legislative or governing body of the Town pursuant to the Town's municipal charter, Part II, Chapter 163, *Fla. Stat.* and Part I, Chapter 166, *Fla. Stat.*

4. The Ordinance amends the following sections and subsections of Chapter 158, the zoning code of the code of ordinances of the Town: Section 158.009, Description of Districts

and District Policies, Subsection (L), Section 165.067, 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, subsections (L) and (L)(3), and Section 158.132, Tourism Uses, subsection (B). A copy of a strike-through and underlined version of Ordinance 2010-16 adopting the amendments to Chapter 158 is attached to this Consistency Determination as Exhibit A.

5. The following terminology is used in the Town's LDRs and Comprehensive Plan:

GPD zone district (Gulf Planned Development zone);
PD zone district (Planned Development zone)
NPD zone district (Negotiated Planned Development zone)
GPD future land use category (Gulf Planned Development);
PD future land use category: (Planned Development);
NPD future land use category: (Negotiated Planned Development);
ODP: Outline Development Plan (master development plan required by LDRs in GPD zone);
LIS: Land Intensity Schedule (required by LDRs in GPD zone).

The GPD, PD, and NPD zoning districts are PUD districts pursuant to the PUD provisions of the LDRs. Lands within a GPD zoning district are regulated by an ODP and LIS. The ODP and LIS reflect approved uses, densities/intensities of various development parcels within a specific designated GPD zoning district. The Comprehensive Plan reflects and includes GPD, PD, and NPD future land use categories or classifications that apply to and encompass the same land areas as the corresponding GPD, PD, and NPD zoning districts.

6. Petitioner challenges subsections 158.009(L), 158.071(A)(2), 158.071(D), 158.102(L), and 158.132(B). Petitioner alleges that the LDR amendments are inconsistent with the Town's Comprehensive Plan on the basis of types of land uses, densities, intensities, non-

conforming uses, departures, and compatibility of use regarding the planned unit development (“PUD”) zoning districts GPD, PD, and NPD.

7. Petitioner challenges Ordinance No. 2010-16 as being inconsistent with the Comprehensive Plan Future Land Use Element (“FLUE”) Table 1, Goal 1, Policies 1.1.1, 1.1.2, 1.1.4, 1.1.6, and 1.1.7, and Housing Element (“HE”) Policy 1.4.6, which state as follows:

FLUE Table 1 (Land Use Densities and Intensities). See Exhibit B, attached hereto and incorporated herein by this reference.

FLUE Goal 1: 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.

FLUE Policy 1.1.1: 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 contained in this element.

FLUE Policy 1.1.2: 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;

FLUE Policy 1.1.4: 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.

FLUE Policy 1.1.6: 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.

FLUE Policy 1.1.7: In development planning efforts, emphasis will be placed upon the protection of the visual and aesthetic character of neighborhoods, including open space.

HE Policy 1.4.6: The Town will protect the visual and aesthetic quality of neighborhoods through design standards.

CONCLUSIONS OF LAW

8. A “substantially affected person” may challenge a land development regulation on the basis that it is inconsistent with the local comprehensive plan. Section 163.3213(2)(a) & (3), *Fla. Stat.* A substantially affected person is one who demonstrates an injury or immediate threat of injury from the operation of the challenged action, and that this substantial injury is of the type and nature which the proceeding is designed to protect. *Agrico Chem. Co. v. DER*, 406 So. 2d 478 (Fla. 2d DCA 1981); *Veal v. Escambia County*, DOAH Case No. 1189GM (Dec. 5, 2000). The Petitioner is a substantially affected person who will be adversely affected by the amendment to the GPD zoning district if the LDR amendment is not consistent with the Comprehensive Plan.

9. Section 163.3213(3), *Fla. Stat.*, requires that a consistency challenge must be instituted within 12 months after final adoption of the land development regulation by filing a petition with the local government. The local government may respond to the petition within 30 days, and the affected person must file the petition with the Department of Community Affairs “not later than 30 days after the local government has responded or at the expiration of the 30-day period which the local government has to respond.” The Petition in this case was timely filed within the requirements of section 163.3213(3), *Fla. Stat.*

10. The Ordinance is a land development regulation (“LDR”) as defined in section 163.3213(2)(b), *Fla. Stat.*

Standard of Review

11. All land development regulations must be consistent with the local comprehensive plan. Section 163.3194, *Fla. Stat.* Comprehensive plans are implemented, in part, by the adoption and enforcement of appropriate land development regulations. Section 163.3197, *Fla. Stat.*

12. The Department has adopted a rule which states,

A determination of consistency of a land development regulation with the comprehensive plan will be based upon the following:

(1) Characteristics of land use and development allowed by the regulation in comparison to the land use and development proposed in the comprehensive plan. Factors which will be considered include:

- (a) type of land use;
- (b) intensity and density of land use;
- (c) location of land use;
- (d) extent of land use; and
- (e) other aspects of development, including impact on natural resources.

(2) Whether the land development regulations are compatible with the comprehensive plan, further the comprehensive plan, and implement the comprehensive plan. The term “compatible” means that the land development regulations are not in conflict with the comprehensive plan. The term “further” means that the land development regulations take action in the direction of realizing goals or policies of the comprehensive plan.

(3) Whether the land development regulations include provisions that implement objectives and policies of the comprehensive plan that require implementing regulations in order to be realized, including provisions implementing the requirement that public facilities and services needed to support development shall be available concurrent with the impacts of such development.
Fla. Admin. R. 9J-5.023.

Scope of Review

13. The Ordinance amended existing sections and subsections of the Town's LDRs. The Department is tasked with determining whether the amendments to the Town's LDRs render the LDRs inconsistent with the Town's Comprehensive Plan. In its determination, the Department must consider for consistency, in its entirety, any section or subsection that has been modified, as the change of a word or sentence may change the meaning of the entire section or subsection. The amended sections were also reviewed in the larger context of the existing LDRs, but the larger context of the existing LDRs was not reviewed for consistency with the Comprehensive Plan. Whether an amendment to the LDRs makes a substantive change or not is not determinative of whether the Section or Subsection is consistent or inconsistent with the Comprehensive Plan.

14. FLUE Support Documentation Table 5 ("Table 5") is part of the adopted portion of the Town's Comprehensive Plan, but Table 5 does not incorporate by reference any part of the LDRs. Table 5 identifies the source of the land use classifications listed in Table 5, but Table 5 does not incorporate by reference a document outside the Comprehensive Plan such as any part of the LDRs in a manner consistent with the requirements of Rule 9J-5.005(2)(g), F.A.C. The Department rejects any argument that the LDRs are adopted into the Comprehensive Plan by way of the referenced notation on Table 5.

Alleged Inconsistencies

I. Land Development Regulation Section 158.009(L)

15. Petitioner alleges the adopted amendments to Subsection 158.009(L) allow non-residential uses, intensities, and densities that are not allowed by the Comprehensive Plan, and that a “mix of uses” would allow any use as set forth in the LDRs.

16. Section 158.009 contains the description of zoning districts, and the challenged Subsection 158.009(L) pertains specifically to the Planned Development (“PD”), Gulf Planned Development (“GPD”) and Negotiated Planned Development (“NPD”) zoning districts. Under Section 158.125, development may occur in these three zoning districts either as a planned unit developments (“PUD”) or as a non-PUDs. Section 158.071 establishes requirements for proposed land uses in a PUD, and Subsection 158.071(A)(1) states that “Proposed land uses shall not adversely affect surrounding development and shall be consistent with the town’s comprehensive plan.” Thus, pursuant to Subsection 158.071(A)(1), a planned unit development is intended to only have proposed land uses that are consistent with the Town’s Comprehensive Plan.

Nonresidential Uses and Intensities.

17. The first sentence of Subsection 158.009(L) states, “Planned unit developments approved in a planned development district may include a mix of land uses as set forth in the regulations of this chapter.” This sentence does not in and of itself allow nonresidential use as a permitted use in a PUD independent of the other general LDR requirements for a PUD. Subsection 158.009(L) by its express language, “as set forth in the regulations of this chapter,” intends that other sections of the LDRs be applied regarding the allowable land uses.

18. The first sentence of Subsection 158.009(L) does not create an exception to Subsection 158.071(A)(1), and therefore must be read in combination with Subsection

158.071(A)(1), which provides a threshold criterion that the proposed land uses shall be consistent with the Comprehensive Plan. It would be unreasonable to interpret the first sentence of amended Subsection 158.009(L) as allowing types of proposed land uses that are inconsistent with Subsection 158.071(A)(1), because such an interpretation would render Section 158.071(A)(1) meaningless.

19. Subsections 158.071(A)(1) and (2) must be read in combination as they both address proposed land uses in a PUD. The first sentence of amended Subsection 158.071(A)(2), states: "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." The first sentence of Section 158.071(A)(2) does not allow nonresidential use as a permitted use in a PUD independent from the application of Subsection 158.071(A)(1). It would be unreasonable to interpret the first sentence of Subsection 158.071(A)(2) as allowing types of proposed land uses that are inconsistent with Subsection 158.071(A)(1), because such an interpretation would render Subsection 158.071(A)(1) meaningless. Thus, read together, amended Sections 158.009(L), 158.071(A)(1), and the first sentence of Subsection 158.071(A)(2) do not result in nonresidential use being allowed in a PUD in the PD, GPD and NPD zoning districts inconsistent with the Comprehensive Plan.

20. If the Comprehensive Plan allows nonresidential uses and intensities in the PD, GPD, and NPD future land use categories, then Subsection 158.009(L), in combination with applicable sections of the LDRs, would allow such nonresidential uses and intensities in PUDs in

the applicable PD, GPD, and NPD zoning districts. Conversely, if the Comprehensive Plan does not allow nonresidential uses and intensities in the PD, GPD, and NPD future land use categories, then Subsection 158.009(L) in combination with applicable sections of the LDRs would not allow such nonresidential uses and intensities in PUDs in the applicable PD, GPD, and NPD zoning districts. Therefore, regarding the types of nonresidential uses and intensities allowed by Ordinance 2010-16, Subsection 158.009(L) is not inconsistent with FLUE Goal 1, Table 1, and Policies 1.1.1, 1.1.4, and does not fail to further FLUE Policy 1.1.7 and HE Policy 1.4.6 of the Comprehensive Plan.

Density and Clustering.

21. The Comprehensive Plan establishes density standards in FLUE Table 1 (“Table 1”) and Table 5. Subsection 158.009(L)(1) establishes an express exception to the zoning code for the calculation of density for residential and tourism uses in a PUD in the PD and GPD zoning districts. The exception allows density to be based on the average overall density per acre of all properties included within a PD or GPD district, including recreational areas, open space areas, road right-of-way, wetland areas and other nonresidential lands. Subsection 158.009(L)(1) further states, “[i]t is understood that under these zoning regulations, the density of sites within the PD and GPD may vary, such that the clustering of density on one or more parcels within a site may be allowed.” The Department reads Subsection 158.009(L)(1) to allow the clustering of district-wide density within one or more parcels in the respective PD and GPD zoning districts.

22. The Comprehensive Plan does not contain specific clustering policies, but FLUE Policy 1.1.9 states, “The Town will use overlay zone districts and other innovative land use

controls in planning for redevelopment.” It is reasonable to interpret FLUE Policy 1.1.9 as allowing a PUD form of development with density clustered from within the boundaries of the PUD because: (1) a PUD can be an overlay zone district as well as an innovative land use control; and (2) such clustering of density is typically associated with a PUD form of development as a means to facilitate the flexibility of internal design of a development. The Town’s LDR Section 158.125 allows “planned unit development overlays” for many zoning districts, including the PD, GPD, and NPD through the requirements of Sections 158.065 through 158.071.

23. Because FLUE Policy 1.1.9 reasonably allows the clustering of density from within the boundaries of a PUD, it follows that such clustering of density is consistent with the density standards of Table 1 when the density standard is applied to the entire acreage of the PUD rather than applied individually to each acre or parcel of the PUD. Such an application of density within a PUD complies with the density standard so long as the total number of dwelling units within the PUD does not exceed the total number of dwelling units that result from applying the density standard to the entire acreage of the PUD. Thus, the clustering of density from and within the boundaries of a PUD is consistent with Table 1, and thus consistent with FLUE Goal 1, Policies 1.1.1, 1.1.2, and 1.1.4.

24. However, it is not reasonable to interpret FLUE Policy 1.1.9 to allow the clustering of density onto a PUD from all properties located within either the PD or GPD zoning districts and land use categories, because such district-wide clustering of density is not typically associated with a PUD form of development. There is no language in the Comprehensive Plan allowing for district-wide clustering of density, and it is not reasonable to interpret FLUE Policy

1.1.9 as broadly as allowing such clustering of density. The clustering of density onto a PUD from all properties located within the PD or GPD zoning district or future land use category as permitted by Subsection 158.009(L)(1) is inconsistent with the density standards of Table 1, because such clustering would allow the total number of dwelling units within the PUD to exceed the total number of dwelling units that results from applying the density standard only to the entire acreage of the PUD.

25. FLUE Goal 1 states, "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." By allowing the clustering of density onto a PUD from any or all properties within a PD or GPD zoning district or future land use category, Subsection 158.009(L)(1) does not ensure that the density of land uses is responsive to the social and economic needs of the community as defined by the density standards expressed in Table 1; therefore, Subsection 158.009(L)(1) is inconsistent with FLUE Goal 1.

26. FLUE Policy 1.1.1 intends for the Town to adopt land development regulations which address land use in accordance with the densities of land use contained in the Comprehensive Plan. Because Subsection 158.009(L)(1) is inconsistent FLUE Table 1, it is also inconsistent with FLUE Policy 1.1.1.

27. FLUE Policy 1.1.2 states, "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.” By allowing the clustering of density onto a PUD from all properties within a PD or GPD zoning district (or applicable PD or GPD future land use category), Subsection 158.009(L)(1) does not implement the adopted Comprehensive Plan regarding densities; therefore, Subsection 158.009(L)(1) is inconsistent with FLUE Policy 1.1.2.

28. FLUE Policy 1.1.4 requires the Town to adopt land development regulations consistent with the densities established in Table 1. Because Subsection 158.009(L)(1) is inconsistent FLUE Table 1, it is also inconsistent FLUE Policy 1.1.4.

Consistency Determination for Subsection 158.009(L).

29. For the reasons set forth above, Subsection 158.009(L) is **consistent** with FLUE Table 1, Goal 1, and Policies 1.1.1, 1.1.2, 1.1.4, 1.1.6, and 1.1.7 and HE Policy 1.4.6 concerning non-residential uses and intensities and clustering density within a PUD.

30. For the reasons set forth above, Subsection 158.009(L)(1) is **inconsistent** with FLUE Table 1, Goal 1, and Policies 1.1.1, 1.1.2, and 1.1.4 concerning the district-wide clustering of density within a zoning district.

II. Land Development Regulation Subsection 158.071(A)(2)

31. Petitioner alleges that the amendments to Subsection 158.071(A)(2) , which changes the permitted amount of non-residential land within the GPD from 5% of the area to 15%, increasing the amount of commercial, commercial tourism, commercial recreation, office and other non-residential uses, is inconsistent with the Comprehensive Plan, because nothing in the Comprehensive Plan permits any non-residential uses in the GPD, PD, or NPD future land use categories, and nothing in the Comprehensive Plan provides for any intensity of such non-

residential uses. Petitioner also contends the amendments to Section 158.071(A)(2) go far beyond any attempt to “vest” or protect the existing non-residential uses insofar as they may be non-conforming under the Comprehensive Plan or LDRs; instead, the changes to Section 158.071(A)(2) allow new non-conforming development and allow existing non-conformities to be enlarged, expanded, intensified or extended inconsistent with the Comprehensive Plan. Petitioner contends that the amendments therefore are not compatible with and do not further FLUE Table 1, Goal 1, and Policies 1.1.1, 1.1.2, 1.1.4, 1.1.6, and 1.1.7.

Non-Residential Uses and Intensities.

32. A PUD overlay is allowed in many zoning districts, including PD, GPD, and NPD, pursuant to Sections 158.065 through 158.071. Section 158.071 establishes requirements for proposed land uses in a PUD. Subsection 158.071(A)(2), states, “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 planned unit development overlay unless they are permitted uses within the underlying zoning district.” Subsection 158.071(A)(2) does not itself allow nonresidential use as a permitted use in a PUD independent from the application of Section 158.071(A)(1). Subsection 158.071(A)(1) states, “Proposed land uses shall not adversely affect surrounding development and shall be consistent with the town’s comprehensive plan.” Thus, pursuant to Subsection 158.071(A)(1), a planned unit development is intended to only have proposed land uses that are consistent with the Town’s Comprehensive Plan. Read together, Section 158.071(A)(1) and the first sentence of Section 158.071(A)(2) do not result in

nonresidential use and intensities being allowed in a PUD inconsistent with the Comprehensive Plan.

33. The second sentence of Subsection 158.071(A)(2) states, “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.” This sentence creates an express exception that allows nonresidential land uses to be permitted within two specific planned unit developments, and the exception is intended to operate independent of the other general requirements for a planned unit development. This second sentence of Subsection 158.071(A)(2) does not change the preceding analysis regarding the consistency of the first sentence of Subsection 158.071(A)(2) with the Comprehensive Plan, but the exception allowed by the second sentence permits land uses within a planned unit development (e.g., types of nonresidential use) that would be inconsistent with the Comprehensive Plan. Thus, the second sentence of amended Section 158.071(A)(2) is inconsistent with the Comprehensive Plan, as follows.

34. Subsection 158.071(A)(2) is consistent with FLUE Policy 1.1.7, but inconsistent with FLUE Table 1, Policies 1.1.1, 1.1.2, and 1.1.4, and Goal 1 of the Comprehensive Plan because: (1) Subsection 158.071(A)(2) allows nonresidential use in areas defined as the PD and GPD zoning districts when the PD and GPD future land use categories do not allow such nonresidential use; and (2) Subsection 158.071(A)(2) allows an intensity of nonresidential use in

areas that the Comprehensive Plan has not authorized such intensity of nonresidential use for the PD and GPD future land use categories, as follows:

35. Table 1 establishes standards for densities and nonresidential intensities of use for the future land use categories, but Table 1 does not establish intensity of use standards for nonresidential uses in the PD and GPD future land use categories or identify that nonresidential use is allowed in the PD and GPD future land use categories. Thus, amended Section 158.071(A)(2) is inconsistent with Table 1.

36. FLUE Policy 1.1.1 states, "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 contained in this element." Subsection 158.071(A)(2) is inconsistent with Policy 1.1.1 for the same reasons it is inconsistent with Table 1.

37. FLUE Policy 1.1.2 states, "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. Subsection 158.071(A)(2) is inconsistent with FLUE Policy 1.1.2 for the same reasons it is inconsistent with Table 1.

38. FLUE Policy 1.1.4 states, "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." FLUE Policy 1.1.4 requires the Town to adopt land development regulations consistent with the intensities of use established in Future Land Use Element Table 1. Table 1

does not establish nonresidential intensities of use for the PD and GPD future land use categories. Subsection 158.071(A)(2) does not implement the Comprehensive Plan based on and consistent with the standards for land use intensities as indicated in Table 1 for the PD and GPD future land use categories. Therefore, amended Section 158.071(A)(2) is inconsistent with FLUE Policy 1.1.4.

39. FLUE Goal 1 states the following: “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.” By allowing nonresidential uses and intensities of nonresidential use inconsistent with the Comprehensive Plan, Subsection 158.071(A)(2) does not ensure that the intensity of land uses is responsive to the social and economic needs of the community as defined by where and at what intensity the future land use categories allow nonresidential use. Therefore, Subsection 158.071(A)(2) is inconsistent with FLUE Goal 1.

40. The inconsistent amendment to Subsection 158.071(A)(2) does not result in Subsection 158.009(L) being inconsistent with the Comprehensive Plan because the express exception of Subsection 158.071(A)(2) is not intended to render inapplicable the general requirements of Subsection 158.071(A)(1) that guide land uses intended by Subsection 158.009(L).

Non-Conforming Uses and Compatibility.

41. FLUE Policy 1.1.7 states, “In development planning efforts, emphasis will be placed upon the protection of the visual and aesthetic character of neighborhoods, including open space.” FLUE Policy 1.1.7 does not expressly pertain to whether nonresidential land use and nonresidential intensity standards apply to the PD and GPD future land use categories, and, therefore, it is at least fairly debatable that Subsection 158.071(A)(2) is consistent with FLUE Policy 1.1.7. FLUE Policy 1.1.7 does not require a specific amount of open space for the PD and GPD future land use categories, and it is at least fairly debatable that the two projects allowed by Subsection 158.071(A)(2) are consistent with the general guidance of FLUE Policy 1.1.7 to protect open space. FLUE Policy 1.1.7 does not establish specific guidelines regarding protection of the visual and aesthetic character of neighborhoods, and it is at least fairly debatable that the two projects allowed by amended Subsection 158.071(A)(2) are consistent with the general guidance of Policy 1.1.7 to protect the visual and aesthetic character of neighborhoods. Therefore, Subsection 158.071(A)(2) is consistent with FLUE Policy 1.1.7.

42. Regarding non-conformities, FLUE Policy 1.1.6 states, “[b]uildings, 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. FLUE Policy 1.1.6 further states, “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.” The first sentence of FLUE Policy 1.1.6 may be reasonably interpreted as the non-

conformities that the second sentence states shall not be enlarged, expanded, intensified, or extended. Thus, if a land use is non-conforming with the zoning code but then the zoning code is amended to allow the land use, the former non-conforming land use becomes legally conforming under the zoning code and FLUE Policy 1.1.6 does not apply. It is at least fairly debatable that Subsection 158.009(L) is consistent with FLUE Policy 1.1.6.

Consistency Determination for Subsection 158.071(A)(2).

43. For the reasons set forth above, Subsection 158.071(A)(2) of the LDRs is **inconsistent** with Comprehensive Plan Future Land Use Element Table 1, Goal 1, and Policies 1.1.1, 1.1.2, 1.1.4 and 1.1.7 concerning non-residential uses and intensities.

44. For the reasons set forth above, Subsection 158.071(A)(2) of the LDRs is **consistent** with Future Land Use Element Policies 1.1.6, and 1.1.7 concerning nonconforming uses.

III. Land Development Regulation Subsection 158.071(D)

Clustering of Density.

45. Petitioner alleges the amendment to Subsection 158.071(D) is inconsistent with FLUE Table 1, Goal 1, Policies 1.1.1, 1.1.2, 1.1.4, 1.1.7; and HE Policy 1.4.6 because the amendment 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, and that 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. Subsection 158.071(D) allows clustering of density within a PUD through the concepts of "average overall density of a planned unit development" and "maximum average overall

density.” Petitioner alleges that such clustering of density is not allowed by the Comprehensive Plan, and that the Comprehensive Plan requires the density standard to be applied on a per acre basis and not as an average number of dwelling units per the entire area (or larger than gross acre) of a PUD. Thus, according to Petitioner, the Comprehensive Plan does not expressly allow the density standard to be applied in a manner that would allow clustering of density such that the number of dwelling units on an individual gross acre could exceed the density standard stated in Table 1.

46. Section 158.071 addresses the proposed land uses for a PUD, and Subsection 158.071(A)(1) requires the proposed land uses of a PUD to be consistent with the Town’s Comprehensive Plan. Section 158.071(D) states,

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 density of a planned unit development exceed the maximum average overall density set forth in this Code or the Comprehensive Plan for the planned unit development.

47. Subsection 158.071(D) pertains to PUDs but does not authorize the types of land uses that may be allowed within a PUD in any manner that renders inapplicable or overrides the requirement of Subsection 158.071(A)(1) that the proposed land uses shall be consistent with the Comprehensive Plan. Subsection 158.071(D) establishes criteria that require amendment to the Outline Development Plan (“ODP”) of a PUD if there is a subsequent request for any new or additional residential or tourism density. Thus, whether any new or additional residential or

tourism uses would be allowed in a PUD depends on whether the uses would be consistent with the Comprehensive Plan as required by Subsection 158.071(A)(1).

48. Subsection 158.071(D) states that the average overall density of a PUD shall not exceed the maximum average overall density set forth in the LDRs or the Comprehensive Plan for the PUD. Thus, amended Section 158.071(D) makes clear that the density standard applies to the area of the PUD and not to a geographic area larger than the PUD such as the entire zoning district. Thus, the density within a PUD must not exceed the density standard. The density for a PUD is set forth in the following: (1) Section 158.070 for all applicable zoning districts; (2) Subsection 158.009(L) for the PD (3.26 units per acre), GPD (5.05 units per acre), and NPD (4.80 units per acre) zoning districts; and (3) Comprehensive Plan Future Land Use Element Table 1.

49. Subsection 158.071(D) clarifies that residential density includes tourism density by adding the words “or tourism” and this clarification implements the definition of residential density provided in Section 158.006, which defines “Maximum Gross Residential Density” as the maximum allowable number of dwelling or tourism units per acre of gross land area, as determined by the Zoning Code. Section 158.006 defines “Gross Land Area” as those contiguous land areas under common ownership with several limited provisions and exceptions. It is reasonable to interpret Section 158.006 as requiring density to be calculated on a gross acre basis with regard to the maximum gross residential density.

50. Subsection 158.071(D) refers to “maximum average overall density” as set forth in the LDRs or Comprehensive Plan for the planned unit development. But, the Comprehensive Plan does not expressly establish density standards in terms of a “maximum average overall

density.” The Comprehensive Plan establishes density standards in Table 1 of the Goals, Objectives, and Policies, and Table 5 of the Data and Analysis. Table 1 expresses density as the number of dwelling units per acre (e.g., 5.05 du/ac). Table 5 expresses density as the number of units per acre (e.g., 5.05 units/acre).

51. FLUE Policy 1.1.9 states that “[t]he Town will use overlay zone districts and other innovative land use controls in planning for redevelopment.” Because FLUE Policy 1.1.9 reasonably allows the clustering of density from within the boundaries of a PUD, it is reasonable to interpret such clustering of density as consistent with the density standards of Table 1 (e.g., Gulf Planned Development 5.05 dwelling units/acre) such that the density standard is applied to the entire acreage of the PUD rather than applied individually to each acre of the PUD.

52. When the density standard is applied to the entire acreage of a PUD rather than individually to each acre of the PUD, the PUD complies with the density standard (e.g., Gulf Planned Development 5.05 dwelling units/acre) so long as the total number of dwelling units within the PUD does not exceed the total number of dwelling units that results from applying the density standard to the entire acreage of the PUD. Thus, the clustering of density from within the boundaries of a PUD as allowed by Subsection 158.071(D) is consistent with FLUE Table 1, and thus consistent with FLUE Goal 1, Policies 1.1.1, 1.1.2, 1.1.4, 1.1.6, 1.1.7 and Housing Element Policy 1.4.6.

Consistency Determination for Subsection 158.071(D).

53. For the reasons set forth above, Section 158.071(L) of the LDRs is **consistent** with the Comprehensive Plan Future Land Use Element Table 1, Goal 1, and Policies 1.1.1, 1.1.2, 1.1.4, and 1.1.7 and Housing Element Policy 1.4.6.

IV. Land Development Regulation Subsection 158.102(L)

54. Petitioner alleges that LDR Subsection 158.102(L) is inconsistent with FLUE Table 1, Goal 1, Policies 1.1.1, 1.1.2, 1.1.4, 1.1.7;¹ and Housing Element Policy 1.4.6, because Subsection 158.102(L) allows departures from performance standards and supplemental controls designed to ensure compatibility of adjacent land uses, visual and aesthetic character/quality of neighborhood, buffering, and open space through the PUD approval process for multifamily and tourism uses without establishing a hardship and without meeting any other meaningful or objective criteria.

55. Section 158.102 addresses performance standards for the review of site and development plans, and provides that the standards are applicable to PUDs through Section 158.067(K). Subsection 158.102(L) enumerates five supplemental controls (requirements) for multifamily residential or tourism uses for ten or more multifamily or tourism units. The five supplemental controls address: (1) setback of building to front lot line; (2) distance between buildings; (3) maximum length of buildings; (4) distance between buildings and driveways; and (5) off-street parking spaces. The supplemental controls provide standards for site design and are relevant to land use compatibility, visual and aesthetic character of development, buffering, and open space.

56. The relevant portions of FLUE Policy 1.1.2 state, “The Town will utilize its land development regulations to implement the adopted Comprehensive Plan, which as a minimum

¹ The Petition alleges that the amendments to Section 158.102(L) are inconsistent with “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.” FLUE Policy 1.1.2 does not contain such a requirement; however, FLUE Policy 1.1.7 does contain that requirement. Therefore, the Petition appears to have incorrectly cited Policy 1.1.2 when a citation to Policy 1.1.7 was intended. The Petition, however, does allege inconsistency with Policy 1.1.7 in this context, in the last sentence of paragraph 41.

will . . . (3) Ensure the compatibility of adjacent land uses; . . . and (8) Provide buffering and open space requirements.” FLUE Policy 1.1.7 states, “[i]n development planning efforts, emphasis will be placed upon the protection of the visual and aesthetic character of neighborhoods, including open space. Housing Element Policy 1.4.6 states, “The Town will protect the visual and aesthetic quality of neighborhoods through design standards.”

57. Rule 9J-5.003(23), F.A.C., defines “Compatibility” to mean “a condition in which land uses or conditions can coexist in relative proximity to each other in a stable fashion over time such that no use or condition is unduly negatively impacted directly or indirectly by another use or condition.”

Compatibility, Visual and Aesthetic Character, Buffering, and Open Space.

58. In addition to the supplemental controls of Subsection 158.102(L), the LDRs contain numerous requirements to ensure the compatible development of a PUD. Subsections 158.067(B) and 158.097 require the application for a site plan, including for a PUD, to provide a variety of information that is relevant and useful to determining whether a proposed PUD results in the compatibility of adjacent land uses. Sections 158.067(K), 158.069, 158.070(B), 158.071(A)(1), and 158.102(A) to (F), and 158.102(L) establish substantive site design requirements for a PUD relevant to land use compatibility. Subsection 158.067(D) allows the Town to approve a PUD with conditions, and Subsection 158.067(D)(3) requires the approval to include findings of fact and conclusions as to the standards set forth in Section 158.102 and on many factors that ensure consistency with the Comprehensive Plan and compatibility with the surrounding neighborhoods and land uses.

59. When the Town approves a departure or waiver, development must still be compatible because of the numerous applicable requirements of the LDRs. In order for the Town to approve a PUD, Subsection 158.067(K) requires that the PUD shall be planned and developed to harmonize with any existing or proposed development in the area surrounding the project site. It is reasonable to interpret “harmonize” as intending a compatibility of land uses or conditions in relative proximity to each other as defined by Rule 9J-5.003(23), F.A.C. Thus, where the Town approves a departure or waiver from the five supplemental controls for a PUD, the LDRs still require the PUD to be compatible. Thus, the departures and waivers are generally limited in that the PUD must still achieve compatibility or the PUD is not to be approved.

60. FLUE Policy 1.1.7 states, “In development planning efforts, emphasis will be placed upon the protection of the visual and aesthetic character of neighborhoods, including open space. HE Policy 1.4.6 states, “The Town will protect the visual and aesthetic quality of neighborhoods through design standards. FLUE Policy 1.1.7 and HE Policy 1.4.6 do not state minimum numerical requirements defining the visual and aesthetic quality/character that must be addressed by the LDRs.

61. Subsection 158.102(L) provides an exception for PUDs that allows departure from any of the five supplemental controls, “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), . . .” Section 158.006 defines “waiver” to mean a grant of permission, which is authorized under this chapter that authorizes an applicant to deviate from specific standards or

provisions of these regulations. It appears that a “departure” would constitute a determination that allows site design to meet an adjusted standard (e.g., an adjusted numerical standard) or to otherwise deviate from the supplemental control.

62. Subsection 158.102(B) establishes performance standards that a PUD shall meet relevant to the visual and aesthetic quality/character of the neighborhood, including standards for the appearance of site and structures, exterior appearance that shall be in harmony with the site and impacted area; the design and arrangement of buildings; screening of mechanical equipment; adverse visual impact on surrounding properties or transportation corridors; and exterior lighting to be arranged as to shield or deflect the light from adjoining properties and public streets. Subsection 158.070(B) requires a PUD to be consistent with the comprehensive plan for the town and the zoning district in which it is located in respect to design compatibility, use, and height regulations. Subsection 158.071(A)(1), regarding planned unit developments, requires that the proposed land uses shall not adversely affect surrounding development and shall be consistent with the town’s comprehensive plan.

63. Apart from the supplemental controls of Subsection 158.102(L), the LDRs establish a development planning effort and standards for the visual and aesthetic quality/character of neighborhoods applicable to PUDs consistent with FLUE Policy 1.1.7 and HE Policy 1.4.6. The amendment to Subsection 158.102(L) does not render inapplicable all of the other LDR sections that implement FLUE Policy 1.1.7 and HE 1.4.6.

64. Policy 1.1.2(8) directs the LDRs to provide buffering requirements, but does not specify any particular buffering requirements. A primary purpose of buffering is to help ensure land use compatibility. Supplemental controls (1), (2), (4), and (5) of Subsection 158.102(L)

address buffering through distance requirements, including distance between lot line and buildings and between buildings; and through screening requirements for parking areas. Policy 1.1.2 does not state the numerical values for the buffering requirements or state that the buffering requirements cannot include a departure procedure that deviates from the numerical values of the supplemental controls of Subsection 158.102(L).

65. Comprehensive Plan FLUE Policy 1.1.2 requires the LDRs to provide open space requirements, and FLUE Policy 1.1.7 states, "In development planning efforts, emphasis will be placed upon the protection of the visual and aesthetic character of neighborhoods, including open space." Policies 1.1.2 and 1.1.7 do not state minimum numerical requirements defining an amount of open space that must be addressed by the LDRs.

66. Sections 158.069 and 158.102(F), provide minimum requirements for open space for PUDs, and these open space requirements are utilized in the development review process to ensure open space. In this way, the LDRs implement the direction of Policy 1.1.7 to protect open space. The open space requirements of Sections 158.069 and 158.102(F) are not rendered inapplicable by Subsection 158.102(L).

67. It is at least fairly debatable that even if a departure or waiver pursuant to Subsection 158.102(L) is approved, there are numerous LDRs that ensure the compatibility of adjacent land uses, visual and aesthetic character/quality of neighborhood, open space, and buffering through the PUD; the LDRs require an application for development that contains relevant compatibility information; the LDRs have substantive design standards other than those in 158.102(L); the LDRs require the standards be met; and collectively, even if departures are approved, the LDRs ensure compatibility. Subsection 158.102(L), which allows departures from

performance standards, is therefore not inconsistent with FLUE Table 1, Goal 1, Policies 1.1.1, 1.1.2, 1.1.4, 1.1.7; and HE Policy 1.4.6.

Hardship Requirements for Departures.

68. Subsection 158.102(L) further states, “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 facts constituting the basis for a waiver of these supplemental controls.”

69. The Comprehensive Plan policies cited by Petitioner provide general guidance but do not expressly require the LDRs to specifically include and apply the five supplemental controls of subsection 158.102(L), do not address the subject of departures from the supplemental controls of subsection 158.102(L), do not expressly state that the Town cannot approve departures from such supplemental controls when reasonably appropriate, and do not prescribe any specific criteria the Town must use in approving such departure.

70. Subsection 158.102(L) states that the departure standards of Subsection 158.067(D)(3)(g) are to be used for the departure decision. The departure standards of Subsection 158.067(D)(3)(g) require the applicant to either establish a hardship or demonstrate how the requested departure is necessary or desirable to accomplish one or more purposes of a planned unit development set forth in Section 158.065. Section 158.065 states,

The purpose of planned unit development regulations is to encourage flexibility in the design and development of land in order to promote its most appropriate use; to facilitate the adequate and economical provision of streets, utilities, and public spaces; and to preserve the natural and scenic qualities of open areas. The procedure is intended to permit diversification in the location of structures and improve circulation facilities and other site qualities while ensuring adequate standards relating to public health, safety, comfort, order, appearance,

convenience, morals, and general welfare, both in the use and occupancy of buildings and facilities in planned groups.

71. Thus, it is reasonable to allow departures if there is a hardship, especially for a PUD because PUDs are intended to provide flexibility in design and development of land. The cited policies do not expressly state that a departure cannot be approved for the five supplemental controls when a hardship exists. Thus, amended Section 158.102(L), which allows departures if a hardship exists, is not inconsistent with the cited plan policies.

72. The lack of Subsection 158.067(D)(3)(g) to require a hardship for the approval of a departure does not make Section 158.102(L) inconsistent with the policies cited in the Petition. When a hardship does not exist, it may be reasonable for a departure in order to accomplish one or more of the stated purposes of the PUD (e.g., encourage flexibility in the design and development of land) as set forth in Section 158.065.

Consistency Determination for Subection 158.102(L).

73. For the reasons set forth above, Section 158.102(L) of the LDRs is **consistent** with the Comprehensive Plan Future Land Use Element Table 1, Goal 1, and Policies 1.1.1, 1.1.2, 1.1.4, and 1.1.7 and Housing Element Policy 1.4.6.

V. Land Development Regulation Subsection 158.132(B)

Tourism Uses.

74. Petitioner alleges that LDR Subsection 158.132(B) is inconsistent with FLUE Table 1, Goal 1, and Policies 1.1.1, 1.1.2, 1.1.4, and 1.1.7 because Subsection 158.132(B) expands the permitted PUD land uses to include an inconsistent land use type, commercial tourism (i.e., hotels/motels), in the GPD, PD, NPD and other existing and future PUDs within the Town.

75. Subsection 158.132(B) states, "Tourism Use of property for remuneration is allowed within T-3 and T-6 Zoning Districts or as may be permitted in a planned unit development within the Town of Longboat Key." Section 158.006 defines "Tourism Use" as "Use, occupancy, or the design for such use or occupancy, by any person, of any property for transient lodging purposes where the term of occupancy, possession or tenancy of the property by the person entitled to such occupancy, possession or tenancy is less than 30 consecutive calendar days or one entire calendar month, whichever is less."

76. Subsection 158.132(B) allows tourism use in the T-3 and T-6 zoning districts. The associated Comprehensive Plan future land use categories of Medium Density Tourist Resort/Commercial (TRC-3) and High Density Tourist Resort/Commercial (TRC-6) allow tourism use by the express language of the future land use classification. With regard to Section 158.132(B) allowing tourism use in the T-3 and T-6 zoning districts, Subsection 158.132(B) is consistent with the Comprehensive Plan.

77. Subsection 158.132(B) also allows tourism "as may be permitted in a planned unit development within the Town of Longboat Key." Based on the quoted language, it is not reasonable to interpret Subsection 158.132(B) as independently allowing tourism use in any planned unit development. To determine which zoning districts may develop tourism uses "as may be permitted in a planned unit development within the Town of Longboat Key," Subsection 158.132(B) must be read in the context of other LDR sections addressing permitted land uses in a PUD.

78. Subsections 158.071(A)(1) and (2) both address land uses in a planned unit development. Subsection 158.071(A)(1) states, "Proposed land uses shall not adversely affect

surrounding development and shall be consistent with the town's comprehensive plan," and Subsection 158.071(A)(2) states, "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." Read together, Subsections 158.132(B), 158.071(A)(1), and 158.071(A)(2) allow tourism uses in a planned unit development only to the extent that the Town's Comprehensive Plan allows tourism use in the applicable future land use category. Table 1 and Table 5 only designate residential uses for the PD, GPD, and NPD land use categories; therefore, the PD, GPD, and NPD land uses do not include tourism uses, and Subsection 158.132(B) is prohibited from permitting tourism uses in the PD, GPD, and NPD zoning districts by Subsections 158.071(A)(1) and (2).

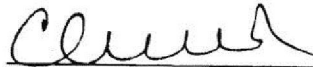
79. Subsection 158.132(B) is consistent with the Comprehensive Plan, because the phrase "as may be permitted in a planned unit development within the Town of Longboat Key," limits the land uses to those which are allowed in a PUD, which are themselves limited by the land uses permitted by the Comprehensive Plan.

Consistency Determination for Subsection 158.132(B).

80. For the reasons set forth above, Section 158.132(B) of the LDRs is **consistent** with the Comprehensive Plan Future Land Use Element Table 1, Goal 1, and Policies 1.1.1, 1.1.2, 1.1.4, and 1.1.7.

CONCLUSION

Based on the foregoing Findings of Fact and Conclusions of Law, the Department determines that the Town of Longboat Key Ordinance 2010-016 is consistent in part and inconsistent in part with the Town of Longboat Key Comprehensive Plan.

 10/20/10
Charles Gauthier, AICP
Division Director
Division of Community Planning
DEPARTMENT OF COMMUNITY AFFAIRS

NOTICE OF RIGHTS

Pursuant to Section 163.3213(6), *Fla. Stat.*, within 21 days after the date of this determination of inconsistency, this matter will be forwarded to the Division of Administrative Hearings, The Desoto Building, 1230 Apalachee Parkway, Tallahassee, Florida 32399-3060 for a formal administrative hearing pursuant to Sections 120.569 and 120.57(1), except that the order of the administrative law judge shall be the final order and shall be appealable pursuant to Section 120.68, *Fla. Stat.* The parties to the hearing shall be the petitioning substantially affected person, the local government, any intervenor, and the Department of Community Affairs.

Pursuant to Section 163.3212(5)(a), *Fla. Stat.*, within 21 days after the date of this determination, the substantially affected person who filed the original petition with the local government may petition the Division of Administrative Hearings to hear and rule on the allegedly inconsistent regulations that were determined to be consistent by the Department of Community Affairs.

CERTIFICATE OF FILING AND SERVICE

I HEREBY CERTIFY that the original of the foregoing has been filed with the undersigned Agency Clerk of the Department of Community Affairs, and that true and correct copies have been furnished to the persons listed below this 20 day of Oct, 2010.


Paula Ford, Agency Clerk

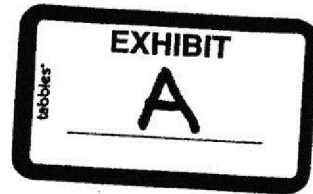
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ORDINANCE 2010-16

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 18, 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 these 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 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.~~

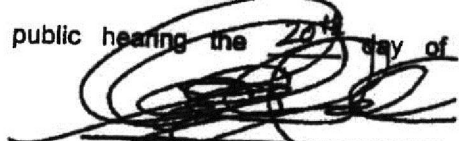
SECTION 11. If any section, subsection, sentence, clause or provision of this Ordinance is held invalid, the remainder of the Ordinance shall not be affected.

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

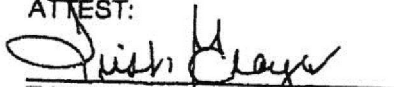
SECTION 13. This Ordinance shall take effect upon second reading in accordance with Law and the Charter of the Town of Longboat Key.

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.



**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>			
INS	Institutional	30%	<u>Max. Height (stories/feet)</u> 2/30
OI	Office-Institutional	30%	2/30
C-1	Limited Commercial	30%	2/30
C-2	General Commercial	30%	3/40
C-3	Highway-Oriented Commercial	40%	3/40
M-1	Marine Commercial Service	40%	2/30
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.	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

Trish Granger

From: Kelly A. Martinson [kmartinson@sarasotalawfirm.com]
Sent: Wednesday, October 20, 2010 5:30 PM
To: Lynn Larson; George Spoll; David Brenner; James L. Brown; Robert Siekmann; Hal Lenobel; Phillip Younger
Cc: Bruce St Denis; David Persson; Susan Phillips
Subject: DCA Determination of Consistency
Attachments: Longboat Key Determination of Consistency.pdf

Mayor Spoll and Commissioners:

Please find attached a copy of the Determination of Consistency issued today by the Department of Community Affairs related to IPOC's challenge of certain land development regulations adopted by the Town earlier this year. In sum, the Department found some of the land development regulations to be consistent with the Town's Comprehensive Plan and others to be partially inconsistent with the Town's Comprehensive Plan. An analysis of the Determination will be provided to you soon.

Kelly A. Martinson, Esq.
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1820 Ringling Blvd.
Sarasota, FL 34236-5917
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