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July 3, 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: Density Within PD and GPD Districts  
Referenda Requirements

Dear Chairman Lee and Board Members:

Your ongoing discussion of the commercial zoning as well as your recent hearing concerning the Einisman property have suggested to me that an outline of my thoughts concerning these matters might be of some assistance. Moreover, my conversation with Lee Rothenberg after your most recent meeting made it very apparent to me that I have not been very clear about these density related issues. At the onset, let me thank Lee for taking the time to sit down with me and ask the questions that need to be answered.

The question that I am attempting to answer is: CAN a property owner within the PD or GPD districts ask the Town for additional residential units? This is not SHOULD the Town grant the request, but CAN the Town grant the request. Merely because the property owner has the legal right to ask, does NOT mean that the Town MUST grant the request. Any request to change existing PD or GPD resolutions or ordinances must be supported by competent substantial evidence. The Town has a myriad of regulations that impact both the PD and GPD districts as well as the individual parcels within both districts. The applicant would need to clearly show you why those regulations needed to be changed.

Property owners within the PD and GPD districts have the right to seek modifications to the existing resolutions and ordinances that govern their districts. Resolution 92-21, for example, provides that future requests to amend the outline development plan for the PD district can be brought by property owners, homeowner associations, other directly interested parties and the Town.

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The question then is: if the property owner can file an application, how does the Town process it? Does the request require approval by a referendum as set forth in the Charter?

The Charter provides that any increase in density beyond the 1984 Comprehensive Plan requires a referendum. The maximum densities for the PD and GPD districts under the 1984 Comprehensive Plan are 3.26 and 5.05 per acre. Attached to this letter is an analysis of both the PD and GPD districts responding to the questions: what was authorized by the 1984 Comprehensive Plan, what was assigned to individual projects and what was actually built. Using the PD district as an example, 2,350 residential units were allowed under the 1984 Comprehensive Plan and only 1267 have been assigned (dedicated) to individual projects. Therefore, it seems to me rather straightforward that until the 1984 threshold is reached, no referendum is required.

Please remember that the 2,350 units are important ONLY for determination of whether a referendum is required. That number has been subsequently reduced by amendments to the land intensity schedule as projects have sought and received permission to be built. There is no "floating density". The Town simply has the capacity within the PD district to approve additional units before a referendum would be required.

Martin Black, former Planning, Zoning and Building Director, rendered an opinion concerning "underlying density" within the PD district (a copy of that letter is attached as well). Mr. Black's opinion was that there was an overall density of 3.26 units per acre within the PD as set forth in the Zoning Code. A property owner who did not use the property residentially, could ask for a conversion at that density without seeking a "transfer" of density within the PD District. Transfers of density are specifically prohibited within the documents approving the various projects within the PD and GPD districts. (As I mentioned earlier, just because the Town has language within the approval documents which prohibits density transfers, doesn't mean that the applicant can't ASK, but what it does mean is that the applicant will have the burden to show why this long-standing agreement should be changed). In addition to the prohibition of the density transfers, there are other limitations and restrictions placed upon properties by the Town (which were approved by the developer) that will impact any subsequent request to modify that property's usage. Further, I recall that there are other limitations placed upon the properties within the

PD district beyond the powers of the Town. The Bay Isles Master Association is the successor to Arvida under its governing documents. My recollection is that those documents contain controls beyond the regulations of the Town. Those issues are left to the Bay Isles Master Association and not the Town.

An alternative argument to Mr. Black's determination could be made that despite the language of the code, there is no underlying density because the entire density of the PUDs was considered at the time density was assigned to individual projects within the PUDs. In support of this, one could look at the Land Intensity Schedules approved by the Town which set forth zero (0) density for commercial properties within the PD district.

In any event, it is my opinion that under our current code, Mr. Black's interpretation is legally defensible.

There is another method within the Code to attribute density to non-residential property. 158.071(B)(2) states:

**Any land with an existing nonresidential zoning classification but not proposed and approved for a nonresidential use may be considered as residentially zoned at a minimum density at one dwelling unit per two acres to a maximum density of three dwelling units per acre. However, land area with an existing nonresidential zoning classification shall not acquire any residential density solely by its inclusion in a planned unit development.**

This provision recognizes that under certain limited conditions, a property owner may seek to have limited density assigned to a nonresidential property within a PUD. It is my view that Mr. Furen on behalf of Dr. Einisman could proceed under either Mr. Black's interpretation of 158.070 or 158.071(B)(2).

Allocation of limited residential use to nonresidential property within the PD district is not new. In 1993, the Town allowed a reclassification of the property now known as Weston Point from commercial use to 15 residential units. In fairness, there were multiple other issues involved with that consideration. These included: transfer to the Town of other nonresidential property, reclassification of that property to

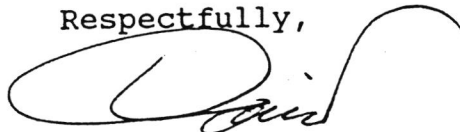
recreational use, a reduction of density for the project that became known as Grand Bay, as well as other modifications. But the concept that residential density can be assigned to unbuilt non-residential property remains the same. This policy is reflected in 158.071(B)(2). Attached is the Resolution creating a residential use for Weston Point and making other modifications to the PD district.

I hope this letter and its attachments have been of some assistance to shed light on how we arrived at the positions and opinions currently before the Board. It's difficult if not impossible to predict all possibilities of future applications, but please understand that there are other restrictions that are placed upon properties within the districts besides Mr. Black's interpretation of underlying density. The viability of each application must turn on its own merits. The Planning and Zoning Board may recommend a change to 158.070 to reflect a different policy than the one set forth by Marty Black. This could be accomplished by enactment of an ordinance to clarify 158.070. It is my view that it is important for the Town to strike a balance between future flexibility and present day certainty.

I will be working on the issues of the commercial uses within the PD District raised by Mr. Diamante. I will provide the results of that investigation prior to your continued hearing on the Eisinman matter.

I invite any Board Member who has any questions, comments, thoughts, or observations, to contact me.

Respectfully,



David P. Persson

DPP:awg

Attachments

cc: The Honorable John M. Redgrave, Mayor  
and Members of Town Commission  
Mr. Bruce F. St. Denis  
Ms. Jill Jeglie  
Ms. Monica Daigle

July 3, 2002

Courtesy copy to:

Mr. James P. Brown  
Michael J. Furen, Esq.  
Mr. Albert L. Green  
John W. Meshad, Esq.  
Ms. Donna H. Spencer  
Mr. Shay Sullivan

REPORT ON DENSITY AND USE ISSUES,  
LONGBOAT KEY CLUB GPD  
BAY ISLES PD  
June 27, 2002

I. INTRODUCTION

A. Purpose

The purpose of this Report on Density and Use Issues, Longboat Key Club GPD and Bay Isles PD (hereinafter "Report") is to provide a comparison between the total number of residential units for the Longboat Key Club GPD and the Bay Isles PD permitted and authorized in and by the successive modifications to the Outline Development Plans for the GPD and PD, and the number of units actually constructed to date.

This Report will also compare the permitted, authorized and constructed units with the requirements and parameters of the Town of Longboat Key Comprehensive Plan Amendment adopted March 12, 1984 for the purposes of determining whether any additional units may be constructed in either the GPD or PD without need for a referendum. In determining and stating the additional unit numbers that would trigger the need for a referendum, this Report is not intended to, and should not be construed as making any determination as to whether any additional units should be authorized or approved for the PD or GPD, or any of the parcels (residential and nonresidential) contained within them.

**\*Note:** It was and is a specific condition of the approval of the multiple Resolutions and Ordinances adopting, approving and modifying the various versions of the Outline Development Plans of both the Longboat Key Club GPD and the Bay Isles PD that the transfer of density units from any one parcel to another within the GPD and PD is prohibited. Each Land Intensity Schedule bears the legend; **"It is specifically understood and agreed by the parties hereto that the setting of the aforesaid maximum densities will prohibit the transfer of Units from any one said parcel to another"**. Nothing in this Report is intended to, and should not be construed as, any waiver or modification of the prohibition against transfer of density units (sometimes referred to as "dwelling units") from one parcel to another.

It is recognized that Section 158.071 (B) (2) of the Town Code of the Town of Longboat Key presents a similar but distinct circumstance (from any possible "transfer" of density units from one parcel to another) in that when land with an existing nonresidential zoning classification is properly reclassified to have a residential zoning classification, no prohibited or restricted "transfer" of density units is implicated or required because, pursuant to the cited section, land with a nonresidential classification may be and is considered as residentially zoned for density purposes as stated in the cited section. This Report does not purport to determine whether any such reclassifications are

or should be permitted or prohibited by any provision of the Town Code of the Town of Longboat Key or other applicable regulations. Similarly, this Report does not attempt to identify the nature and extent of the relationships between property owners within the PD and GPD and the successors and assigns of Arvida Corporation relative to the use and ownership of nonresidential parcels or areas (and any facilities constructed thereon) within the PD and GPD which may be implicated or affected by any proposed reclassification.

#### B. Sources of Information

The number of units authorized and permitted is derived from the Resolutions and Ordinances approving the various proposed amendments to the initially submitted Outline Developments Plans and the site plans of the individual projects within the GPD and PD as reflected on the Land Intensity Schedules on file with the Town of Longboat Key Planning, Zoning & Building Department.

The source of information for the number of units actually constructed on the various projects and on the various lots and parcels comprising the GPD and PD are the on-line records of the Sarasota County Property Appraiser and plans, applications and other documents on file with the Town of Longboat Key Planning, Zoning & Building Department. Also utilized was the Town Of Longboat Key Street Address Map prepared by the Town of Longboat Key Planning, Zoning & Building Department dated January 1, 2000. To the extent that there are any inaccuracies, discrepancies, defects or missing elements in these sources of information, or the records are incomplete, this Report is subject to modification to reflect the actual circumstances.

Currently under consideration is a proposal to conduct a parcel-by-parcel physical examination and inventory of residential units to confirm and harmonize the figures contained in this Report as to the total number of units actually constructed to date on each parcel, and the aggregate existing total of units currently constructed on the GPD and PD.

#### C. Preparation of this Report

This Report has been prepared by William R. Pomeroy at the request of David Persson, Town Attorney for the Town of Longboat Key. Input in the preparation of this Report has been received from Town personnel.

## II. LONGBOAT KEY CLUB GPD

### A. INTIAL SUBMISSION AND MODIFICATIONS BY AMENDMENT

The Outline Development Plan submitted by Arvida Corporation for the Longboat Key Club GPD was initially approved by Resolution 76-7 (passed at a meeting of the Town Commission of May 5, 1976), subject to the conditions stated in the Resolution.

One of the key conditions (paragraph 6 of conditions) of approval was that there was a five percent (5%) limitation imposed on commercial development. Paragraph 7 (b) (1) of the Conditions requires submission of a, "...land intensity map or table indicating the development intensity range of all residential and nonresidential development."

The initial Land Intensity Schedule was filed with and accepted by the Town on December 14, 1979. The initial Land Intensity Schedule provided for a total number of density units of 1595. Thereafter, multiple changes were made to the designation, size and use of the various parcels within the initial GPD, and the Arvida Corporation deeded certain land east of Gulf of Mexico Drive to the Town of Longboat Key. These changes generally resulted in a reduction of the total number of density units, both from a reduction of the total acreage of the GPD due to the deeding of certain land to the Town, and amendments to the Outline Development Plan (approved by various Resolutions as noted below) reducing the density of various parcels.

The Outline Development Plan and the Land Intensity Schedules based thereon were subsequently modified by various amendments. Resolution 80-21 amended Resolution 76-07 and reduced the total Density Units for the property west of Gulf of Mexico Drive from 1595 to 1560. Resolution 80-21 recognized that the Land Intensity Schedule accepted by the Town Commission on March 14, 1980 and approved April 16, 1980, reflected the reduction of total density units for the property on the west side of Gulf Of Mexico Drive from the initial 1595 to 1560. Paragraph 4 of the Conditions of Approval contained the provision for credit for off-site recreational facilities for such facilities constructed and "clustered" outside the parcel being developed, but within the GPD, referencing the requirements of Section 6.774 of the Town Zoning Code. The application to and effect of Resolution 80-21 on the GPD is somewhat analogous to the application to and effect of Resolution 81-13 on the PD. Similar to the provisions of Resolution 81-13, Resolution 80-21, Section 2. 2 B states: "Except as specifically provided herein, no further development rights or findings of satisfaction of ordinance requirements are granted by this Resolution." Section 2. 2 C states: "There shall be no transfer of density from one tract to another of the Land Intensity Schedule".

Resolution 85-12 revised the Outline Development Plan to include a provision for the development of parcel MF-"E" (which is on the east side of Gulf Of Mexico Drive and therefore not included in previous calculations). Paragraph 7 of the conditions for approval reflected a total reduction of "dwelling units" (as opposed to the "density units referenced in prior resolution and Land Intensity Schedules) from 1560 to 1407.

Resolution 85-27 adopted the Land Intensity Schedule attached to the Resolution and specifically held that it superseded the Land Intensity Schedule approved April 16, 1980. The newly adopted Land Intensity Schedule reflected the reduction noted above, and provided a total "density unit" count of 1,407 for what was by then a 317.18 acre parcel. Note that this is the total density for all parcels within the GPD, including parcel MF-"E" (what was to become Tangerine Bay) on the east side of Gulf of Mexico Drive.



There followed multiple resolutions affecting various individual parcels by reconfiguration of the proposed buildings and changes to the number of units in each parcel (generally reductions). Many of these numbers and configurations changed multiple times (for example parcel MF-"A" which ultimately became the 16 lot single family residential parcel on "Lighthouse Point"), and some apparently became moot due to the developer changing its plans (for example the proposed "Lamarck" at 360 Gulf Of Mexico Drive was never constructed).

Resolution 86-18 amended the Outline Development Plan and Land Intensity Schedule to permit the construction of single family residences on parcel MF-"D", but no modified Land Intensity Schedule is attached. Thereafter, while various Resolutions required amendments to the Land Intensity Schedule to reflect various changes by parcel, it does not appear that a "master" or overall Land Intensity Schedule reflecting the changes to the various individual parcels was ever required, submitted or approved.

This Report does not attempt to track in detail the evolution of the permitted units or Land Intensity Schedules, but compares the number of units actually constructed with the most recently submitted Land Intensity Schedule or most recent resolution or ordinance, as the case may be. Through the various modifications and amendments, the total number of density units for the entire GPD was further reduced to 1067, as reflected on the Land Intensity Schedule received by the Town on November 20, 1992, and again further reduced to 892 density units by Resolution 92-17 as noted below.

B. COMPARISON OF PERMITTED/AUTHORIZED UNITS AND UNITS CONSTRUCTED TO DATE

<b>TRACT:</b>	<b>NAME:</b>	<b>MAXIMUM UNITS PER MOST RECENT LAND INTENSITY SCHEDULE</b>	<b>NUMBER UNITS AS REFLECTED BY PROPERTY APPRAISER REC.</b>
MF-"A"	Lighthouse Point	16	17 lots 10 houses built
MF-"B-1A"	Sanctuary	182	181
MF-"B-1B" Parcel A	The Pierre	67	66
MF-"B-1B" Parcel B	L'Ambiance I + II	145	136
MF-"B-2"	Inn on the Beach	245	222
MF-"C"	Beaches Longboat (now, Beaches	120*	119 (Beaches, 74

	of Longboat, Regent Place I and II And Regent Court		Regent Place I and II, 36 Regent Court, 9)
MF-"E"	Tangerine Bay	110	90
MF-"D"	N/A (single family Lots on Longboat Club Road)	7	7 lots created 6 built 1 vacant
	TOTAL:	892	TOTAL: 719

Note: the reduction of L'Ambiance from 192 to 145 units (Resolution 98-42) reduced the actual authorized total for the entire GPD from 1114 (as shown on the most recent Land Intensity Schedule identified in Section IV of this Report) to 1067, with a resulting ratio of 3.38, see immediately below for reduction of total units from 1067 to the 892 shown above.

\* Parcel MF-"C" had an initial assigned/approved total density of 295 units. 74 units were built as a project known as "Beaches". The remaining units available were therefore 221. Pursuant to Resolution 92-17 the Land Intensity Schedule was amended to reduce the "remaining residential density" from 221 to 46 dwelling units. Those 46 units were assigned/utilized in Regent Place I and II (total of 36 units) and Regent Court (total of 9 units/single family lots), thereby leaving 1 unused unit for the total parcel MF "C". Thus, with the subtraction of 175 units (221 minus 46 = 175) from the original 295 total available units, the total units for the three combined projects now included and constructed in parcel MF-"C", is 120 (295 minus 175 = 120). This change is not reflected on the most recent Land Intensity Schedule on file with the Town, which is the Bishop & Associates Drawing No: YAL-02, Sheet 8 filed with the Town November 20, 1992, which reflects a total of 1067 authorized density units, rather than the current actual number of 892.

### III. BAY ISLES PD

#### A. INTIAL SUBMISSION AND MODIFICATIONS BY AMENDMENT

The Outline Development Plan for the Bay Isles PD submitted by Arvida Corporation was initially approved by Resolution 75-27, which was passed at a meeting of the Town Commission on August 6, 1975. Passage of the Resolution and acceptance of the Outline Development Plan was specifically subject to the conditions and stipulations stated in the Resolution. The conditions and stipulations stated, inter alia; that the gross residential density of the PD shall be limited to four units per acre which,

when multiplied by the gross acreage of 720 acres, would have permitted a maximum of 2,883 residential units to be constructed.

This Report does not address any issues relative to the Bay Isles Civic-Commercial Center or any other non-residential uses.

There followed early on various Resolutions affecting certain tracts of land within the PD, in which (without waiver of future enforcement of the prohibition against doing so) the Town of Longboat Key permitted the Arvida Corporation, prior to the construction of improvements within the affected parcels, to reduce the number of units in a given tract and reallocate the density units among other tracts within the PD. This Report does not purport to comprehensively "track" such changes, but an example of this type of change and reallocation may be found at Resolution 76-3. This type of change and reallocation was not intended to and did not have the effect of changing either the "base" density of four units per acre or the initial maximum total of 2,883 residential units for the entire PD.

Resolution 75-27 was substantially amended and modified by Resolution 81-13 (passed at Town Commission Meeting of March 5, 1981). By means of this Resolution, the total density for the entire Bay Isles PD was reduced from 2,833 dwelling units to 2,798 dwelling units. Resolution No. 75-27 was further amended by Resolution 81-13 which states at Section 2. 2. B: "Except as specifically provided herein, no further development rights or findings of satisfaction of ordinance requirements are granted by this Resolution." and section 2. 2. C: "There shall be no transfer of density from one tract to another of the Land Intensity Schedule".

With passage of Resolution 85-28 (approved October 7, 1985) the Town adopted the appended Land Intensity Schedule which assigned units to various parcels and tracts within the PD, and again reducing the total residential units from the 2,798 units authorized by Resolution 81-13 to a total of 2,350.

Additional Resolutions followed affecting various tracts and the authorized densities of the identified tracts. Again, while this Report is not intended to track all density changes or to provide a complete or exhaustive listing of all such changes, examples of such changes in density may be found at: 1) Resolution 86-32 changing the density in Harbour Court (Parcel MF "B-1A") from 77 multi family units to 18 two family dwelling units; 2) Resolution 87-1 changing the density in parcel MF "J" (Winding Oaks) from 149 multi-family units to 57 one and two family units; 3) Resolution 87-27 changing the density in parcel MF-"C/D" (Harbour Links) from 68 multi family units to 56 multi family units; 4) Resolution 88-21 changing and reducing the density for parcel MF-"T" (Corey's Landing) from 170 multi family units to 72 one and two family units.

Similar changes (generally resulting in per parcel reductions) resulted in a further net total unit reduction for the entire PD from the 2,350 total units as approved by Resolution 85-28, so that the ultimately approved total residential units was reduced to

1267, as reflected on the Land Intensity Schedule appended to the Landry & Esber Harbour Links Site Development Plan (Sheet No. P-12) dated October 7, 1994.

B. COMPARISON OF PERMITTED/AUTHORIZED UNITS AND UNITS CONSTRUCTED TO DATE

TRACT:	NAME:	MAXIMUM UNITS PER MOST RECENT LAND INTENSITY SCHEDULE	NUMBER UNITS AS REFLECTED BY PROPERTY APPRAISER REC.
"Residential Harbor"	Bay Isles Unit No. 1	80 single family	67 lots, 66 houses one house on double lot
MF-"A"	Fairway Bay	288 multi family	287
MF-"B-1A"	Harbour Court	18 two family	18
MF-"B-1B"	Marina Bay	60 multi family	60
MF-"B-2A"	Harbour Oaks	56 multi family	56
MF-"B-2B"	Harbour Oaks II	42 multi family	42
MF-"C-D"	Harbour Links	42 two and multi family	42 (20 Subd. 7995) (6 Emerald Pointe) (16 Emerald P. S.)
MF "H", MF "K" & HR "B"	Manchester Bay (k/n/a Queens' Harbour)	102 single family	102
MF-"T"	Corey's Landing	72 one or two family	70 lots, 61 homes (9 on double lots)
MF-"J"	Winding Oaks	56 one or two family	56

Bay Isles Unit 2	Bayou	109 single family	109 lots, 108 homes (1 on double lot)
Tract "A"	Bayou	17	17 lots, 3 not yet built
HR-"A"	Grand Bay	272 multi family high rise	272
HR-"C"	Sabal Cove	38 single family	38
Tract "C"	Weston Point	15 single family	15
	TOTAL:	1267	TOTAL: a) 1251* b) 1240**

\* total a) is total lot count, and does not consider single houses on double lots.  
 \*\* total b) counts structure on double lots as one unit.  
 All unbuilt single family lots are counted as one unit

**IV. TOWN OF LONGBOAT KEY COMPREHENSIVE PLAN, AMENDMENT  
 ADOPTED MARCH 12 1984**

The Town of Longboat Key Comprehensive Plan (hereinafter "Comprehensive Plan) was first adopted in 1978, and the Comprehensive Plan was substantially amended by the amendment adopted March 12, 1984. The Comprehensive Plan was adopted pursuant to F.S. 163, and its stated purpose is to, "...use and strengthen the Town's role in establishing and implementing the comprehensive planning process in order to protect natural and man-made resources and to maintain, through orderly growth and development, the character and stability of present and future land use and community development." The Charter for the Town of Longboat Key provides that there shall be no density increases from those permitted and established by and in the 1984 Amendment to the Comprehensive Plan.

Pursuant to Article I, Section 1-3 B of the Comprehensive Plan, the Planning and Zoning Board is the designated Local Planning Agency (LPA), and is empowered to exercise the powers of an LPA pursuant to the applicable provisions of F.S. 163.

Application of the Comprehensive Plan to the GPD and PD and the interplay between then-existing development orders in the form of written resolutions approved by the Town and accepted by the applicant (and to the extent that those prior resolutions created any vested rights in the applicants) is found at Article I, Section 1-15 C of the Comprehensive Plan. The cited section states that development orders issued in the form of written resolutions approved by the Town and accepted by the applicant prior to the

date of the adoption of the 1984 Amendment to the Comprehensive Plan shall be deemed not to be in conflict with but to be consistent with the Comprehensive Plan and the elements and portions thereof.

The overall scheme for densities and future land use is found at Article III, and the overall land use goals are described in Article III, Section 3-1. The use of Future Land Use Maps to reflect and establish the maximum gross residential density for all lands within the purview of the Comprehensive Plan is found at Article III, Section 3-3. The cited section provides that, "Maximum gross residential density is defined as 'maximum allowable units' divided by 'gross land area'". "Gross land area" is defined as contiguous lands under common ownership, with various provisions and exceptions cited in the section.

Application of the Future Land Use Maps and Comprehensive Plan Land Use Maps to the PG and GPD is found at Article III, Section 3-3 A 6 (pages 53 through 55) of the Comprehensive Plan. Pursuant to the cited section, the Comprehensive Plan Land Use Maps (presumably including the referenced Future Land Use Maps), "...reflect the following density schedule after considering vested rights issues." The stated density ratios are:

PD	3.26
GPD	5.05

The actual acreage of the PD and GPD has varied from time to time. Pursuant to Resolution 75-27 the acreage of the PD, as of the date of adoption of that resolution was 720.88 acres. Pursuant to Resolution 85-28, the acreage for the PD was 720.90 as of the date of the adoption of that resolution. The latest Land Intensity Schedule reflects a total acreage of 730.22 acres for the PD.

With respect to the GPD (which was subject to greater variances in total acreage due to the deeding of certain lands to the Town), the acreage as reflected by Resolution 85-27 was 317.28. The total acreage for the GPD as shown on the latest Land Intensity Schedule is 315.29.

Maximum Units As of The Adoption of the 1984 Amendment

Applying the total acreages for the PD and GPD as of March 12, 1984 (as best as can be determined at this point), to the density ratios specified in the 1984 Amendment, the maximum allowable units for the PD and GPD as of March 12, 1984, is stated below:

PD

<u>Acres</u>	x	<u>Units Per Acre</u>	=	<u>Total Units</u> *
720.90	x	3.26	=	2350

GPD

<u>Acres</u>	x	<u>Units Per Acre</u>	=	<u>Total Units</u> *
317.18	x	5.05	=	1602

\* Note that these figures do not reflect the current maximum/approved units within the PD and GPD due to the successive reductions in density as reflected in subsequent resolutions and ordinances as noted above. These figures represent the number that would "trigger" the need for a referendum. The acreage figures stated above are subject to confirmation/variance depending on whether other reliable sources of information may provide a more accurate "snapshot" of the actual total acreage of the PD and GPD as of March 12, 1984.

Current Densities

The most recent Land Intensity Schedule for the Bay Isles PD (Landry & Esber Project No: B01902, Sheet P-12, dated 10/7/94\*) reflects a Residential Subtotal average density of 4.79, with an overall density units per acre (including civil, commercial, recreational, etc) of 1.74. This is well within the 3.26 ratio established by the 1984 Amendment.

\* The subject sheet contains the statement; "The foregoing Land Intensity Schedule was presented by Arvida Corporation to the Town Commission on 3/1/93. It has been revised to reflect maximum densities, as indicated in compliance with the 1984 Amendment to the Town Comprehensive Plan for all approved residential parcels. The adoption of this Land Intensity Schedule will supersede the previous Land Intensity Schedule for the PD area."

The most recent Land Intensity Schedule for the Longboat Key Club GPD (Bishop & Associates Drawing No: YAL-02, Sheet 8, filed with the Town November 20, 1992\*), reflects a then existing overall density (including recreational etc.) of 3.53, with a proposed density (upon completion of L'Ambiance on parcel MF-"B-1B", with the total number of units reduced from 192 to 145 pursuant to Resolution 98-42, which has now occurred) of 3.38. See \* note at end of section II B. of this Report which indicates that the total approved number of units for the GPD is 892 rather than the 1067 shown on the Land Intensity Schedule. Assuming a grand total acreage for the entire GPD of 315.28, the current ratio is 2.83 (892 divided by 315.28 = 2.829). This is well within the 5.05 ratio established by the 1984 Amendment.

\* The subject sheet contains the statement; "The foregoing Land Intensity Schedule was presented by Arvida Corporation to the Town Commission on April 29, 1985. It has been revised so as to include Parcel MF-E and also to reflect maximum densities, as indicated in compliance with the 1984 Amendment to the Town Comprehensive Plan for all approved residential parcels. The adoption of this Land Intensity Schedule will supersede the previous Land Intensity Schedule for the GPD area

which was accepted by the Town Commission on March 14, 1980 and approved April 16, 1980”.

The above density ratios are calculated with reference to the entire acreage within the PD and GPD. Article III, Section 3-3 A 6 (a) of the Amendment to the Comprehensive Plan states: “The respective densities for the PD and GPD Districts reflects the average overall density per acre of all properties included within such Districts including recreational areas, open space areas, road rights-of-way, lakes and other nonresidential lands. It is understood that under PUD zoning regulations, the density of the development sites within the PUD may vary.”

## V. CONCLUSION

It appears that the current ratios of both the PD and GPD are within the limits of the maximum the density ratios set in Article III, Section 3-3A 6 of the 1984 Amendment to the Comprehensive Plan. This conclusion is subject to the proviso and condition of the 1984 Amendment to the Comprehensive Plan at Article III, Section 3-3 (page 46), “Density is generally expressed as a range up to a specified maximum. Where so stated as a range, the maximum density is not guaranteed by right.”

It also appears that neither the PD or the GPD have actually constructed the total number of units authorized and assigned, as reflected on the most recent Land Intensity Schedule for the PD, and in the case of the GPD, the further reductions resulting from ordinances and resolutions subsequent to the last Land Intensity Schedule. Again, assuming the accuracy of the figures shown on Land Intensity Schedules as modified by subsequent resolutions and ordinances, and subject to the recommended physical inventory of constructed units, it appears that there may be as many as 174 authorized but unbuilt units for the entire GPD, and either 13 or 27 authorized but unbuilt units for the entire PD, depending on how homes constructed on double lots are characterized and calculated. This Report does not purport to analyze or reach any conclusions as to whether the construction of any additional units in either the PD or GPD (or any parcels within them) is otherwise proper or permitted, or how or whether any “unbuilt but authorized” units may be apportioned or utilized within the PD and GPD.





# TOWN OF LONGBOAT KEY

Incorporated November 14, 1955

RECEIVED

JAN 19 1999

COPY OF RECORD  
Town Hall  
501 Bay Isles Road  
Longboat Key, Florida 34228-3196  
(941) 316-1999  
SUNCOM 549-1999  
FAX (941) 316-1656

January 12, 1999

Planning, Zoning & Building Department  
610 General Harris Street  
Longboat Key, FL 34228  
Telephone: (941) 316-1966  
Facsimile: (941) 316-1970

Mr. Michael Furen  
Icard, Merrill, Cullis, Timm, Furen & Ginsburg, PA  
Post Office Box 4195  
Sarasota, FL 34230



Re: Einisman Property / Tract B-1 South, Bay Isles Unit 11

Dear Mr. Furen:

Thank you for your letter and support materials of December 3, 1998 regarding the above referenced property. Your materials have been reviewed by Town staff, the Town Attorney and the Town Manager. Based upon our review of your submittal, we offer the following:

1. We concur that the 1985 amendment to the Town Charter does not prohibit the Town from approving residential uses on the subject parcel without a Town-wide referendum approval since the property lies within the PD, Planned Development Future Land Use Category of the Comprehensive Plan.
2. The PD, Planned Development Future Land Use Category of the 1984 Comprehensive Plan as well as the Town's current Comprehensive Plan, provide for a range of residential, office and commercial uses.
3. The PD, Planned Development Future Land Use Category establishes a density of 3.26 units per gross acre.
4. Based upon the reported property size of  $\pm$  3.78 acres, the subject tract is eligible for up to 12 dwelling units through the application process outlined in #5 below.

5. An outline development plan and site plan / subdivision application are required to be submitted for consideration by the Planning and Zoning Board and Town Commission for confirmation of consistency with Town Code, Town Policy, and the Comprehensive Plan.
6. As a component of the Bay Isles Planned Development, the subject tract is eligible to seek a transfer of density from within the overall Bay Isles Planned Development based upon the provisions of the Comprehensive Plan which provide for the calculation of density on an "average overall density per acre of all properties" within the development. Consistent with this provision and prior requests considered by the Town, application for such transfer of density will require the consent of all owners with a property interest in the Bay Isles Planned Development to consent and agree to any density transfer proposed under these provisions.

If you have any questions or comments regarding this determination, please do not hesitate to contact David Persson or me. We look forward to working with your client to pursue a formal Outline Development Plan and Site Plan / Subdivision application, as appropriate.

Sincerely,



Martin P. Black, AICP  
Community Services Director

MPB/dmc

xc: Bruce St. Denis, Town Manager  
David Persson, Town Attorney  
Reading / Property Files

RESOLUTION 92-21

A RESOLUTION AMENDING RESOLUTION NO. 75-27, AS AMENDED, APPROVING AN OUTLINE DEVELOPMENT PLAN AMENDMENT FOR THE BAY ISLES PLANNED UNIT DEVELOPMENT, FOR THE FOLLOWING PURPOSE:

a) TO REVISE THE LAND USE OF TRACT 6, BLOCK "A", BAY ISLES UNIT #4 FROM COMMERCIAL USE AND 40 BOAT SLIPS TO RESIDENTIAL USE (15 SINGLE-FAMILY UNITS) AND 15 BOAT SLIPS; b) TO REVISE THE LAND INTENSITY SCHEDULE FOR PARCEL "HR-A", BAY ISLES, UNIT #6 FROM 382 UNITS TO 352 UNITS; c) TO REVISE THE LAND USE FOR PARCEL "B-1, NORTH" FROM COMMERCIAL USE TO TOWN PARK/RECREATION USE; d) TO RETAIN THE USE OF PARCEL "B-1, SOUTH" FOR 28,000 SQ.FT. OF COMMERCIAL USE; AND e) TO DELETE FROM EXISTING ODP'S, ANY REFERENCE TO THE CONSTRUCTION OF THE "CIVIC GROVE," OR THE OBLIGATION TO CONSTRUCT THE HARBOURSIDE CLUBHOUSE, PHASE II.

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WHEREAS, on the 6th day of August, 1975, the Town of Longboat Key, adopted Resolution No. 75-27 approving an Outline Development Plan for Bay Isles in the PD zoning district, subject to the conditions attached thereto; and

WHEREAS, the Town has subsequently amended Resolution No. 75-27 by Resolution No. 80-24, Resolution No. 81-10, Resolution No. 81-13 and Resolution No. 87-27; and

WHEREAS, Arvida/JMB has requested approval of an Outline Development Plan Amendment, for the following purpose: a) To revise the land use of Tract 6, Block "A", Bay Isles Unit #4 from commercial use and 40 boat slips to residential use (15 single-family units) and 15 boat slips; b) To revise the Land Intensity Schedule for Parcel "HR-A", Bay Isles, Unit #6 from 382 units to 352 units; c) To revise the land use for Parcel "B-1, North" from commercial use to Town park/recreation use; d) To retain the use of Parcel "B-1, South" for 28,000 sq.ft. of commercial use; and e) To delete from existing ODP's, any reference to the construction of the "Civic Grove," or the obligation to construct the Harbourside Clubhouse, Phase II; and

WHEREAS, the Planning and Zoning Official has, in timely fashion, accepted the application and referred same to the Planning and Zoning Board along with documentation and staff recommendations; and

WHEREAS, the Planning and Zoning Board has reviewed the application and has recommended to the Town Commission along with their findings that the proposed amendment be approved with conditions; and

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WHEREAS, the Town and the applicant are desirous of further amending Resolution No. 75-27 as hereinafter provided;

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN OF LONGBOAT KEY, FLORIDA, THAT:

Section 1. The Outline Development Plan amendment for the Bay Isles PD District incorporated by reference herein is hereby adopted with the following provisions:

- A. The Land Intensity Schedule for Parcel "HR-A", Bay Isles, Unit No. 6 is hereby modified to reduce the residential density by 30 dwelling units leaving a maximum of 352 dwelling units applicable to said parcel.
- B. The land use designation of Parcel "B-1" Bay Isles Unit 10 is hereby revised as follows:
  - 1) Parcel "B-1 North:" The use of this 2.38 acre parcel is redesignated to reflect a Town park or use for Town recreational facilities in lieu of the previous commercial use designation.
  - 2) Parcel "B-1 South:" The use of this 3.8 acre parcel is retained for retail commercial buildings containing a maximum of 28,000 square feet.
  - 3) Town Resolution No. 75-27, as amended, is hereby amended to a) delete any reference to the construction of a "Civic Grove", or outdoor amphitheater, or any other public facility required to be constructed by Arvida or its successors or assigns within the Bay Isles Civic-Commercial Center; and b) to delete any obligation to construct "Harbourside Clubhouse", or "Harbourside Clubhouse Phase II", deemed by Town to be required to be constructed by Arvida or its assigns within the Bay Isles PUD (PD District).
- C. The Development Schedule for Bay Isles is hereby amended as follows:

Applications for final approval of projects within Bay Isles will be filed as follows:

1992:

Tract 6, Block "A", Bay Isles, Unit No. 4.

Town Plaza - Northerly portion of Parcel B-1, Bay Isles, Unit No. 10, (formerly referred to as Phase II-G and currently referred to as Parcel "B-1 North").

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Harbourside Clubhouse Phase II  
1992 - 1996:

Parcel "HR-A", Bay Isles, Unit No. 6.

Town Plaza - Southerly portion of Parcel B-1, Bay Isles, Unit No. 10, (formerly referred to as Phases II-B, II-D, II-E and II-F and currently referred to as Parcel "B-1 South").

D. The land use designation of Tract 6, Block "A", Bay Isles, Unit No. 4 is hereby revised to permit usage of said tract for 15 dwelling units in lieu of the previous office or commercial usage, and to permit the construction of 15 boat slips in the area designated as "West Boat Basin", in lieu of the previous 40 slips. This land use designation is subject to the following land use regulations:

1. The provisions of the site plan application for the subject property dated March, 1992 and received on April 22, 1992 shall represent the lot yard and bulk regulations for Tract 6, Block "A", Bay Isles Unit No. 4, as summarized in Exhibit "A" attached hereto unless waived or modified by the conditions of approval referenced herein, or by written agreement between the Town and the applicant or amended pursuant to Code.
2. The 2.38 acre parcel "B-1, North," shall be deeded, within 30 days of adoption of this Resolution by the Town of Longboat Key and prior to the issuance of building permits, to the Town of Longboat Key, by instrument approved by the Town Attorney, for Town recreation use.
3. As a means of addressing equity in the exchange of developer obligations to construct the Civic Grove and Harbourside Clubhouse Phase II, Arvida/JMB Partners shall provide to the Town of Longboat Key, within 30 days of adoption of this Resolution by the Town of Longboat Key, and prior to the issuance of building permits, a cash contribution of \$200,000 for use within parcel "B-1, North."
4. Upon receiving final approval of a site plan for Parcel "HR-A", Arvida shall release the reverter provisions pertaining to the title to the Town Hall property located at 501 Bay Isles Road.

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5. At such time as Arvida has completed the construction of improvements on all of its remaining properties in the Bay Isles PUD (Parcels HR-A, Bay Isles Unit #6; Tract 6 Block "A", Bay Isles Unit 4; and Parcel "B-1 South", Bay Isles Unit #11), any and all future requests for Outline Development Plan Amendments may be made by the Town or requested of the Town by any individual or organization, including a homeowners association owning lands in the Bay Isles Planned Unit Development. Any modification to the Outline Development Plan resulting from such application shall be in the form of an ordinance adopted by the Town of Longboat Key pursuant to the provisions of Chapter 166, Florida Statutes.
6. A 10 ft. wide landscaped buffer shall be maintained around the perimeter of the property.
7. The 50 ft. common area along the northern property line adjacent to Buttonwood Harbor shall be maintained and used only as a drainage and 50 ft. landscaped buffer.
8. Maximum coverage of lots by structures shall not exceed 30% for single-family homes, and 35% for single-family homes with screened enclosures over pools. For the 15 lots in Weston Pointe, half of the land within the buffer area (Tract 6-A) shall be credited to individual lots, as needed, to ensure that the maximum 30%/35% lot coverage requirement is met. This credit-for-land provision shall be applied to individual lots in accordance with the schedule attached hereto as Exhibit "B".

Section 2. Except as herein modified and amended, the conditions of Resolution No. 75-27, as previously amended, shall remain in full force and effect.

Section 3. This resolution shall take effect upon adoption by the Town Commission and approval within 30 days by the developer. If the Town Commission has not received notification of approval and acceptance of this Resolution within 30 days after developer's receipt, then this Resolution shall be deemed to have been denied.

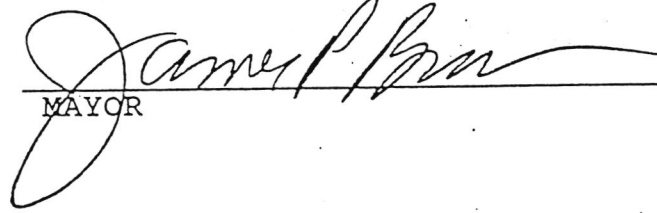
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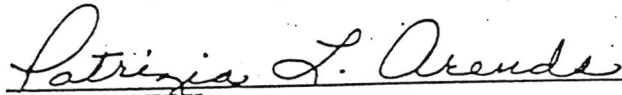
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ADOPTED at a meeting of the Town Commission of the Town of Longboat  
Key this 1st day of JUNE, 1992.

  
MAYOR

ATTEST:

  
TOWN CLERK

Attachments: Consent of Developer  
Exhibit "A"  
Exhibit "B"

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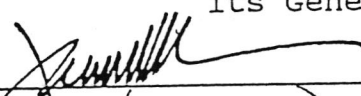
ATTACHMENT TO RESOLUTION 92-21

CONSENT OF DEVELOPER

The undersigned, ARVIDA/JMB PARTNERS, herein above referred to as applicant, does hereby approve and assent to the terms, conditions, and provisions of the foregoing resolution and does further acknowledge that the same is binding upon them and their successors and assigns in the manner hereinabove set forth.

ARVIDA/JMB PARTNERS, a Florida General Partnership

By: ARVIDA/JMB MANAGERS, A Delaware corporation,  
its General Partner

By: 

James D. Motta  
Please Type or Print Name

Title: Vice President

Dated: June 12, 1992

Attest:

  
Signature

Steven A. Parker  
Please type or Print Name

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EXHIBIT "A"

WESTON POINTE: LOT, YARD AND BULK REGULATIONS

<u>District Uses:</u>	<u>Weston Pointe</u>
	<u>o 15 s/f d.u.</u>
	<u>o 15 boat slips</u>
Min. Area (sq.ft)	8,814
Min. Width (ft)	42.81
Min. Depth (ft)	118.25
Max. Gross Res. Den.	2.89 du/a
Min. Street (ft)	20 ft.
Min. Side Yard (both/one, ft)	20/20 ft. b
Min. Rear (ft)	20 ft.
Min. Floor Area	Unit A: 2906 w/o enclosure 3909 w/ enclosure Unit B: 3208 w/o enclosure 4205 w/ enclosure
Max. Height stories/ feet	2/30 <sup>c</sup> Unit A: 22.33 Unit B: 27.5
Max. Coverage (%)	30%/35% a
Min. Open Space	50%

NOTES: (a) Area under roof not to exceed 30% of lot area, area of home including screened pool area not to exceed 35% of lot area. Land area credit to specific lots are allowed as per Exhibit "B" schedule incorporated herein by reference.

(b) Zero lot line design allows 0 ft. sideyard setback with a total minimum sideyard setback between structures of 20 ft.

(c) 30 ft. maximum height above FEMA A-13 Zone (Elevation 11 ft.)

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EXHIBIT "B"

WESTON POINTE

PLAN B

<u>LOT #</u>	<u>ACTUAL AREA</u>	<u>ALLOCATION FOR "A" UNIT</u>	<u>ALLOCATION FOR "B" UNIT</u>
1	18,504	-0-	-0-
2	11,138	-0-	877
3	10,343	180	N/A
4	11,021	-0-	994
5	16,323	-0-	-0-
6	8,814	1,709	1,886*
7	10,530	-0-	1,484
8	9,942	581	N/A
9	10,689	-0-	1,325
10	11,135	-0-	N/A
11	14,399	-0-	N/A
12	10,247	276	N/A
13	10,963	-0-	1,051
14	11,382	-0-	632
15	15,485	-0-	N/A

N/A - UNIT CANNOT BE CONSTRUCTED ON LOT  
 \* - UNIT CANNOT BE CONSTRUCTED WITH SCREENED ENCLOSURE

Allocation of land area credit shall be provided from parcel 6A

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RECORDER'S MEMO: Legibility of writing, typing or printing for reproductive purpose may be unsatisfactory in this document when received.

KAREN E. ROSS  
 CLERK OF CIRCUIT COURT  
 SARASOTA COUNTY, FL

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