



# SPIKOWSKI PLANNING ASSOCIATES

## MEMORANDUM

**TO:** Alaina Ray, Director of Planning, Zoning & BUilding  
**FROM:** Bill Spikowski  
**DATE:** June 6, 2014  
**SUBJECT:** Proposed Ordinance 2013-20, ODP Zoning Code Changes

Alaina, I'm attaching the latest draft of the ODP zoning code changes that were prepared in response to the final order by Judge Haworth. This draft also includes some refinements to clarify the code, eliminate inconsistencies, and address minor pressing issues.

The ODP process was designed for the incremental development of large master-planned communities. At this juncture on Longboat Key, the ODP process has about outlived its usefulness and is due for replacement with zoning techniques that focus on improvements and redevelopment. However, a Key Club expansion proposal is imminent; and the comprehensive plan should be amended to set the direction for larger code revisions before actual drafting begins. For these reasons, this ordinance is limited to clarifying and improving the existing ODP process and making it comply with Judge Haworth's decisions.

This ordinance was approved by the Planning & Zoning Board on May 27, 2014. The language in this latest draft is also supported by town staff, the town attorney, and my firm.

This ordinance supplements other changes affecting the 250 available tourism units that were adopted by Ordinance 2013-07 in March 2013.

A brief explanation of each section of the ordinance is provided here.

**SECTION 2.** The current town rule about mailed public notices is ambiguous as to MUC zoning districts. The current language in section 33.25 says that mailed notices will be provided "to all owners of property involved in the petition or application." The question arises as to which owners are "involved in" an application for additional units in the MUC zoning districts, with their shared recreational facilities and the possibility of disputes over allocating unassigned dwelling units. Is it just the applicant, or also other property owners in the same MUC zoning district? The language proposed in this ordinance takes the conservative position that the rights of all owners in the same MUC zoning district may be affected by that kind of application and thus they should receive individual mailed notices.

**SECTION 3.** Two definitions in the subdivision regulations are being amended to maintain consistency with how those terms are defined and used in the zoning code and in the subdivision regulations.

**SECTION 4.** 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 changes 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 current zoning code uses three terms interchangeably: lot coverage, land coverage, and building coverage. Only the first term is currently defined. These terms are now being defined as synonymous.
- The distinction between “departure,” “variance,” and “waiver,” are being clarified through their definitions in this section.
- A new definition is provided for “pre-existing legal use,” to be used in section 158.125 (schedule of uses). This term would be applied to uses such as the existing hotel and restaurants in the MUC-1 and MUC-2 zoning districts that were built legally but are now deemed “nonconforming.” These uses deserve a better status than nonconforming, which applies limitations on the ability to rebuild, expand, or resume operations after a discontinuance. The new status as “pre-existing legal uses” would afford them the privileges of a permitted use and would allow them to be reconstructed up to their pre-existing density, but only on the specific parcel on which they are located.
- A few other terms are being 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 5 & 6.** These sections, which include the map in Exhibit “A,” will 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 later tabled by the Planning and Zoning Board so that these corrections could be combined with the remainder of these ODP zoning code changes.

**SECTION 7.** The table in 158.008 that lists the density cap for each zoning district is being 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” will now apply only to the MUC-2 zoning district, where some allowable residential units were constructed as tourism units.

**SECTION 8** (middle of page 9 of 43): Several changes are being made to the introductory language for the three MUC zoning districts that was amended by Ordinance 2012-08:

- The phrase “average overall density” is being shortened to “overall density,” because average and overall can have conflicting meanings when applied to density.
- The potential for further limitations on “overall density” to be set during the ODP/PUD process is now clearly acknowledged.

- The town’s longstanding practice of updating a land intensity schedule with each MUC amendment is now being codified.

**SECTION 8** (bottom of page 9 of 43): The final paragraph at the bottom of page 9 would resolve a controversial matter caused 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 in MUC zoning districts didn’t exceed the maximum density that had been approved for the entire MUC district. However, now that the residential tracts are completed, the continued publication of “overall density” figures could be read to pre-authorize the conversion of existing open spaces and golf courses to additional residential or tourism development through claims on the rights to “unused density.”

The Planning and Zoning Board debated three alternative approaches to claims for “unused density” that had originally been allowed for each original MUC-zoned master planned development, but which was never assigned to individual sites, or was assigned but never constructed:

1. Unused units have been waived and no longer exist. Requests for additional units will be treated like other property owners on Longboat Key (triggering a referendum).
2. Unused units are essentially property rights and are awaiting assignment to specific tracts through the ODP/PUD process.
3. Unused units are neither guaranteed nor waived, but may be requested by landowners through the ODP/PUD process, to be placed on any existing vacant or recreation sites, or to increase density during redevelopment of existing buildings.

The first two alternatives were debated and firmly rejected. The third alternative appears in this ordinance at the bottom of page 9 of 43.

Considerable research was undertaken during this debate. Important data is presented in the table below, which begins with the comprehensive plan’s maximum “overall density” ratio and the computed unit cap when that ratio is multiplied by the overall acreage. The table also shows the number of units that had initially been assigned to development parcels through the ODP process and the latest figure for units that were actually constructed (845, which includes one vacant single-family lot). In the last two columns, the table shows the difference between the computed cap and units initially assigned, and the difference between the computed cap and units actually constructed.

<i>ZONING DISTRICT</i>	<i>OVERALL ACRES</i>	<i>COMP PLAN OVERALL DENSITY</i>	<i>COMPUTED UNIT CAP</i>	<i># OF UNITS INITIALLY ASSIGNED THROUGH ODP/PUD</i>	<i># OF INITIALLY ASSIGNED UNITS ACTUALLY CONSTRUCTED</i>	<i>UNIT CAP MINUS UNITS INITIALLY ASSIGNED</i>	<i>UNIT CAP MINUS UNITS ACTUALLY CONSTRUCTED</i>
MUC-1	725.0	3.26 / ac.	2,363	1,267	1,251	1,096	1,112
MUC-2	314.6	5.05 / ac.	1,588	1,407	845	181	743
MUC-3	25.4	11.26 / ac.	286	286	286	0	0

Resolutions of the Town Commission have assigned fewer units in the MUC-1 and MUC-2 zoning districts than would have been allowed by the maximum “overall density” ratio set in the Comprehensive Plan (which is repeated in section 158.008 of the zoning code). Resolutions 85-12, 85-27, and 92-17 indicate the initial assignment of 1,407 units for what is now the MUC-2 zoning district; Resolution 92-17 indicates that the number of assigned units was reduced to 892. The lower figure in the table (845) reflects the fact that some units that remained assigned in 1992 were never constructed.

**SECTION 8** (page 10 of 43): Several additional changes are being made to Section 8:

- Previously, an MUC district could be expanded onto contiguous land. That provision is being deleted because the original MUC/ODP concept becomes obsolete with the completion of the original master-planned developments.
- Another difficult issue is the technically complex question about assigning additional tourism units in the MUC-2 zoning district. Judge Haworth’s initial order included an additional complication, a remedy for which was included in the judge’s amended final order in December 2012. The question has been further complicated by recent state legislation that may affect the legality of Longboat Key’s referendum requirement, which was put into the town’s charter by the voters in 1985:  
*“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.”*  
Given the strong desire for the zoning code to accurately reflect the resolution of these complex questions, a new paragraph has been added to Section 8 just above the middle of page 10 that anticipates the possibility that pending legislation and litigation could remove the town’s ability to hold a referendum on allowing additional tourism uses in the MUC-2 zoning district.

**SECTION 9.** The opening section about Planned Unit Developments (PUDs) in 158.065 is being amended to summarize the purpose and effect of PUDs:

- (A) states the purpose and process of PUDs.
- (B) clarifies that PUD approval does not change the underlying zoning district or add new uses.
- (C) lists which zoning districts PUDs can be used in; in the current code, this is ambiguous.
- (D) reminds readers that the code sets special density limitations for PUDs.
- (E) restates 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) provides 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) is being modified in the following ways:

- All subsections are given a short title, which allows 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” will 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 are being expanded slightly. The requirement for a binding concept plan would be added in (o), 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 issue of written findings of fact has been re-addressed. The requirement for formal findings of fact was deleted by Ordinance 2012-08, which was then challenged in circuit court. Judge Haworth, when ruling on the repeal of this requirement, concluded that the repealing ordinance wasn't invalid because the town could still prepare finding of fact despite the requirement having been eliminated from the zoning code. The final judgment reached these conclusions:

*... The current version of §158.067(D)(3) does not mandate findings in written form. However, neither does it forbid such findings. In other words, the Commission has the option of making written findings should it choose to do so.*

*Given the due process imperative of providing a clear evidentiary foundation for administrative decision, a commission that opts not to make such findings may find its action consistent with the Longboat Key Zoning Code but running afoul of Irvine and its progeny. However, because the Code grants the Commission the discretion to enter written findings and thus be compliant with the Irvin requirement that the agency provide an acceptable record upon which a reviewing court can make a qualitative assessment of the evidence, this court cannot find §158.067(D)(3) facially unconstitutional on this basis. ... The issue of whether the failure to make such findings provides a viable basis for an "as-applied" constitutional challenge must await an actual decision granting or denying an outline development plan, and cannot be resolved in this action.*

The draft ordinance reflects a decision to not require findings of fact in the zoning code. However, it would be advisable for the town to routinely prepare and adopt them anyway. This approach would avoid an obvious legal vulnerability if findings of fact were not prepared in a particular case. The town could still prepare and adopt findings of fact as a part of normal business and thus be in a better position to defend its zoning actions from the other potential legal challenges described in Judge Haworth's order.

- In (C), the standards for approving or disapproving a PUD have been consolidated and modified slightly. Subsection (C)(9) has been added to respond to the following language in the judge's order:

*The court declares that the Town may not adopt or amend outline development plans for any MUC zone district until the Town . . . provides clear and direct standards to guide whether the identified uses should be permitted under a particular outline development plan application.*

The new language in (C)(9) addresses 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, versus being an intrusive or incompatible change in pattern.

- Two new standards in (C)(10) would be applied to requests for building heights above four stories in the MUC-2 zoning district.
- In (D), the standards for approving or disapproving departures are being 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 are being moved to their own subsection to minimize future confusion.
- Revised language in (H) changes how long an ODP/PUD approval remains valid without an extension being granted by the Town Commission. The general rule on Longboat Key is for final site plans to be guaranteed for 2 years before being subject to re-review (see 158.099(F)). The existing code mentions 5 years for an entire PUD plan in a convoluted sentence in 158.067(H); that period is not specific to the MUC zoning districts. This ordinance proposes that the 2-year period in 158.099(F) for final site plans be increased to 4 years for ODP/PUD approvals to reflect the extra public scrutiny of those processes, and to 10 years in the MUC-1 and MUC-2 zoning districts provided two or more types of substantial progress has been made in developing the land. The review and extension procedures in 158.099(H) would still apply at the end of those periods.

**SECTION 11.** The minimum sizes for PUDs is being 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 make this potential route for relief unavailable for many smaller properties.

**SECTION 12.** The table in 158.070 that lists special density caps for PUDs in each zoning district is being updated to reflect the final judgment’s distinction between dwelling units and tourism units. The table now also includes 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 158.008).

**SECTION 13.** The phrase “average overall density” is being replaced by “overall density.”

**SECTION 14.** The word “departure” appears twice in section 158.097 even though the code does not allow departures to be granted during the standard final site plan approval process. This ordinance would replace the word “departure” in this context with “waiver.”

**SECTION 15.** The current code is ambiguous regarding how certain ratios are to be measured in the MUC-1 and MUC-2 zoning districts: “maximum floor area ratio,” “living space ratio,” and “open space ratio.”

New language proposed for 158.102(C)(1)(a) would clearly allow the inclusion of land under common ownership even when it is separated by an intervening privately owned street. The relevant example here is Longboat Club Road, a privately owned street that separates the Islandside golf course from the development sites that benefit from the golf course. The effect of including the golf course land in the denominator of this ratio is to increase the allowable floor area on the development sites across Longboat Club Road, dramatically so because of the golf course’s large size.

Similar changes to 158.102(C)(2) would have the same effect for “living space ratio” and “open space ratio.”

These changes are consistent with the philosophy behind density measurements in the MUC-1 and MUC-2 zoning districts, where clustering of density on development sites is encouraged to maximize shared open spaces such as the golf course.

**SECTION 16.** New language for 158.102(L) would allow less stringent front setbacks for land in the MUC-2 zoning district along Longboat Club Road and Gulf of Mexico Drive where land across those street is designated open space and recreational lands.

**SECTION 17.** 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 is being used to maintain consistency with other parts of the revised code.
- The purpose statements are being expanded to match section 158.009.
- In MUC-1 and MUC-2, the uses permitted WITHOUT site plan review are being 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 are being modified substantially. First, the PUD reference is being 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 is being added that corresponds to the existing uses in each district. Third, the new "pre-existing legal uses" category would be applied to any existing hotels, motels, timeshare units, and restaurants. 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 is being 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 will now reflect the distinction between dwelling and tourism units.
- Typographical errors in the permitted use columns are being corrected.

**SECTION 18.** Section 158.128(K) of the existing code provides screening requirements for parking garages. Changes are now being proposed to clarify and strengthen the screening requirements. New language for 158.128(K) would require 90% of visible facades of parking garages to be screened; this figure is fairly strict and the Town Commission may wish to lower it, perhaps to 75% or 80%.

**SECTION 19.** This section updates obsolete language that could be interpreted to forbid tourism uses at the Longboat Key Club. 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 is being eliminated and a cross-reference is being added to section 158.180 which allows additional tourism in zoning districts not currently listed in 158.132.

**SECTION 20.** This section adds a description of “pre-existing legal uses” (a term newly defined in Section 4 of this ordinance) into the zoning code’s section about nonconformities.

**SECTION 21.** This section amends the schedule of lot, yard, and bulk regulations in 158.145. A new subsection (B) adds 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 resulting from Section 21 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 stage; in place of that footnote, specific dimensional regulations are being placed into this schedule for all three MUC zoning districts. The dimensions are comparable to those in other Longboat Key zoning districts, except for specific modifications made in this ordinance.
- 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.

**SECTION 22.** This section amends 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 amendments are merely for consistency with other changes being made through this ordinance.

**SECTION 23.** This section aligns 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 24.** This section aligns the meaning of “maximum coverage of buildings” with other references in this code to “coverage,” “lot coverage,” or “land coverage.”

**SECTION 25.** This section would no longer forbid public beach access parking from being placed in gulf and pass waterfront yards (waterfront setback areas).

**SECTION 26.** This section reconciles minor inconsistencies within the code.

**EXHIBIT “A”** Exhibit “A” is the map discussed in Section 6.

**EXHIBIT “B”** This chart shows amendments to the schedule of uses in 158.125, as discussed in Section 17 above. 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...”*

Several other minor changes have also been made to keep the language in this table internally consistent.

**EXHIBIT “C”** This chart shows amendments to the schedule of lot, yard, and bulk regulations 158.145, as discussed in Sections 21 and 22 above.

cc: Maggie Mooney-Portale  
Kelly Fernandez  
Dave Bullock