



# SPIKOWSKI PLANNING ASSOCIATES

## MEMORANDUM

**TO:** Robin Meyer  
**FROM:** Bill Spikowski  
**DATE:** April 29, 2013  
**SUBJECT:** Remaining Zoning Code Changes

Robin, I'm attaching my draft of the remaining zoning code changes prepared in response to the final judgment by Judge Haworth. Some additional changes are included to eliminate inconsistencies, clarify the code, or address minor pending issues. These changes supplement the changes affecting the 250 additional tourism units that were made in Ordinance 2013-07, as adopted on March 4. A brief explanation of each section of the ordinance is provided below.

**SECTION 2.** Two definitions in the subdivision regulations would be amended to maintain consistency with how those terms are defined and used in the zoning code.

**SECTION 3.** Many definitions in the zoning code would be amended, for a variety of reasons:

- Some changes are to maintain consistency with the subdivisions regulations.
- Others are to explain or amplify, in simple language, how several key terms are used in the Longboat Key zoning code. For instance, "binding concept plan," "outline development plan," and "planned unit development" would now have clear definitions (in addition to being explained at the beginning of section 158.067, as shown in Section 10 of this ordinance).
- The distinction between "departure," "variance," and "waiver," would be illustrated through their definitions.
- A new definition would be provided for "existing only," as proposed for section 158.125 (schedule of uses), to describe uses such as the Inn on the Beach that were built legally but have become nonconforming. This new term could be expanded in the future to address other uses or buildings that have become nonconforming due to changes in town regulations.
- A few other terms would be defined or redefined to clarify their use in this code. These terms include "golf course" and "hotel," which would now be used to define permitted uses in certain MUC zoning districts.

**SECTIONS 4, 5 & 6.** These sections, which include Exhibit "A," would correct what Judge Haworth concluded were technical flaws when the town converted the PD, GPD, and NPD zoning districts into the MUC-1, MUC-2, and MUC-3 districts respectively. These corrections had been proposed in Ordinance 2012-29, which was tabled by the Planning and Zoning Board last November so that the corrections could be combined with the remainder of the zoning code changes.

**SECTION 7.** The table in 158.008 that lists the density cap for each zoning district would be updated to reflect the final judgment's distinction between dwelling units and tourism units. The term "overall density" is introduced, simplified from "average overall density" in the current zoning code. The term "units per acre" now applies only to the MUC-2 zoning district, where some allowable residential units were constructed as tourism units.

**SECTION 8.** This section would make several changes to the descriptions of the three MUC zoning districts that were adopted by Ordinance 2012-08:

- The phrase "average overall density" would be replaced by "overall density," because average and overall can have conflicting meanings when applied to density.
- An important change would add clarity to ambiguities created by potentially conflicting provisions of the town charter, the comprehensive plan, and the zoning code. The comprehensive plan and zoning code describe "overall densities" for the MUC categories. During the initial development stage, these overall densities ensured that the combined development on individual parcels didn't exceed the maximum density that had been approved for each entire MUC tract. However, now that the residential tracts are completed, the continued publication of "overall density" figures could be read to allow the conversion of existing open spaces and golf courses to additional residential developments under the argument that some allowable density had been "left unused." Under the terms of the town charter, additional residential density would require approval by referendum, but that requirement isn't currently mentioned in the description of the MUC zoning districts. To resolve this conflict, an explicit statement would be added that any additional dwelling and tourism units in any MUC district would be subject to a referendum. This would remove any arguable conflict between the final judgment and application of the 1984 charter requirement regarding density.
- A new sentence would clarify that all changes to land-use patterns in the MUC zoning districts must follow the schedule of uses for that zoning district and must also meet the standards in section 158.067(C), including an important new standard in 158.067(C)(9).

**SECTION 9.** The opening section about PUDs (158.065) would be amended to summarize the purpose and effect of PUDs:

- (A) would state the purpose and process of PUDs.
- (B) would clarify that PUD approval does not change the underlying zoning district or add new uses.
- (C) would list which zoning districts PUDs can be used in; in the current code, this is ambiguous.
- (D) would remind readers that PUDs have special density limitations.
- (E) would restate the site-design flexibility intended for PUDs, without some language that the final judgment criticized as circular and too general to be meaningfully applied.
- (F) would provide a simple explanation of the relationship of outline development plans, binding concept plans, and final site plans.

**SECTION 10.** The detailed procedural section on PUDs (158.067) would be modified in the following ways:

- All subsections would be given a short title, which would allow readers to understand the organization of 158.067 and to locate any particular topic more easily.
- In (A), the confusing phrase “permitted use with review” would be eliminated (and eliminated from the schedule of uses in 158.125 as well, as shown in Exhibit “B”).
- In (B)(1), the application requirements would be expanded slightly. The requirement for a binding concept plan would be added in (p), and the option for replacing a binding concept plan with a final site plan would be explicitly stated (and referenced in (B)(5(c) and (G)(3)).
- In (B)(3) and (C), the requirement for written findings of fact would be reinstated into the code; it was deleted by Ordinance 2012-08. The final judgment concluded that the deletion of this requirement wasn’t facially unconstitutional, but implied that without written findings, an “as-applied” constitutional challenge might be viable.
- In (C), the standards for approving or disapproving a PUD have been consolidated and modified slightly. A new standard (C)(9) would address the critical question of whether proposed land-use changes in the MUC-1 or MUC-2 zoning districts would match the historic land-use pattern or be a harmonious evolution of the historic pattern. The prior standards were far less explicit on this question, contributing to the final judgment’s conclusion that the zoning code must be amended to provide “... clear and direct standards to guide whether the identified uses should be permitted under a particular outline development plan application ... to guide the Town Commission in granting or denying the approval of outline development plans.”
- In (D), the standards for approving or disapproving departures would be modified, responding to the final judgment’s direction “... to provide clear and direct criteria that the Town Commission must consider and apply in determining whether to grant or deny a request for a departure.” Vague language that the judgment specifically criticized would be removed (e.g., “as deemed applicable to the request by the town”; “promote the most appropriate use of the land”).
- (E) describes two regulations that the town commission is currently allowed to modify without meeting the standards for departures. These regulations would be moved to their own subsection to minimize future confusion. The single extra story allowed for PUD/ODP applications in several zoning districts would be extended to the MUC-2 district, in place of the much more generous height allowances that had been granted by Ordinance 2012-08; taller buildings could still be approved through departures, but this provision would no longer allow essentially automatic increases. The corresponding change has been made to the table in 158.145.
- In (F) through (I), some redundancy would be eliminated.

**SECTION 11.** The minimum sizes for PUDs would be decreased from 10 to 2 acres in residential zoning districts and from 5 to 0.5 acres for all other zoning districts. Given the town’s reliance on the PUD process for dealing with non-conformities, the previous size standards would create considerable hardships on many smaller properties.

**SECTION 12.** The table in 158.070 that lists special density caps for PUDs in each zoning district would be updated to reflect the final judgment's distinction between dwelling units and tourism units. The table would also now include the "overall density" terminology being used in other portions of the revised code and the same footnotes as in Section 7 (from the table in 158.007).

**SECTION 13.** As in Section 8 above, the phrase "average overall density" would be replaced by "overall density."

**SECTION 14.** The word "departure" appears twice in section 158.097 even though departures cannot be granted during the standard final site plan approval process. This use of the word "departure" would be replaced by "waiver."

**SECTION 15.** A cross-reference would be corrected to correspond to the reorganization of section 158.067.

**SECTION 16.** This section amends the schedule of uses in 158.125. The most important change is to expand the lists of permitted uses in response to the final judgment's conclusion that "...the town may not adopt or amend outline development plans for any MUC zone district until the Town amends the Zoning Code to identify the particular uses that may be permitted in the MUC zoning districts...." Exhibit "B" of this ordinance shows all of the changes.

**For the MUC-1, MUC-2, and MUC-3 zoning districts:**

- The "overall density" terminology would be added to maintain consistency with other parts of the revised code.
- The purpose statement would be expanded to match section 158.009.
- In MUC-1 and MUC-2, the uses permitted WITHOUT site plan review would be expanded to match the "mixed residential" zoning districts (R-3MX, R-4MX, and R6-MX), with the exception of two-family dwellings.
- The uses permitted WITH site plan review would be modified substantially. First, the PUD reference would be eliminated, because PUD is an optional site plan review process and not a permitted use itself; a corresponding change has been made to 158.067(A). Second, a list of uses would be added that corresponds to the existing uses in each district. Third, a new "existing only" category would be created for the Inn on the Beach, which has been ruled nonconforming. Fourth, the phrase "Uses allowed in the MUC-\_ district pursuant to §158.009(L)" would be eliminated because that wording is ambiguous and unnecessary.

**For the C-3 zoning district:**

- The special exception for hotels and motels would be deleted in response to this conclusion from the final judgment: "Except for tourism uses or density that may be authorized pursuant to the Town's 2008 referendum for 250 tourism units, the Town may not approve any tourism units or density for lands in the C-3 zoning district until it secures voter approval for such uses and density pursuant to Article II, §22 of the Town Charter." Section 158.180 could allow some of the 250 additional tourism units to be used in the C-3 zoning district, but tourism units

cannot be permitted through the special exception process, absent voter approval.

**For the T-3 and T-6 zoning districts:**

- The density column would reflect the distinction between dwelling and tourism units.
- Typographical errors in the permitted use columns would be corrected.

**SECTION 17.** This section would update obsolete language that could be interpreted to forbid tourism uses at the Inn on the Beach. The existing language could also be interpreted to allow tourism uses in some or all planned unit developments regardless of the underlying zoning district. In addition, some redundant language would be eliminated and a cross-reference would be added to section 158.180 which allows additional tourism in zoning districts not currently listed in 158.132.

**SECTION 18.** This section would add a description of “existing only” uses (a term newly defined in Section 3 of this ordinance) into the zoning code’s section about nonconformities.

**SECTION 19.** This section would amend the schedule of lot, yard, and bulk regulations in 158.145. A new subsection (B) would add language that protects any building in the MUC-1, MUC-2, and MUC-3 zoning districts that might otherwise become nonconforming as a result of the new lot, yard, and bulk regulations for these districts.. The most important change in Section 19 is to assign specific lot, yard, and bulk regulations in response to the final judgment’s conclusion that “...the Town may not adopt or amend outline development plans for any MUC zone district until the Town amends the Zoning Code to identify the minimum lot sizes, widths and depths, and minimum front, side and rear yards, that may be permitted in the MUC zoning districts....” Exhibit “C” of this ordinance shows all of the changes.

**For the MUC-1, MUC-2, and MUC-3 zoning districts:**

- Prior footnote (g) delayed the assignment of dimensional regulations until the ODP/PUD stage; in place of that footnote, specific dimensional regulations would be placed into this schedule for all three MUC zoning districts. The dimensions are comparable to those in other Longboat Key zoning districts.
- The density column would no longer refer solely to residential density, and the “overall density” terminology would be added to maintain consistency with other parts of the zoning code.
- In the MUC-2 zoning district, the extra height allowed by 2011 comprehensive plan amendments could still be achieved, but not through the abbreviated process that was added to 158.067(D)(3)(j) by Ordinance 2012-08. Taller buildings could still be approved through departures, but the code revisions would no longer allow essentially automatic increases.

**SECTION 20.** This section would amend three footnotes to the schedule of lot, yard, and bulk regulations, as shown in Exhibit “C.” The elimination of footnote (g) was discussed earlier; the two other amendment are merely for consistency with other changes that would be made by this ordinance.

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**SECTION 21.** This section would align the meaning of “lot width” and “lot depth” with the definitions of those terms in the subdivision regulations and the zoning code (including the modifications contained in earlier sections of this ordinance).

**SECTION 22.** This section would align the meaning of “maximum coverage of buildings” with other references in this code to “coverage,” “lot coverage,” or “land coverage.”

**SECTION 23.** This section would no longer forbid public beach access parking from being placed in gulf and pass waterfront yards (waterfront setback areas).

cc: David Persson, Kelly Fernandez, Maggie Mooney-Portale  
Steve Schield, Alaina Ray  
Dave Bullock, Town Manager