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PREVIOUSLY FAXED

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September 18, 2001

* Board Certified Real Estate
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Jill A. Jeglie, AICP
Town Planner
Town of Longboat Key
501 Bay Isles Road
Longboat Key, FL 34228

Re: Density Limitations

Dear Jill:

Pursuant to our conversations and your direction, I have researched the methodology for implementation of the density limitation provided within the Longboat Key Charter. Article II, Section 24(d) of the Charter reads:

The present density limitation provided in the existing Comprehensive Plan as adopted March 12, 1984, shall not be increased without the referendum approval of the electors of Longboat Key.

I have reviewed the Charter and the Comprehensive Plan together with the minutes and memoranda available to the Town at the time of passage of this Charter Amendment.

My opinion is that the density limitations are as set forth by the 1984 Future Land Use map as well as the language within the Plan regarding the ability of legal non-conformities to rebuild in the event of a natural disaster.

Attached to this letter is a 1985 memo from Scott Christiansen, the then Town Attorney, to the Town Commission. Note Page 2. I concur that a change from non-residential land use to any residential land use (i.e., general commercial (0 d.u./acre) to RL-1 (1 d.u./acre)) would require a referendum.

Procedurally, I believe when the referendum is held is subject to refinement. The timing of a referendum can be



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determined either when such a request is being considered or codified within the Zoning Code.

I also agree with Mr. Christiansen that the referendum is implemented on a property-by-property basis. Because of the nature of the approval process, I believe that each PUD which was in existence in 1984, would be treated as one parcel for purposes of determining whether a proposed density increase within the PUD would require a referendum.

I hope this has been of some help. Should you have any questions, please let me know.

Sincerely,

A handwritten signature in blue ink, appearing to read 'David P. Persson', with a large, sweeping flourish above the name.

David P. Persson

DPP:awg
Enclosure

MEMORANDUM

TO: Town Commission
FROM: Town Attorney
RE: Advantages and Disadvantages of Proposed Charter Amendment

Ordinance 85-2 provides for a special election on May 7, 1985 for a referendum vote of the electors of the Town of Longboat Key on a proposal to add a subsection to Article II, Section 24 to read as follows:

(d) The present density limitations provided in the existing Comprehensive Plan as adopted March 12, 1984 shall not be increased without the referendum approval of the electors of Longboat Key.

If approved by a majority of the electors of the Town of Longboat Key voting in the special election, the above provision will become a part of the Town Charter.

The effect of the adoption of this provision would be to add an additional step to the procedure for adopting changes to the amendment to the Comprehensive Plan adopted on March 12, 1984, if such proposed change would have the effect of increasing the density limitations as set forth in the March 12, 1984 amendment. All the procedures for amending the Comprehensive Plan set forth in the Local Government Comprehensive Planning Act (Ch. 163, Fla. Stat.) and our own Comprehensive Plan would still need to be met. This means that the Local Planning Agency (P and Z Board) and the Town Commission would conduct all the required public hearings and all notice and publication requirements would be met. Only after all the statutory procedural requirements, as supplemented by the Town Comprehensive Plan requirements, are met, would the proposed amendment be presented to the voters for a referendum vote and this vote would be required only if the proposed amendment would have the effect of increasing a density limitation. Both the Florida Statutes and the Town Comprehensive Plan provide that the Town should adopt procedures to provide for public participation in the Comprehensive Planning process. (§163.3181(1), Fla. Stat. and Section 1-11, Town of Longboat Key Comprehensive Plan Amendment, March 11, 1984).

One benefit in this procedure appears to be that the public

participation in the decision making process will be maximized when amendments increasing density are being considered.

There are numerous disadvantages to the proposed procedure:

1. A referendum would be required for a land use designation density increase, no matter how small (i.e. RM-3(3 d.u./acre) to RM-4 (4 d.u./acre)).

2. A referendum would be required for a change from a non-residential land use to any residential land use (i.e. general commercial (0 d.u./acre) to RL-1 (1 d.u./acre)).

3. A referendum would be required for changes in the text of the Comprehensive Plan to correct errors or to change land use standards or criteria which might have the effect of adding additional density.

4. A referendum decision by the electors with regard to a land use change in density may not be based upon proper data and planning criteria. If the electorate were to disapprove a change in the Comprehensive Plan which had been approved by the Town Commission where the Commission based its decision on appropriate data and criteria as set forth in the Comprehensive Plan and Zoning Code, such a disapproval would be subject to judicial review if it were arbitrary, unreasonable or capricious. The referendum process will not put the decision beyond judicial review. I suspect that any disapproval by the electorate will result in litigation.

5. The referendum process is time consuming and expensive.

6. The final decision making process is being removed from the Town Commission which is presumably in a better position to make reasonable, informed planning decisions by virtue the availability of its staff, its retained professionals and its information gathering capability coupled with the public participation in the amendment procedure.

There are, undoubtedly, other advantages and disadvantages connected with the proposed amendment. In my judgment, the disadvantages outweigh the advantages.

SRC *[Signature]*

April 18, 1985

OUR COPY

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April 11, 2002

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Mr. Jerome Lee, Chairman
& Members of Planning & Zoning Board
Town of Longboat Key
501 Bay Isles Road
Longboat Key, FL 34228

Re: Charter Requirements/Accessory Density Allowed
Within C-1

Dear Chairman Lee and Board Members:

At the last Planning & Zoning Board meeting you asked me to review the provision of the Longboat Key Zoning Code which allows an accessory residential use in a C-1 District. Essentially, the question is whether this accessory use can be expanded to a principal use without being in violation of the charter provision that limits density in excess of the 1984 Comprehensive Plan.

I offer the following:

The Charter provision (Article II, Section 22(b)) of the Town Charter states:

Article II. Town Commission

Sec. 22. Comprehensive plan for town.

b) The present density limitations provided in the existing comprehensive plan as adopted on March 12, 1984 shall not be increased without the referendum approval of the electors of Longboat Key.

There is no residential density as a principal use for commercial property under the 1984 Comprehensive Plan. There is an accessory use in the C-1 District for limited residential use. This accessory use states:

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One dwelling units (sic) for use by owner, employee, or lessee that shall be attached to the principal structure.

Essentially, a C-1 District on Longboat Key allows an owner or operator of a commercial building to "live above the store".

An accessory use is one that is incidental and subordinate to the principal use of the land (See 158.006, Longboat Key Code). A principal use is the primary or predominant function or activity on the land. Presently, a dwelling unit within a C-1 District must be an accessory use to the commercial components within the C-1 District. In my opinion, making residential units a permitted principal use, without a referendum, violates the provisions of the Charter and the density limitations provided in the 1984 Comprehensive Plan.

I will be pleased to speak with you and the Board concerning this issue at your April meeting. If you have any questions, please call me.

Respectfully,



David P. Persson

DPP:awg

cc: Mr. Bruce F. St. Denis
Ms. Jill Jeglie
Ms. Monica Daigle
Mr. Al Green