

**MINUTES
LONGBOAT KEY TOWN COMMISSION
SPECIAL MEETING
JANUARY 8, 2010 - 9:00 A.M.**

Present: Mayor Lee Rothenberg, Vice Mayor Robert Siekmann, Commrs. Jim Brown, Gene Jaleski, Hal Lenobel, Peter O'Connor, George Spoll

Also Present: Town Attorney David Persson, Town Clerk Trish Granger

CALL TO ORDER

Mayor Rothenberg called the Special Meeting of the Longboat Key Town Commission was called to order at 9:00 a.m., in the Temple Beth Israel, 567 Bay Isles Road, Longboat Key, Florida, for the purpose of considering the following item:

1. Quasi-Judicial – Ordinance 2009-25, Longboat Key Club and Resort - Islandside, 301 Gulf of Mexico Drive, Outline Development Plan (ODP) Amendment.

Public hearing to consider Ordinance 2009-25, an ODP Amendment to the Longboat Key Club and Resort, Islandside. The applicant, Key Club Associates, Limited Partnership and Islandside Development, LLC, property owners, are requesting Outline Development Plan amendment approval for the Longboat Key Club and Resort – Islandside, located at 301 Gulf of Mexico Drive, to redevelop the existing 18 hole golf course, and to construct the following: golf clubhouse and parking structure; golf club condominiums (132 residential units); resort meeting center and administrative building, and parking structure; hotel with 196 tourist units, 34 residential units, restaurant/lounge; 10 residential villas; and, spa and fitness center. Recommended Action: The Town Commission will base its decision on competent substantial evidence presented at this public hearing.

Town Clerk Trish Granger proceeded with a roll call of Commissioners, with all Commissioners in attendance.

Following review of the public hearing procedural process, Mayor Rothenberg opened the public hearing.

Town Clerk Trish Granger placed Ordinance 2009-25 on record by title only for first reading and public hearing.

Mayor Rothenberg noted the procedures for quasi-judicial public hearings and Town Clerk Trish Granger administered the oath to all who will be giving testimony.

Town Attorney David Persson discussed the quasi-judicial proceeding process, legal requirements in consideration of the ODP Amendment petition, advised of the time frame for presentations on the petitions, and recommended that the following organizations be granted third party status to the proceedings: Islandside Property Owners Coalition (IPOC); Positive Change for Longboat Key, Inc. (CP-LBK); and the Longboat Key Association, Inc. (Road Association).

1. Ordinance 2009-25, Longboat Key Club ODP Amendment - Continued

Vice Mayor Siekmann moved to grant third party status to IPOC, CP-LBK, and the Road Association. The motion was seconded by Commr. Spoll.

Town Attorney Persson requested and Attorney John Patterson, representing the Longboat Key Club, and Attorney Nancy Stroud, Special Counsel, noted no objection to the motion to grant third party status.

The motion carried by a 7-0 roll call vote, as follows: Siekmann, aye; Spoll, aye; O'Connor, aye; Brown, aye; Lenobel, aye; Rothenberg, aye; Jaleski, aye.

Town Attorney Persson noted the next order of business to establish time limits for the presentation of the petition, advised of discussions with the attorneys for the parties on acceptable time limits, and suggested the following time limits apply: Staff presentation of the petition for 2.5 hours, the applicant for 3.5 hours, IPOC for 2.5 hours, PC-LBK for one-half (0.5) hour, and the Road Association for one hour.

Attorney Mark Barnebey, representing PC-LBK, commented on the time frame for presentation and requested that if they were to run slightly over a half-hour, they would request consideration to finish the presentation.

Attorney John Patterson, representing the Longboat Key Club, noted agreement with the time frames set.

Attorney Michael Furen, representing IPOC, noted agreement with the time frames established.

Attorney Dick Ulrich, representing the Road Association, noted agreement with the time frames and requested consideration to present prior to IPOC.

Commr. Spoll moved to approve the recommended time limits for the public hearing. The motion was seconded by Vice Mayor Siekmann.

Commr. O'Connor requested, and Town Attorney Persson restated the time limits suggested.

The motion carried by a 7-0 roll call vote, as follows: Spoll, aye; Siekmann, aye; Lenobel, aye; Jaleski, aye; Brown, aye; O'Connor, aye; Rothenberg, aye.

Town Attorney Persson noted Town Code time limits for citizen comments of three minutes versus five minutes for public hearings.

Following comments, Commr. Lenobel moved to provide five minutes each for citizen comment during the public hearing. The motion, seconded by Commr. O'Connor, carried by a 7-0 roll call vote, as follows: Lenobel, aye; O'Connor, aye; Brown, aye; Jaleski, aye; Siekmann, aye; Rothenberg, aye; Spoll, aye.

1. Ordinance 2009-25, Longboat Key Club ODP Amendment - Continued

Town Attorney Persson noted that citizens would be given five minutes to present their comments, and reviewed the following:

- the laws/regulations that establish consideration of the application (Comprehensive Plan and Zoning Code of the Town Code)
- options to modify the Comprehensive Plan and Zoning Code under separate legislative procedures
- existing legal agreements between the developer of the property and the Town
- requirements for consideration and decision making based on competent, substantial evidence presented during the hearing
- disclosure of ex-parte communications and conflicts of interest relating to the petition.

Town Attorney Persson requested disclosure of any conflicts from the Commission.

Commr. Jaleski noted previous public statements and advised of his ability to consider the petition based on the evidence presented during the public hearing process. Upon inquiry by Town Attorney Persson, Commr. Jaleski confirmed his opinion to participate in the hearings.

Town Attorney Persson requested comments from the parties in the petition or objection to the participation in the hearing by Commr. Jaleski. No objections were stated.

Commr. Lenobel noted his membership in the Longboat Key Club for 41 years, his service on the Golf Association Advisory Committee of the Longboat Key Club, and current standing on the Tiger Bay Board of Directors, serving with Mr. Michael Welly and Attorney John Patterson. Town Attorney Persson inquired and Commr. Lenobel clarified his service on the Tiger Bay Board, advising that the organization has no connection with the Longboat Key Club and that he receives no financial benefit from his service.

Town Attorney Persson inquired and Commr. Lenobel opined that he could consider the petition based on the evidence presented.

Town Attorney Persson requested comments from the parties in the petition or objection to the participation in the hearing by Commr. Jaleski. No objections were stated.

Town Attorney Persson requested and no additional disclosures were raised by other Town Commissioners.

Town Attorney Persson provided an overview on ex-parte communications, advised that all the records from the Planning and Zoning (P&Z) Board public hearings were available for review, and requested disclosure of any ex-parte communications by the Commissioners.

1. Ordinance 2009-25, Longboat Key Club ODP Amendment - Continued

Commr. Spoll noted avoidance of any presentations on the petition prior to the public hearings before the P&Z Board and advised that he did attend all of the P&Z Board public hearings. Upon inquiry by Town Attorney Persson, no objections were stated by the parties of record on Commr. Spoll's attendance at the P&Z Board public hearings.

Town Attorney Persson inquired and Commr. Spoll confirmed he did not engage in ex-parte communications during the course of the P&Z Board public hearings.

Following inquiry by Town Attorney Persson on the procedural process, Commr. Lenobel advised that he had read the Town's Comprehensive Plan, opined of needed amendments to the Comprehensive Plan, and suggested that legislative action be taken on the Comprehensive Plan prior to consideration and action of the application of the Longboat Key Club.

Town Attorney Persson commented on the process to consider amendments to the Comprehensive Plan and recommended that all parties be provided the opportunity to present or to discuss consideration of possible amendments to the Comprehensive Plan prior to consideration of the petition. Discussion ensued on consideration of the petition with the current Comprehensive Plan and options to have the parties of record comment on the suggestion to review the Comprehensive Plan prior to consideration of the requested ODP amendment.

Attorney Patterson commented on the Town's Comprehensive Plan, opined of issues with the Town Code which are unclear, and discussed consideration of the Comprehensive Plan prior to hearing the petition.

Subsequent to individual comments, Town Attorney David Persson outlined options for consideration of the petition and the Comprehensive Plan.

Vice Mayor Siekmann moved to proceed with hearing the petition with a determination of the Comprehensive Plan following the public hearing portion. Commr. Spoll seconded the motion.

Attorney Patterson noted the applicant's preference to move forward with the scheduled public hearing and Commr. Lenobel requested Staff's comments on proceeding.

Special Counsel Nancy Stroud commented on the process for consideration of the Comprehensive Plan during the presentation of the petition and supported the suggestion to move forward with the presentation, holding discussions on the Comprehensive Plan during the presentations.

Discussion ensued with Attorney Stroud and Town Attorney Persson on the following topics/issues:

1. Ordinance 2009-25, Longboat Key Club ODP Amendment - Continued

- authority of Town Commission to amend Comprehensive Plan and consideration of changes prior to November 2010 if the State Constitution Amendment 4 is passed
- pending Constitutional amendment on the November 2010 ballot and impact on changes to Comprehensive Plan which would require referendum by voters to initiate any changes to the Comprehensive Plan
- legislative action of amendments to the Comprehensive Plan versus quasi-judicial status of ODP amendments.

Attorney Robert Lincoln, representing IPOC, commented on consideration of the Comprehensive Plan.

Attorney Ulrich, representing the Road Association, opined on consideration of the Comprehensive Plan.

Attorney Barnebey, representing PC-LBK, commented on the consideration of the Comprehensive Plan versus the petition.

Commr. Jaleski inquired on the process to move forward with consideration of the Comprehensive Plan versus the petition. Discussion ensued on the process to proceed.

Attorney Barnebey commented on the proposed process and Town Attorney Persson commented on the options for consideration of the Comprehensive Plan prior to or during the hearing on the petition.

Discussions were held on the following topics/issues:

- process and length of time required to amend the Comprehensive Plan
- options to consider the Comp Plan during the presentation of the petitions
- impact of delay in consideration of the petition as it relates to the availability of witnesses for all parties.

Vice Mayor Siekmann moved to call the question on the motion to proceed with the public hearing.

Commr. Jaleski inquired and Town Attorney Persson commented on the legislative versus quasi-judicial process. Additional comments followed on the procedure to utilize.

Attorney Furen commented on the discussion relating to consideration of the Comprehensive Plan prior to the petition and opined that the petition does not comply with the current Comprehensive Plan and provisions of the Land Development Regulations (Section 158.071(A)(2) of the Zoning Code).

Discussion ensued on process to proceed and issues to be considered within the Comprehensive Plan and/or the Land Development Regulations.

1. Ordinance 2009-25, Longboat Key Club ODP Amendment - Continued

Following individual comments, the motion carried by a 6-1 roll call vote, as follows: Siekmann, aye; Spoll, aye; Jaleski, aye; Lenobel, aye; Brown, aye; O'Connor, aye; Rothenberg, no.

Mayor Rothenberg reviewed the order of presentations for the public hearing, as follows: Staff presentation, 2.5 hours; Longboat Key Club, 3.5 hours; Road Association, 1.0 hour; IPOC, 2.5 hours; and PC-LBK, 0.5 hour; with public comment of 5 minutes per speaker.

RECESS: 10:21 a.m. - 10:35 a.m.

Following comments from Mayor Rothenberg, Planning, Zoning, and Building Department Director Monica Simpson, duly sworn, provided an outline of the items included in the Staff report and an overview of the historical development of the Longboat Key Club, noting previous Ordinances and Resolutions adopted for the property. Ms. Simpson reviewed the requested departures as follows:

- Section 158.006 - definition of Building Height with the exemption/exclusion for architectural features on the roof
- Section 158.128(A) - parking regulations as it relates to stacked parking
- Section 158.071(A)(2) - five percent (5%) non-residential limitation within a PUD.

Discussions were held with Ms. Simpson and Town Attorney Persson on the following topics/issues:

- length of existence of the 5% non-residential limitations in the Code
- non-residential limitation departure not considered at the Planning and Zoning (P&Z) Board hearings.

Ms. Simpson continued her presentation and further reviewed the requested departures. Discussions were held with Ms. Simpson and Town Attorney Persson on the following topics/issues:

- one-story building height with one level parking garage
- floor area ratio requirements
- open space ratio (inclusion or exclusion of the driving range)
- Facilities Investment Fee required for additional potable water from the developer
- discretionary nature of the agreement with Manatee County to provide the nature if the resource is available
- existing capacity and water agreement (2.5 million gallons per day {gpd})
- agreement and financial arrangements in place to provide water to the development once built
- increase in water capacity for new development.

1. Ordinance 2009-25, Longboat Key Club ODP Amendment - Continued

Town Manager Bruce St. Denis, duly sworn, commented on the contract requirements with Manatee County Government for the provision of potable water.

Ms. Simpson continued the presentation on the planned development review criteria for consideration and approval or non-approval of a petition, the findings of fact to be considered, and summarized Staff's position and recommendation on the petition. Ms. Simpson advised that Staff could not recommend approval at the current time and until outstanding issues are resolved.

Town Attorney Persson requested and Ms. Simpson commented on the proposed measurement of the height for the tallest building in the GPD and the intent of the P&Z Board to add additional floors.

Upon inquiry, Ms. Simpson commented on the requested departures that are Comprehensive Plan issues to address. In closing, Ms. Simpson commented on the process for review and update of the Comprehensive Plan in 2005, the intent of the Comprehensive Plan, and the development of the Vision Plan.

Mayor Rothenberg inquired, Attorney Stroud suggested review of transportation/traffic. Mr. Bill Oliver, duly sworn, presented an overview of transportation and Level of Service (LOS) standards for roadways and reviewed the Traffic Study submitted by the applicant and advised that the Town did not complete an independent traffic review. Discussions were held on the following topics/issues:

- backups that occur from St. Armands Circle to Longboat Key
- review of impact of improved waterway use in New Pass and resulting bridge openings on traffic reports.

Mr. Oliver presented conclusions on LOS standards during peak and non-peak hours and issues to be considered and opined that Gulf of Mexico Drive meets current LOS and on occasion, exceeds LOS standards. Mr. Lincoln opined that the LOS is most probably exceeded during peak season.

RECESS: 12:06 p.m. - 1:15 p.m.

Mayor Rothenberg called the meeting back to order at 1:15 p.m.

Attorney Stroud presented legal requirements relating to Comprehensive Plan consistency. Ms. Stroud reviewed the following Elements of the Comprehensive Plan, with discussions held throughout the presentation:

- Element 1 - Future Land Use Element and Table 1 relating to densities
- Element 2 - Transportation Element
- Element 5 - Recreation and Open Space

1. Ordinance 2009-25, Longboat Key Club ODP Amendment - Continued

Ms. Stroud reviewed the Comprehensive Plan issues to be considered as they relate to the GPD Amendment and reviewed the following issues:

- allows for mixed uses in the GPD and Future Land Use Policy 1.1.1.
- identification of the Island Preserve Zoning District assigned to Jewfish Key
- available type of construction in the GPD

Town Attorney Persson requested that a copy of the EAR Comprehensive Plan Amendment be provided to the Commission.

Upon inquiry, Attorney Stroud advised that the "EAR" is an Evaluation and Appraisal Report required by the State in the review of the Comprehensive Plan. Attorney Stroud continued her presentation and reviewed the following issues:

- the GPD may allow additional density/transfer of density
- review of the Comprehensive Plan versus the Zoning Code
- Concurrency with Transportation LOS standards
- Concurrency with Recreation and Open Space requirements
- Concurrency with Potable Water requirements
- Coastal Management Policy 3.2.5 setback requirements.

Attorney Stroud reviewed options and steps required to resolve the issues raised relating to compliance with the Comprehensive Plan and the ODP. Upon inquiry, Attorney Stroud noted consideration of an anticipated Florida Constitutional Amendment to be considered by the voters in November and the time frame for processing a concurrent ODP and Comprehensive Plan Amendment and possible outcomes if the State were to reject the Comprehensive Plan Amendment.

Vice Mayor Siekmann commented on the proposed Constitutional Amendment and the impact to a submitted Comprehensive Plan Amendment. Attorney Stroud advised that she is unaware of the process that the Florida Department of Community Affairs (FDCA) will utilize for an Amendment pending review.

Vice Mayor Siekmann requested copies of the Staff reports utilized this date.

Town Attorney Persson commented on the options referenced and discussion ensued on the impact to the development if an Amendment is pending and options to amend the Comprehensive Plan to the benefit of the proposed project.

Commr. Lenobel inquired as to the process for the hearings and consideration of the Comprehensive Plan.

Town Attorney Persson advised that the intent of the discussion was to determine the issues in the Comprehensive Plan that would need to be considered.

1. Ordinance 2009-25, Longboat Key Club ODP Amendment - Continued

Discussion ensued with Attorney Stroud on the following topics/issues:

- uncertainty of outcome and impact of Constitutional Amendment 4
- result of more clarification/determination versus lack of clarification in the Comprehensive Plan.

RECESS: 2:14 p.m. - 2:25 p.m.

Mayor Rothenberg called the meeting back to order.

Attorney Robert Lincoln, representing IPOC, requested clarification, and Ms. Simpson commented on the following:

- concerns related to the approval of the petition as it relates to Open Space
- lack of full determination that the site plan, if submitted, would comply with the Comprehensive Plan
- off-street parking and compliance with code requirements
- reduction of parking by 50% (Section 158.128 of the Zoning Code) required for commercial/hotel use and additional uses that could occur
- review of various sections of the Town Code and applicability of compliance to the proposed application.

Attorney Barnebey, representing Positive Change, requested clarification, and Ms. Simpson and Mr. Oliver responded to inquiry regarding the following:

- anticipated future site plan submission, ability to submit at a later date
- purpose of a binding Concept Plan
- chart referenced for traffic counts on Gulf of Mexico Drive

Attorney John Patterson, representing the Longboat Key Club, provided background information on the development of the property, historical record of the development, and the currently proposed application and development. Attorney Patterson noted that two witnesses

Attorney Patterson introduced Mr. Joseph Lessor, duly sworn, Chairman and CEO of Loeb Realty. Mr. Lessor commented on recent articles from Mr. Al Green, length of ownership interest in Longboat Key for over 20 years, proposed investors in the Loeb Realty Group, and the intent for a long term investment for the Islandside development application, and supported approval of the application. Discussions were held on the following topics/issues:

- financial structure of holding company/investors, no return of investments in past ten years
- anticipated length of time for development
- current economic conditions restricting financing options.

1. Ordinance 2009-25, Longboat Key Club ODP Amendment - Continued

Attorney Furen commented on consideration of the application by the P&Z Board relating to the development and requested that Mr. Lessor provide assurances that the hotel be constructed as proposed. Mr. Lessor noted the intent to build the hotel. Attorney Furen requested that Mr. Lessor's organization provide a contractual agreement that the property would be developed with the hotel by his organization and that the property would not be sold.

Mayor Rothenberg thanked Mr. Lessor for his attendance and requested that material on Loeb Partners be forwarded to the Town Commission. Mr. Lessor noted an active web site and advised that Loeb Partners are not the only property owners and that many investors participate, noting that the Key Club is owned by two British Pension Funds (2/3) and the balance owned by Loeb Partners.

Attorney Patterson introduced Mr. Peter Yeservich, duly sworn, Chairman and CEO of Y Partnerships. Mr. Yeservich provided an overview on his organization, reviewed current conditions in the travel industry, general economic conditions, and current trends by those expending travel and leisure funds.

Upon inquiry, Attorney Patterson commented on the intent to construct a hotel with residential units. Commr. Lenobel advised that the current agreement does not permit hotel guests to play on the existing golf course. Attorney Patterson advised that a revision to the current agreement is being sought to allow use of the golf courses by hotel guests.

Upon inquiry, Mr. Yeservich advised that he could not provide alternatives to make the existing resorts more viable in the current economic market. Commr. Jaleski inquired and Mr. Yeservich advised that his firm would provide information on the conversion of tourist to property owner. Attorney Patterson requested additional information and Mr. Yeservich commented on younger travelers converting to home ownership and the anticipated future impact to the demographics of Longboat Key

Attorney Furen inquired, and Mr. Yeservich responded to the current environment and

Attorney Lincoln inquired as to the anticipated PRC buyers (Private Residence Club). Mr. Yeservich commented on forms of real estate currently sought by current travelers.

RECESS/CONTINUATION:

Mayor Rothenberg continued the public hearing to Monday, January 11, 2010, at 9:00 a.m., at the Temple facility, located at 567 Bay Isles Road, Longboat Key, Florida.

s/s Trish Granger
Trish Granger, Town Clerk

/s/ George Spoll
George Spoll, Mayor

Minutes Approved: 05/03/2010