

VDF LAW, PLLC

Van D. Fischer, Esquire

Post Office Box 420526
Summerland Key, Florida 33042

Phone: (305) 849-3893
Email: van@vdf-law.com

December 7, 2017

Cheri Smith, City Clerk
City of Key West City Hall
1300 White Street
Key West, Florida 33040

RECEIVED
CITY CLERK'S OFFICE
2017 DEC - 7 PM 2: 08
CITY OF KEY WEST
KEY WEST, FLORIDA

RE: Notice of Administrative Appeal of Administrative Decision rendered by City Licensing Official regarding transient rental licenses at 1315 Whitehead Street, Key West, Florida 33040.

Dear Ms. Smith:

I represent the interests of PP KW, LLC, a Florida Limited Liability Company, and Paul Misch with respect to transient rental licenses at 1315 Whitehead Street. Pursuant to Sections 90-305 and 90-430 of the City of Key West Code of Ordinances ("City Code") I am submitting this Notice of Appeal together with the required fee of One Thousand and 00/100 Dollars (\$1,000.00) for purposes of appealing the December 4, 2017, administrative decision rendered via email from Ron Ramsingh, Chief Assistant City of Key West ("City") Attorney, on behalf of the City Building Department. A true and correct copy of the email is attached hereto and incorporated herein as Exhibit 1.

The City has incorrectly determined that the four (4) transient rental licenses at 1315 Whitehead Street "have been extinguished" pursuant to Section 122-1338 of the City Code. As described below, the four (4) transient rental licenses in question "shall not expire" and were transferred five years before the extinguishment clause was added to Section 122-1338 of the City Code. The incorrect City decision was rendered in response to the November 7, 2017, application request, submitted by Trepanier & Associates, Inc, to place the four (4) transient licenses into unassigned status. A true and correct copy of the November 7, 2017, application request is attached hereto and incorporated herein as Exhibit 2. This request was materially different from a similar prior request, yet the City incorrectly denied the most recent application request based on the reasoning applied to a prior request in 2015. A true and correct copy of the November 25, 2014, application request is attached hereto and incorporated herein as Exhibit 3, and a true and correct copy of the January 8, 2015, City response is attached hereto and incorporated herein as Exhibit 4.

Background

The four (4) transient rental licenses in question were originally associated with the Hampton Inn (now Parrot Key Resort) located at 2801 N. Roosevelt Boulevard. On July 18, 2006, the City Commission adopted Resolution No. 06-265 which approved a Major Development Plan for 2801 N. Roosevelt Boulevard (see Attachment C of Exhibit 2). Resolution 06-265 recognized that 17.06 Rate of Growth Ordinance (“ROGO”) allocations could be transferred off-site with accompanying transient rental licenses. Importantly, Resolution 06-265 specified that unused transient rental licenses “shall not expire.” In 2007, Section 122-1338 of the City Code did not contain any provisions by which a transient license would either expire or be extinguished.

The four (4) transient licenses were transferred in 2007 from 2801 N. Roosevelt Boulevard to 1315 Whitehead Street pursuant to City Planning Board Resolution No. 2006-035 (see Attachment B of Exhibit 2). The transient licenses were not subsequently transferred and remain associated with 1315 Whitehead Street.

In March 2011, the City Commission adopted Ordinance 11-06 which amended the transient license transfer regulations of Chapter 122 of the City Code. Ordinance 11-06 included for the first time under Section 122-1338(2), that “When units are transferred for non-transient use, the licenses will be extinguished.” (see Attachment G of Exhibit 2). This change to the City Code occurred five years after the subject transient licenses were transferred, and may not be retroactively applied to extinguish the subject transient licenses as the City now claims.

On November 25, 2014, appellants made an initial application to place the four (4) transient licenses into unassigned status (Exhibit 3). On January 28, 2015, the City returned the application and fee claiming that the transient licenses had been extinguished (Exhibit 4). Trepanier & Associates, Inc., understood the return of the request to indicate that additional information was required in order to establish whether or not the transient rental licenses had in fact been extinguished. The November 7, 2017, application request (Exhibit 2) supplied additional information which establishes that the four (4) transient rental licenses could not be extinguished as the City now claims.

Basis of Appeal

The City’s final determination received on December 4, 2017, (Exhibit 1) that the four (4) transient rental licenses “have been extinguished” as per the 2015 decision ignored the additional information submitted with the November 7, 2017, application request. The City’s response simply stated “This matter was already dealt with by the city in 2015. There is nothing new to add from the city’s perspective.” Based on the City’s response, it appears that neither Resolution No. 06-265 nor the timing of Ordinance 11-06 was considered in the City’s December 4, 2017, decision.

City Commission Resolution No. 06-265 contains language which is unambiguous that the transient rental licenses “shall not expire.” Further, the transfer of the licenses was subject to the requirements of Chapter 122 of the City Code in effect at the time of the transfer in 2007 which did not contain any provision that transient licenses would be extinguished if transferred for non-

transient use. Therefore, it was erroneous for the City to conclude that the licenses were extinguished.

Ordinance 11-06 amended the language of Section 122-1338 five years after the transient rental licenses were transferred pursuant to Planning Board Resolution No. 2006-035. The amended language did not provide for a retroactive application of the non-transient use extinguishment clause. Absent any such retroactive language, it is an established practice that amendments to the City Code only apply to actions which occur after the amendments take effect. As such, the extinguishment clause which is now part of Section 122-1338 is inapplicable to the transfer of the four (4) transient rental licenses which occurred in 2007. Further, the extinguishment clause could not be applied to the subject licenses because the licenses have remained at 1315 Whitehead Street since the transfer in 2007.

For the reasons described, the City decision denying the November 7, 2017, application request was incorrect. The subject transient rental licenses "shall not expire" and there was not a subsequent transfer of the licenses which subjected the licenses to the non-transient use extinguishment clause of Section 122-1338. As such, the transient licenses should have been properly found to be valid and active.

We respectfully request this appeal be scheduled at a mutually agreeable time for purposes of presentation of this appeal. If you should have any questions regarding this request, please do not hesitate to contact me

Sincerely,

A handwritten signature in blue ink that reads "Van D. Fischer". The signature is written in a cursive style with a large, sweeping flourish at the end.

Van D. Fischer, Esq.

PP KW, LLC
101 GULFVIEW DR B, 205
ISLAMORADA, FL 33036-4142

1401
63-4/630 FL
29241

DATE 12-7-17

PAY
TO THE
ORDER OF

City of Key West

One Thousand & 00/100

\$ 1000.00

Bank of America

DOLLARS

ACH R/T 063100277

FOR

[Signature]

⑈001401⑈

Photo
Safe
Deposit
Boxes on Back



Van Fischer <van@vdf-law.com>

RE: 1315 Whitehead St.- Transient licenses

1 message

Ronald Ramsingh <rramsingh@cityofkeywest-fl.gov>

Mon, Dec 4, 2017 at 11:40 AM

To: Van Fischer <van@vdf-law.com>

Cc: George Wallace <gwallace@cityofkeywest-fl.gov>, Peg Corbett <pcorbett@cityofkeywest-fl.gov>, Patrick Wright <pwright@cityofkeywest-fl.gov>

Good Morning Van.

This matter was already dealt with by the city in 2015. There is nothing new to add from the city's perspective. Mr. Trepanier needs to refer to those 2015 materials on which no further action was taken.

I hope that you are well.

Ron

From: Van Fischer [mailto:van@vdf-law.com]
Sent: Friday, December 01, 2017 4:20 PM
To: Ronald Ramsingh <rramsingh@cityofkeywest-fl.gov>
Cc: Van Fischer <van@vdf-law.com>
Subject: 1315 Whitehead St.- Transient licenses

Ron,

I represent the owner of [1315 Whitehead Street](#) and your assistant Claire Heard indicated you are the attorney handling that matter. It is my understanding from Owen Trepanier that the licensing official Peg Corbett was instructed not to speak to or provide any further correspondence on the matter. Briefly, this matter involves transient rental licenses which were transferred to [1315 Whitehead Street](#) from the Parrot Key Resort property back in 2006/2007. I would like to know where things stand with the City so that I can advise my client accordingly.

I look forward to your response and working with you to mutually resolve the matter. Thank you. Have a great weekend.

Van

Van D. Fischer, Esq.

VDF Law, PLLC

PO Box 420526

12/4/2017

VDF Law, PLLC Mail - RE: 1315 Whitehead St.- Transient licenses

EXHIBIT 1

Summerland Key, FL 33042

(305) 849-3893

van@vdf-law.com

CONFIDENTIAL & PRIVILEGED

Unless otherwise indicated or obvious from the nature of the above communication, the information contained herein may be an attorney-client privileged and confidential information/work product. The communication is intended for the use of the individual or entity named above. If the reader of this transmission is not the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you have received this communication in error or are not sure whether it is privileged, please immediately notify us by return e-mail and destroy any copies, electronic, paper or otherwise, which you may have of this communication.

EXHIBIT 2

November 7, 2017

Ms. Peg Corbett, Licensing Official
City of Key West
1300 White Street
Key West, FL 33040

**RE: 1315 Whitehead Street
Business Tax Receipt¹**

TREPANIER



& ASSOCIATES INC
LAND USE PLANNING
DEVELOPMENT CONSULTANTS

Dear Ms. Corbett:

This is a request to place four transient licenses (Ctl No. 2154) into unassigned status.

The property at 1315 Whitehead Street was the subject of a transient unit transfer in 2006. Pursuant to Res. No. 2006-035,² four (1.0 BPAS equivalent) transient units, and accompanying transient licenses were transferred from 2801 N. Roosevelt to 1315 White Street.

The records show³ that the four transient units transferred were accompanied by license no. 06 19054/control number 2154⁴ as referenced in Res. No. 2006-035. The four licenses were never subsequently transferred elsewhere and thus remain associated with 1315 Whitehead Street's bundle of property rights.

At the time, transient licenses did not expire when transferred, as stated in Res. 06-265 Sec. 1(3).⁵ The code relating to transient transfers was amended in 2011, pursuant to Ord. 11-06⁶, Sec. 122-1338(10) transient licenses are extinguished when transient units are transferred for non-transient use. Prior to 2011, no such provision existed.

We are requesting the four BTRs that transferred with the four ROGO units in 2006, be placed into unassigned status. I am including a BTR application for the reassignment to unassigned status and I am including a check for the estimated back fees.

Transient tax:	$(\$28.00 \times 4 \text{ units} \times 9 \text{ years}) = \$1,008.00$
Total:	\$1,008.00

If any additional fees are due the City please let us know and we will promptly make payment. Thank you for your assistance.

Best regards,

Lori Thompson

¹ Attachment A (BTR Application and Check)

² Attachment B (Resolution No. 2006-035)

³ Attachment B (Resolution No. 2006-035)

Attachment C (Resolution 06-265)

Attachment D (Letter from KW Planning Department dated 11/07/13)

Attachment E (BTR license no. 06 19054, Ctl No. 2154)

Attachment F (Receipt for license transfer)

Attachment G (Ord. 11-06)

⁴ Attachment E (BTR license no. 06 19054, Ctl No. 2154)

⁵ Attachment C (Resolution 06-265)

⁶ Attachment G (Ord. 11-06)

EXHIBIT 2
Business License Tax Application

City of Key West
City Hall Annex
PO Box 1409
Key West, FL 33041

Date Applied 10/25/2017

License # _____
Phone 305-809-3955
Fax 305-809-3978

Business Type: 4 unassigned transient licenses (06-00019054)

Business Name: Southwhitehead, LLC

Business Location: 1315 Whitehead Street

Business Owner: Southwhitehead, LLC

State Licensed Qualifier (if applicable): N/A

C/o Trepanier & Associates, Inc.,
Mailing Address: 1421 First St., Unit 101, Key West, FL 33040

EIN / SS # 370-44-2860 Phone # (305) 293-8983

Trepanier & Associates, Inc.
Applicant name (printed)

[Signature]
Applicant signature

10/25/17
Date

State of Florida
County of Monroe

The foregoing instrument was acknowledged before me this 25 day of Oct, 2017 by

Lafi Thompson

Avina Covington
Signature of Notary Public



(stamp or seal). Personally known
Produced id

- Sales Tax number 3106 Flagler Ave 292-6735 City utility acct _____
- Commercial garbage Waste Mgmt 296-8297 _____
- Lease or deed _____
- State License DBPR 850-487-1395 / Dept Ag 305-470-6900
- Home occupation application
- Fictitious Name registration Previous use _____
- Corporate or LLC registration
- Liability / Worker's Comp Zoning _____
- Fire Inspector 292-8179
- CO / final inspection on any permits Category _____ Fee \$ _____
- Monroe County or local licensing

Licensed in accordance with Chapter 66, Key West Code of Ordinances

_____ Approved _____ Denied / Reason _____

Licensing Official

Date

EXHIBIT 2

Attachment B

PLANNING BOARD RESOLUTION No. 2006-035

A RESOLUTION OF THE CITY OF KEY WEST PLANNING BOARD PURSUANT TO SECTION 122-1338, LAND DEVELOPMENT REGULATIONS OF THE CODE OF ORDINANCES OF THE CITY OF KEY WEST APPROVING AN APPLICATION FOR THE TRANSFER OF FOUR (4) TRANSIENT UNITS FROM 2801 N. ROOSEVELT BOULEVARD (RE#00002410-000400) TO 1315 WHITEHEAD STREET (RE#00036180-000100); PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, pursuant to Sec. 122-1338 of the Code of Ordinances of the City of Key West, Owen Trepanier representative for Parrot Key Associates, INC. the owner of 2801 Roosevelt Boulevard (the sender site), filed an application to transfer four (4) transient units from the property (sender site) to 1315 Whitehead Street (the receiver site); and

WHEREAS, the above-referenced party presented to the City proof of transient licenses, Number 2154; and

WHEREAS, Owen Trepanier, representative for Southwhitehead, LC, owner of the receiver site, simultaneously made application to transfer the licenses from the sender site to the receiver site; and

WHEREAS, the redevelopment of the sender site has begun pursuant to City Commission Resolution 06-265 and the previous buildings have been demolished; and

WHEREAS, at the Planning Board Meeting of 18 January 2007, Ms. Kenson reported that there were 52 notices sent, 4 responses received, 0 with objections, 4 non-objections, and 1 written comment, which was read into the record; and

WHEREAS, at that Meeting, Ms. Kenson referenced a staff report dated 27 December 2006, that reviewed the application for compliance with all applicable regulations and reported the comments from the Development Review Committee of 28 December 2006 and recommended approval of the requested transfer of 4 transient units based on a finding that the proposal complies with the criteria and intent of the Transfer Ordinance and with the finding that this approval is for the transfer only; and

EXHIBIT 2

NOW, THEREFORE, BE IT RESOLVED by the Planning Board of the City of Key West, Florida:

Section 1. That the Planning Board finds that the transfer of the four (4) transient units from 2801 N. Roosevelt Boulevard to 1315 Whitehead Street is approved.

Section 2. That this Resolution shall go into effect immediately upon its passage and adoption and authentication by the signatures of the Co-Chairman of the Planning Board and Planning Director.

Passed at a meeting held this 18th day of January 2007.

Paul V. Tagliaferri

**Paul V. Tagliaferri, Co-Chairman
Key West Planning Board**

1/29/07

Date

Attest:

Gail E. Kenson

**Gail E. Kenson, AICP
Planning Director**

29 Jan 07

Date

Filed with the Clerk:

Cheryl Smith
Cheryl Smith, City Clerk

1-29-07
Date

EXHIBIT 2

RESOLUTION NO. 06-265

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF KEY WEST, FLORIDA, APPROVING THE ATTACHED MAJOR DEVELOPMENT PLAN AND CONDITIONAL USE FOR THE PROPERTY LOCATED AT ~~2801~~ NORTH ROOSEVELT BOULEVARD; PROVIDING CONDITIONS; RESCINDING RESOLUTION NO. NO. 05-341; PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, sections 108-198 and 122-63 of the Code of Ordinances, respectively, provide City Commission authority to approve a Major Development Plan and Conditional Use application;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF KEY WEST, FLORIDA, AS FOLLOWS:

Section 1: That the attached Major Development Plan and Conditional Use application is hereby approved, provided that the property owner fulfills the following conditions recommended by the Key West Planning Board at its meeting of June 22, 2006, as ~~modified and supplemented~~ herein;

1. All requirements of the Americans With Disabilities Act, Florida Accessibility Code and Federal Fair Housing Act, as specifically stated in the plans submitted by the property owner, shall be met.

2. The remaining 17.06 ROGO allocations may be transferred off-site with an accompanying transient rental license, but only to a receiver site or sites within the city of Key West. (This number was arrived at by applying a .58 conversion ratio, i.e., 157 motel

EXHIBIT 2

units x .58 = 91.06 full units, less 74 units retained on site = 17.06 ROGO allocations.) Should the City subsequently increase the conversion ratio (e.g., from .58 to .85), the new ratio shall be applied so as to increase the number of transferable ROGO allocations. If the ROGO unit allocations transferred to a receiver site or sites are to be used as non-transient dwellings, the accompanying transient rental licenses may be transferable, but only to a receiver site or sites within the city of Key West zoned to allow transient rental use, according to the procedures of section 122-1336-1346 of the Code of Ordinances.

3. Notwithstanding the potential conversion contemplated in Paragraph 2, the unused transient rental licenses in excess of the 17.06 ROGO allocations shall not expire, but shall be subject to transfer in accordance with the provisions of sections 122-1336-1346 of the Code of Ordinances. The City Commission hereby interprets section 122-1339 of the Code of Ordinances to allow the transfer of transient rental licenses from a zoning district where transient rental uses are allowed.

4. The recorded homeowners' association documents governing the project shall provide that the townhouse units shall not be eligible for homestead status, and shall prohibit townhouse unit owners from applying for or obtaining a homestead exemption for any townhouse unit.

5. City Commission Resolution No. 05-341 shall be rescinded upon approval of the current application for development.

EXHIBIT 2

Section 2: That Resolution No. 05-341 is hereby rescinded.

Section 3: That this Resolution shall go into effect immediately upon its passage and adoption and authentication by the signature of the presiding officer and the Clerk of the Commission.

Passed and adopted by the City Commission at a meeting held this 18 day of July, 2006.

Authenticated by the presiding officer and Clerk of the Commission on July 20, 2006.

Filed with the Clerk July 20, 2006.

[Handwritten Signature]
MORGAN McPHERSON, MAYOR

ATTEST:

[Handwritten Signature]
CHERYL SMITH, CITY CLERK



STATE OF FLORIDA, COUNTY OF MONROE,
CITY OF KEY WEST

This copy is a true copy of the public record on file in this office. Witness my hand and official seal this 21 day of July 2006

By *[Handwritten Signature]*
Cheryl Smith, City Clerk



THE CITY OF KEY WEST

Post Office Box 1409 Key West, FL 33041-1409 (305) 809-3700

November 7, 2013

Owen Trepanier
Trepanier & Associates, Inc.
PO Box 2155
Key West FL 33045-2155

RE: 1315 Whitehead Street

Dear Mr. Trepanier:

In your letter dated October 28, 2013, you requested confirmation of the number of permanent and/or transient units associated with the subject property. After a quick review of the prior development approvals on the subject property, the status of the units is as follows.

The property received a beneficial use determination for two non-transient units on August 30, 2005. The approval required the owner to obtain a development plan approval and commence development within one year. A six-month extension was granted by the planning director on July 24, 2006.

The property received an approval to transfer four transient units from 2801 N Roosevelt Blvd via Planning Board Resolution No. 2006-035 on January 18, 2007. There is no expiration date on the transferred units.

A Major Development Plan approval was granted to redevelop the property as six-unit non-transient residential via City Commission Resolution No. 06-339. Development plan approvals expire 12 months after final approval if construction has not started. I found no evidence of any extensions being granted.

Building permits were applied for in 2007, but never issued and are now cancelled/void.

In order to continue the previously-approved six-unit non-transient residential project, the owner would need to re-apply for a beneficial use determination for two units, a Major Development Plan and building permits, as well as any other necessary approval such as Certificates of Appropriateness, Tree Commission, etc.

If I can help with anything else, please feel free to contact me at 305.809.3725 or kbond@keywestcity.com.

Thank you.



Kevin Bond, AICP, LEED Green Associate, Planner II
City of Key West Planning Department

October 28, 2013

Mr. Donald Craig, AICP,
Director of Community Development Services
City of Key West
3140 Flagler Avenue
Key West, FL 33040

RE: 1315 Whitehead Street

Dear Mr. Craig,

Thank you for the opportunity to meet with you and discuss the development potential of the above referenced property.

Per our meeting, I wanted to follow up on the recognized entitlements associated with the property. Can your office confirm the number of permanent and/ or transient units associated with the above property?

Thank you in advance for your assistance in this matter.

Sincerely,



Owen Trepanier

TREPANIER



& ASSOCIATES INC

LAND USE PLANNING
DEVELOPMENT CONSULTANTS

EXHIBIT 2

A City Occupational License is a business tax. Holder must meet all City zoning and use provisions. P.O. Box 1409, Key West, Florida 33040 (305)809-3955

Business name : HAMPTON INN KEY WEST Ctl nbr : 2154
 Location addr : 2801 N ROOSEVELT BLVD
 Lic Nbr/Class : 05 19054 RENTAL-MOTEL/HOTEL/TIMESHARE
 Issue date : 9/01/06 Expiration date : 9/30/06
 Lic Fee : 2276.50
 Penalty : .00
 Total : 2276.50
 Comments : HOTEL 157 ROOMS

This license must be prominently displayed.

HAMPTON INN KEY WEST
 2801 N ROOSEVELT BLVD
 KEY WEST FL 33040
 MRM AT PARROT KEY INC

STONES & CARDENAS
ATTORNEYS AT LAW
221 SIMONTON STREET
KEY WEST, FLORIDA 33040

EXHIBIT 2
FIRST STATE BANK
OF THE FLORIDA KEYS

63-43/670

12/6/2006

PAY
TO THE
ORDER OF

City of Key West

\$ **1,800.00

One Thousand Eight Hundred and 00/100***** DOLLARS

Revenue
City of Key West
PO Box 1409
Key West, FL 33041-1409

Allen V. Stone

AUTHORIZED SIGNATURE

MEMO

Atlantic Avenue Dr

4381

STON

11120

100.00

A'

int

800.00

DATE: DEC 06 2006

AMOUNT: 2000.00

CITY OF KEY WEST

Please deposit check to account -

343.70 Conservation & Resource Mgmt Fees-Planning Application Fees Project Related

PROJECT TYPE:

Transient Transfer

SITE ADDRESS:

2801 N. Roosevelt Blvd to 1315 Whitehead St.

APPLICANT:

Trepanier & Assoc.

OWNER:

PLANNER:

Security features. Details on back.

EXHIBIT 2

ORDINANCE NO. 11-06

AN ORDINANCE OF THE CITY OF KEY WEST, FLORIDA, AMENDING CHAPTER 122 OF THE CODE OF ORDINANCES ENTITLED "ZONING" BY AMENDING SECTION 122-1338, and 122-1346 TO PROVIDE FOR CLARIFICATION TO THE TRANSFER OF TRANSIENT UNITS ORDINANCE; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL OF INCONSISTENT PROVISIONS; PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, Section 90-517 of the Code of Ordinances allows the City Commission to amend the text of the land development regulations in accordance with certain procedures and criteria;

WHEREAS, the City Commission held a workshop on April 20, 2010, to discuss potential modifications to the ordinance, and at that meeting directed city staff to consult with the Planning Board regarding potential ordinance modifications;

WHEREAS, the Planning Board held a workshop on July 14, 2010, to discuss potential modifications to the ordinance and recommended that the sunset provisions be eliminated and that the ordinance be maintained with only minor clarifications;

WHEREAS, staff prepared minor changes to the ordinance in accordance with Planning Board recommendations;

WHEREAS, the Planning Board held a noticed public hearing on 1-20-11, where based on the consideration of recommendations by

1

*(Coding: Added language is underlined; deleted language is ~~struck through~~.)

EXHIBIT 2

the city planner, city attorney, building official and other information recommended approval of the proposed amendments;

WHEREAS, the City Commission held a noticed public hearing on 3-15-11 and in its deliberations considered the criteria identified in section 90-521 of the Code of Ordinances;

WHEREAS, the City Commission determined that the proposed amendments: are consistent with the Comprehensive Plan; in conformance with all applicable requirements of the Code of Ordinances; are stimulated by changed conditions after the effective date of the existing regulation; will promote land use compatibility; will not result in additional demand on public facilities; will have no impact on the natural environment; will not negatively impact property values or the general welfare; will result in more orderly and compatible land use patterns; and are in the public interest.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY OF KEY WEST, FLORIDA:

Section 1: That Chapter 122 of the Code of Ordinances is hereby added/amended as follows*:

Sec. 122-1338 (2). Transfer of Transient Units.

*(Coding: Added language is underlined; deleted language is ~~struck through~~.)

EXHIBIT 2

Transient use must be an allowed zoning use on the receiver site, unless the units are to be converted into non-transient units as contemplated by subsection (3) of this section. Further, no transient unit shall be recognized for transfer purposes, regardless of whether it will be used transiently or non-transiently, unless accompanied by a business tax receipt duly issued pursuant to section 66-109 (10). When units are transferred for non-transient use, the licenses will be extinguished.

Sec. 122-1346. Sunset.

~~This division shall expire on May 15, 2011.~~

Section 2: If any section, provision, clause, phrase, or application of this Ordinance is held invalid or unconstitutional for any reason by any court of competent jurisdiction, the remaining provisions of this Ordinance shall be deemed severable therefrom and shall be construed as reasonable and necessary to achieve the lawful purposes of this Ordinance.

Section 3: All Ordinances or parts of Ordinances of said City in conflict with the provisions of this Ordinance are hereby superseded to the extent of such conflict.

EXHIBIT 2

Section 4: This Ordinance shall go into effect immediately upon its passage and adoption and authentication by the signature of the presiding officer and the Clerk of the Commission and approval by the State Department of Community Affairs pursuant to Chapter 380, Florida Statutes.

Read and passed on first reading at a regular meeting held this 1 day of March, 2011.

Read and passed on final reading at a regular meeting held this 15 day of March, 2011.

Authenticated by the presiding officer and Clerk of the Commission on 16 day of March, 2011.

Filed with the Clerk March 16, 2010.


CRAIG CATES, MAYOR

ATTEST:


CHERYL SMITH CITY CLERK

EXHIBIT 2

DCA Final Order No.: DCA11-OR-052

STATE OF FLORIDA
DEPARTMENT OF COMMUNITY AFFAIRS

In re: LAND DEVELOPMENT
REGULATIONS ADOPTED BY
CITY OF KEY WEST ORDINANCE
NO. 11-06

RECEIVED
2011 APR -6 PM 1:24
CITY OF KEY WEST
KEY WEST, FLORIDA

FINAL ORDER

The Department of Community Affairs (the "Department") hereby issues its Final Order, pursuant to §§ 380.05(6) and (11), Fla. Stat., (2010), approving a land development regulation adopted by a local government within the City of Key West Area of Critical State Concern as set forth below.

FINDINGS OF FACT

1. The City of Key West is a designated area of critical state concern.
2. On March 21, 2011 the Department received for review City of Key West Ordinance No. 11-06, which was adopted by the City of Key West City Commission on March 15, 2011, ("Ord. 11-06").
3. The purpose of Ord. 11-06 is to amend Chapter 122 of the Code of Ordinances entitled Zoning by amending Section 122-138 and 122-1346 to clarify that transient units shall not be transferred, regardless of whether the unit will be used for transient or non-transient use, unless accompanied by a business tax receipt. Ord. 11-06 also clarifies that if a transient unit is transferred for non-transient use, the license will be extinguished and deletes a sunset provision.
4. Ord. 11-06 is consistent with the City's Comprehensive Plan: Policy 1-2.3.4: Historic Planned Redeveloped and Development.

CONCLUSIONS OF LAW

5. The Department is required to approve or reject land development regulations that are adopted by any local government in an area of critical state concern based upon consistency with the Principles for Guiding Development applicable to that area of

EXHIBIT 2

DCA Final Order No.: DCA11-OR-052

critical state concern. §§ 380.05(6) and 380.05(11), Fla. Stat., (2010).

6. The City of Key West is an Area of Critical State Concern. § 380.05, Fla. Stat. (2010) and Rule 28-36.001, Fla. Admin. Code.

7. "Land development regulations" include local zoning, subdivision, building, and other regulations controlling the development of land. § 380.031(8), Fla. Stat. (2010). The regulations adopted by Ord. 11-06 are land development regulations.

8. All land development regulations enacted, amended, or rescinded within an area of critical state concern must be consistent with the principles for guiding development for the particular area (the "Principles"). § 380.05(6), Fla. Stat.; see Rathkamp v. Department of Community Affairs, 21 F.A.L.R. 1902 (Dec. 4, 1998), aff'd., 740 So. 2d 1209 (Fla. 3d DCA 1999). The Principles for the City of Key West Area of Critical State Concern are set forth in Rule 28-36.003(1), Fla. Admin. Code.

9. The above identified portions of Ord. 11-06, are consistent the following Principles:

(a) Strengthen local government capabilities for managing land use and development.

(d) Protection of scenic resources of the City of Key West and promotion of the management of unique tropical vegetation.

(e) Protection of the historical heritage of Key West and the Key West Historical Preservation District.

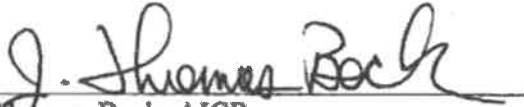
10. WHEREFORE, IT IS ORDERED that Ord. 11-06 is found to be consistent with the Principles for Guiding Development of the City of Key West Area of Critical State Concern, and is hereby APPROVED.

This Order becomes effective 21 days after publication in the Florida Administrative Weekly unless a petition is filed as described below.

EXHIBIT 2

DCA Final Order No.: DCA11-OR-052

DONE AND ORDERED in Tallahassee, Florida.


Thomas Beck, AICP
Director, Division of Community Planning
Department of Community Affairs
2555 Shumard Oak Boulevard
Tallahassee, Florida 32399-2100

NOTICE OF ADMINISTRATIVE RIGHTS

ANY PERSON WHOSE SUBSTANTIAL INTERESTS ARE AFFECTED BY THIS ORDER HAS THE OPPORTUNITY FOR AN ADMINISTRATIVE PROCEEDING PURSUANT TO SECTION 120.569, FLORIDA STATUTES, REGARDING THE AGENCY'S ACTION. DEPENDING UPON WHETHER YOU ALLEGE ANY DISPUTED ISSUE OF MATERIAL FACT IN YOUR PETITION REQUESTING AN ADMINISTRATIVE PROCEEDING, YOU ARE ENTITLED TO EITHER AN INFORMAL PROCEEDING OR A FORMAL HEARING.

IF YOUR PETITION FOR HEARING DOES NOT ALLEGE ANY DISPUTED ISSUE OF MATERIAL FACT CONTAINED IN THE DEPARTMENT'S ACTION, THEN THE ADMINISTRATIVE PROCEEDING WILL BE AN INFORMAL ONE, CONDUCTED PURSUANT TO SECTIONS 120.569 AND 120.57(2) FLORIDA STATUTES, AND CHAPTER 28-106, PARTS I AND III, FLORIDA ADMINISTRATIVE CODE. IN AN INFORMAL ADMINISTRATIVE PROCEEDING, YOU MAY BE REPRESENTED BY COUNSEL OR BY A QUALIFIED REPRESENTATIVE, AND YOU MAY PRESENT WRITTEN OR ORAL EVIDENCE IN OPPOSITION TO THE DEPARTMENT'S ACTION OR REFUSAL TO ACT; OR YOU MAY EXERCISE THE OPTION TO PRESENT A WRITTEN STATEMENT CHALLENGING THE GROUNDS UPON WHICH THE DEPARTMENT HAS CHOSEN TO JUSTIFY ITS ACTION OR INACTION.

IF YOU DISPUTE ANY ISSUE OF MATERIAL FACT STATED IN THE AGENCY ACTION, THEN YOU MAY FILE A PETITION REQUESTING A FORMAL ADMINISTRATIVE HEARING BEFORE AN ADMINISTRATIVE LAW JUDGE OF THE DIVISION OF ADMINISTRATIVE HEARINGS, PURSUANT TO SECTIONS 120.569 AND 120.57(1), FLORIDA STATUTES, AND CHAPTER 28-106, PARTS I AND II, FLORIDA ADMINISTRATIVE CODE. AT A FORMAL ADMINISTRATIVE HEARING, YOU MAY BE REPRESENTED BY COUNSEL OR OTHER QUALIFIED REPRESENTATIVE, AND YOU WILL HAVE THE OPPORTUNITY TO PRESENT EVIDENCE AND ARGUMENT ON ALL THE ISSUES INVOLVED, TO CONDUCT CROSS-EXAMINATION AND SUBMIT REBUTTAL EVIDENCE, TO SUBMIT

EXHIBIT 2

DCA Final Order No.: DCA11-OR-052

PROPOSED FINDINGS OF FACT AND ORDERS, AND TO FILE EXCEPTIONS TO ANY RECOMMENDED ORDER.

IF YOU DESIRE EITHER AN INFORMAL PROCEEDING OR A FORMAL HEARING, YOU MUST FILE WITH THE AGENCY CLERK OF THE DEPARTMENT OF COMMUNITY AFFAIRS A WRITTEN PLEADING ENTITLED, "PETITION FOR ADMINISTRATIVE PROCEEDINGS" WITHIN 21 CALENDAR DAYS OF PUBLICATION OF THIS NOTICE. A PETITION IS FILED WHEN IT IS RECEIVED BY THE AGENCY CLERK, IN THE DEPARTMENT'S OFFICE OF GENERAL COUNSEL, 2555 SHUMARD OAK BOULEVARD, TALLAHASSEE, FLORIDA 32399-2100.

THE PETITION MUST MEET THE FILING REQUIREMENTS IN RULE 28-106.104(2), FLORIDA ADMINISTRATIVE CODE. IF AN INFORMAL PROCEEDING IS REQUESTED, THEN THE PETITION SHALL BE SUBMITTED IN ACCORDANCE WITH RULE 28-106.301, FLORIDA ADMINISTRATIVE CODE. IF A FORMAL HEARING IS REQUESTED, THEN THE PETITION SHALL BE SUBMITTED IN ACCORDANCE WITH RULE 28-106.201(2), FLORIDA ADMINISTRATIVE CODE.

A PERSON WHO HAS FILED A PETITION MAY REQUEST MEDIATION. A REQUEST FOR MEDIATION MUST INCLUDE THE INFORMATION REQUIRED BY RULE 28-106.402, FLORIDA ADMINISTRATIVE CODE. CHOOSING MEDIATION DOES NOT AFFECT THE RIGHT TO AN ADMINISTRATIVE HEARING.


YOU WAIVE THE RIGHT TO AN INFORMAL ADMINISTRATIVE PROCEEDING OR A FORMAL HEARING IF YOU DO NOT FILE A PETITION WITH THE AGENCY CLERK WITHIN 21 DAYS OF PUBLICATION OF THIS FINAL ORDER.

CERTIFICATE OF FILING AND SERVICE

I HEREBY CERTIFY that the original of the foregoing Final Order has been filed with the undersigned designated Agency Clerk, and that true and correct copies have been furnished to the persons listed below by the method indicated this ~~4th~~ day of

~~March~~, 2011.

April



Paula Ford, Agency Clerk

EXHIBIT 2

DCA Final Order No.: DCA11-OR-052

By U.S. Mail:

The Honorable Craig Cates
Mayor, City of Key West
P.O. Box 1409
Key West, Florida 33041

Cheryl Smith
Clerk to the City Commission
P.O. Box 1409
Key West, Florida 33041

Don Craig
Interim Planning Director
City of Key West
P.O. Box 1409
Key West, Florida 33041

Larry Erskine
City Attorney
P.O. Box 1409
Key West, FL 33041

By Hand Delivery or Interagency Mail:

Rebecca Jetton, ACSC Administrator, DCA Tallahassee
Richard E. Shine, Assistant General Counsel, DCA Tallahassee

EXHIBIT 2



EXECUTIVE SUMMARY

To: Jim Scholl, City Manager

Through: Donald Leland Craig, AICP, Interim Planning Director

From: Ashley Monnier, Planner II *AM*

Meeting Date: March 1, 2011

RE: Transient Transfer Ordinance – An ordinance of the City of Key West, Florida, amending Chapter 122 of the Code of Ordinances entitled “Zoning” by amending Section 122-1338, and 122-1346 to provide for clarification to the Transfer of Transient Units Ordinance; providing for severability; providing for repeal of inconsistent provisions; providing for an effective date.

ACTION STATEMENT:

Request: A request to propose modifications to the transient transfer ordinance.

Location: City-wide

Background:

In 1999 the City of Key West adopted a Transient Unit Ordinance to allow the transfer of transient units and transient business tax receipts from non-conforming zoning areas to conforming areas throughout the City. The original ordinance had a five year “sunset” date. In February of 2002, the ordinance, including the sunset date, was modified in response to implementation experience, and a new sunset date of March 15, 2005 was established. The ordinance was readopted in its entirety on April 20, 2005 with a new sunset date of May 15, 2010. On April 7, 2010, the City Commission approved an ordinance extending the May 15, 2010 sunset date for a period of 12 months, providing a new sunset date of May 15, 2011. The purpose of this extension was to allow City staff to present options regarding transient units and license transfers to the City Commission. All four ordinances were found consistent with the Comprehensive Plan and Principals for Guiding Development of the Key West Area of Critical State Concern by prior Planning Boards, City Commissions and the Department of Community Affairs.

The purpose of this request is to modify portions of the Transient Unit Ordinance, based on feedback received from the City Commission and Planning Board at two publicly held workshops. On April 20, 2010, the City Commission held a public workshop to discuss the ordinance. At that time, the City Commission provided preliminary input (which focused on a phased elimination of the ordinance or to continue it with clarification) and requested Planning Board input. On July 14, 2010, the Planning Board held a public

EXHIBIT 2

workshop to discuss the ordinance, and provided direction to the Planning Department to eliminate the sunset provision in the ordinance and to further clarify what happens to the licenses when they move. Specifically, the proposed ordinance indicates that when units are transferred for non-transient uses, that the licenses will be extinguished. The proposed revisions were heard and approved by the Planning Board at a regularly scheduled meeting, held on January 20, 2011.

Previous City Actions: Planning Board Approval: January 20, 2011

Planning Staff Analysis:

Section 90-522 of the City Code outlines key review criteria for any changes to the Land Development Regulations. After staff review of the criteria, the Planning Board recommended approval of the proposed ordinance to the City Commission. A complete summary of the Planning Department staff analysis can be found in the attached Planning Board staff report.

Process:

After the Planning Board recommends changes to the City Commission, the ordinance will require two City Commission readings for adoption. Absent any appeals, the ordinance will be rendered to the Department of Community Affairs (DCA), who will have 60 days to review the ordinance and issue an order of consistency.

Options / Advantages / Disadvantages:

Option 1. To approve the proposed changes to the ordinance.

- 1. Consistency with the City's Strategic Plan, Vision and Mission:**
The City's Strategic Plan, Vision and Mission do not address issues pertinent to this request.
- 2. Financial Impact:**
No financial impact is expected to be generated as a result of the proposed ordinance changes.

Option 2. To deny the proposed changes to the ordinance.

- 1. Consistency with the City's Strategic Plan, Vision and Mission:**
The City's Strategic Plan, Vision, and Mission do not address issues pertinent to this request.
- 2. Financial Impact:**
No financial impact is expected to be generated as a result of the proposed ordinance changes.

RECOMMENDATION:

EXHIBIT 2

The Planning Department and Planning Board recommend to the City Commission that the proposed changes to the Transient Unit Ordinance be approved.

EXHIBIT 2

RESOLUTION NO- 2011-005

A RESOLUTION OF THE KEY WEST PLANNING BOARD RECOMMENDING APPROVAL OF AN ORDINANCE OF THE CITY OF KEY WEST, FLORIDA, AMENDING CHAPTER 122 OF THE CODE OF ORDINANCES ENTITLED "ZONING" BY AMENDING SECTION 122-1338, AND 122-1346 TO PROVIDE FOR CLARIFICATION TO THE TRANSFER OF TRANSIENT UNITS ORDINANCE; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL OF INCONSISTENT PROVISIONS; PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, the Planning Department initiated the proposed amendments to the ordinance as a result of changes requested by the City Commission and Planning Board; and

WHEREAS, the Planning Board held a noticed public hearing on January 20, 2011, where based on the consideration of recommendations by the City Planner, City Attorney, Building Official, and other information, the Planning Board recommended approval of the proposed amendments; and

WHEREAS, the Planning Board determined that the proposed amendments are: consistent with the Comprehensive Plan; in conformance with all applicable requirements of the Code of Ordinances; are stimulated by changed conditions after the effective date of the existing regulation; will promote land use compatibility; will not result in additional public demand on public facilities; will have no impact on the built environment; will not negatively impact property values or the general welfare; will result in more orderly and compatible land use

 Vice-Chairman

 Interim Planning Director

EXHIBIT 2

patterns; and are in the public interest.

NOW THEREFORE BE IT RESOLVED by the Planning Board of the City of Key West, Florida:


Section 1. That the above recitals are incorporated by reference as if fully set forth herein.

Section 2. That AMENDING CHAPTER 122 OF THE CODE OF ORDINANCES ENTITLED "ZONING" BY AMENDING SECTION 122-1338, AND 122-1346 TO PROVIDE FOR CLARIFICATION TO THE TRANSFER OF TRANSIENT UNITS ORDINANCE is hereby recommended for approval; a copy of the recommended modifications to the Code is attached.


Section 3. This resolution shall go into effect immediately upon its passage and adoption and authentication by the signatures of the presiding officer and the Clerk of the Commission.

Read and passed on first reading at a regular meeting held this 20th day of January 2011.

Authenticated by the Vice-Chairman of the Planning Board and the Interim Planning Director.

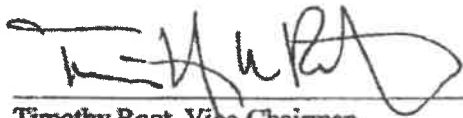


Vice-Chairman



Interim Planning Director

EXHIBIT 2



Timothy Root, Vice-Chairman
Key West Planning Board

1/31/11

Date

Attest:

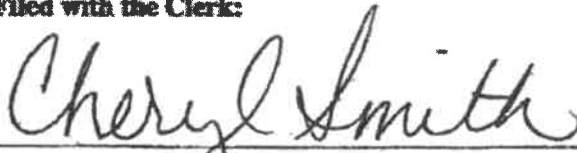


Donald Craig, AICP
Interim Planning Director

12911

Date

Filed with the Clerk:



Cheryl Smith, City Clerk

2-1-11

Date

 Vice-Chairman

 Interim Planning Director

EXHIBIT 2



THE CITY OF KEY WEST PLANNING BOARD Staff Report

To: Chairman and Planning Board Members

Through: Ashley Monnier, Planner II

From: Donald Leland Craig, AICP Interim Planning Director

Meeting Date: January 20, 2011

Agenda Item: Transient Transfer Ordinance -- An ordinance of the City of Key West, Florida, amending Chapter 122 of the Code of Ordinances entitled "Zoning" by amending Section 122-1338, and 122-1346 to provide for clarification to the Transfer of Transient Units Ordinance; providing for severability; providing for repeal of inconsistent provisions; providing for an effective date.

Background:

In 1999 the City of Key West adopted a Transient Unit Ordinance to allow the transfer of transient units and transient business tax receipts from non-conforming zoning areas to conforming areas throughout the City. The original ordinance had a five year "sunset" date. In February of 2002 the ordinance, including the sunset date, was modified in response to implementation experience, and a new sunset date of March 15, 2005 was established. The ordinance was readopted in its entirety on April 20, 2005 with a new sunset date of May 15, 2010. On April 7, 2010, the City Commission approved an ordinance extending the May 15, 2010 sunset date for a period of 12 months, providing a new sunset date of May 15, 2011. The purpose of this extension was to allow City staff to present options regarding transient units and license transfers to the City Commission. All four ordinances were found consistent with the Comprehensive Plan and Principals for Guiding Development of the Key West Area of Critical State Concern by prior Planning Boards, City Commissions and the Department of Community Affairs.

The purpose of this request is to modify portions of the Transient Unit Ordinance, based on feedback received from the City Commission and Planning Board at two publicly held workshops. On April 20, 2010, the City Commission held a public workshop to discuss the ordinance. At that time, the City Commission provided preliminary input (which focused on a phased elimination of the ordinance or to continue it with clarification) and requested Planning Board input. On July 14, 2010, the Planning Board held a public workshop to discuss the ordinance, and provided direction to the Planning Department to

EXHIBIT 2

eliminate the sunset provision in the ordinance and to further clarify what happens to the licenses when they move.

In anticipation of a full discussion about modifications to the Transient Ordinance, the Planning Department has conducted a transient survey and assembled relevant information on prior transfers, existing transfers still in play, and hurricane evacuation impacts of transient units under the Building Permit Allocation System.

Review Criteria: Section 90-522 of the Code outlines key review criteria for any changes to the Land Development Regulations. A review of the proposed ordinance relative to the criteria is provided below.

Sec. 90-522. Planning Board review of proposed changes in Land Development Regulations.

(a) The Planning Board, regardless of the source of the proposed change in the Land Development Regulations, shall hold a public hearing thereon with due public notice. The Planning Board shall consider recommendations of the City Planner, City Attorney, Building Official and other information submitted at the scheduled public hearing. The Planning Board shall transmit a written report and recommendation concerning the proposed change of zoning to the City Commission for official action. In its deliberations the Planning Board shall consider the criteria stated in section 90-521.

The Planning Board is scheduled to review a draft of the ordinance on January 20, 2010. This document constitutes the summary of relevant criteria reviewed by the Planning Board.

Sec. 90-521. Criteria for approving amendments to official zoning map.

In evaluating proposed changes to the official zoning map, the City shall consider the following criteria:

(1) *Consistency with plan.* Whether the proposal is consistent with the Comprehensive Plan, including the adopted infrastructure minimum levels of service standards and the concurrency management program.

The proposed changes do not impact the official zoning map or underlying future land use map designations. Transfer of transient units and transient tax receipts must comply with uses allowed in the Comprehensive Plan and Land Development Regulations. Further, the transient ordinance is consistent with the Comprehensive Plan objectives and policies, in that it is consistent with future land use classification provisions (the ordinance is consistent with allowed uses identified in Objective 1-2.1) and the Building Permit Allocation System (the ordinance maintains fractional allocations and equivalencies as required in Comprehensive Plan Objective 1-3.12 and implementing policies). The ordinance also establishes limits on unit sizes associated with transfers of

EXHIBIT 2

units (to two rooms) and requires occupancy equivalency considerations for business tax receipt transfers.

(2) *Conformance with requirements.* Whether the proposal is in conformance with all applicable requirements of the Code of Ordinances.

The proposed modifications appear consistent with all applicable requirements of the Code.

(3) *Changed conditions.* Whether, and the extent to which, land use and development conditions have changed since the effective date of the existing regulations, and whether such changes support or work against the proposed rezoning.

No rezoning is proposed as part of this ordinance modification. Conditions driving the creation of the ordinance are fundamentally the same: growth management constraints including limits to transient development are still in place; underlying zoning code restrictions on transient development are still in place; and, nonconforming uses and densities still exist which can be remedied by the ordinance.

(4) *Land use compatibility.* Whether, and the extent to which, the proposal would result in any incompatible land uses, considering the type and location of uses involved.

The modification of the ordinance will have no impact on land uses: transient uses can only be allowed in conforming zoning districts as provided by the overall zoning code and as referenced in the existing ordinance.

(5) *Adequate public facilities.* Whether, and the extent to which, the proposal would result in demands on public facilities and services, exceeding the capacity of such facilities and services, existing or programmed, including transportation, water and wastewater services, solid waste disposal, drainage, recreation, education, emergency services, and similar necessary facilities and services. Rezoning does not constitute a concurrency determination, and the applicant will be required to obtain a concurrency determination pursuant to chapter 94.

The proposed ordinance modification does not impact the allocation of residential units and does not impact concurrency determinations or other public facility determinations in the Comprehensive Plan and Land Development Regulations. All development and redevelopment must comply with those regulations.

(6) *Natural environment.* Whether, and to the extent to which, the proposal would result in adverse impacts on the natural environment, including consideration of wetlands protection, preservation of groundwater aquifer, wildlife habitats, and vegetative communities.

EXHIBIT 2

The proposed ordinance modification relates to the transfer of existing transient units and business tax receipts and does not impact existing natural resource protection regulations.

(7) *Economic effects.* Whether, and the extent to which, the proposal would adversely affect the property values in the area or the general welfare.

No economic impacts are anticipated as a result of the proposed sunset provision elimination and ordinance clarification.

(8) *Orderly development.* Whether the proposal would result in an orderly and compatible land use pattern. Any negative effects on such pattern shall be identified.

By eliminating the sunset provision, the ordinance can continue to help eliminate legally nonconforming transient development by facilitating transfer of transient units and business tax receipts into areas where they are permitted in the zoning code. Should future changes be warranted, the proposed changes to the ordinance can be considered as needed. Further, the proposed clarifications to the ordinance are expected to support orderly and compatible land use patterns.

(9) *Public interest; enabling act.* Whether the proposal would be in conflict with the public interest, and whether it is in harmony with the purpose and interest of the Land Development Regulations in this subpart B and the enabling legislation.

The proposed ordinance changes will facilitate the public interest and are in harmony with the Land Development Regulations.

(10) *Other matters.* Other matters which the Planning Board and the City Commission may deem appropriate.

The proposed elimination of the sunset provision and clarifying language will potentially streamline future transfer requests.

PROCESS

After the Planning Board recommends changes to the City Commission, the ordinance will require two City Commission readings for adoption. Absent any appeals, the ordinance will be rendered to the DCA, who will have 60 days to issue an order of consistency.

RECOMMENDATION

The Planning Department recommends consideration and approval of the ordinance modification.

K:\LDR Amendments\Transient Transfer Ordinance\2011 Ordinance Revision\Draft Planning Report TT Ordinance Revision.doc

EXHIBIT 2

MINUTES

CITY COMMISSION WORKSHOP

OLD CITY HALL, 510 GREENE STREET

TUESDAY, APRIL 20, 2010

A workshop meeting of the City Commission of the City of Key West, Florida was held in Commission Chambers, Old City Hall, on Tuesday, April 20, 2010.

Mayor Cates called the meeting to order at 5:58 p.m.

Answering roll call were Commissioners Teri Johnston, Clayton Lopez, Mark Rossi, Billy Wardlow, Jimmy Weckley and Mayor Craig Cates.

Commissioner Gibson arrived at 6:03 p.m.

Also present were City Manager Jim Scholl, Assistant City Attorney Larry Erskine, Assistant City Attorney Ron Ramsingh, City Planner Amy Kimball-Murley, Finance Director Roger Wittenberg, Fire Chief David Fraga, Building Official John Woodson, Marina Manager Mark Tait, Parking Manager John Wilkins, Manager of Transportation Myra Wittenberg, Utilities Manager Jay Gewin, Human Resources Director Sandy Gilbert, Budget Analyst Trish Whitacre, IT Manager Patti McLaughlin, General Services Director Gary Bowman and Deputy City Clerk Angela Budde.

The pledge of allegiance to the flag of the United States of America was given by all present.

Preliminary Discussion of Transient Unit Ordinance and Potential Revisions

City Planner Amy Kimball-Murley gave a presentation to the City Commission.

The following people spoke on the matter:

Tom Milone, 832 Caroline Street
Robert Kelly, 801 Elizabeth Street
Assistant City Attorney Larry Erskine

The Commission discussed the current ordinance with the City Planner and the Assistant City

EXHIBIT 2

Attorney Erskine. Commissioner Johnston stated for the record she would support a clarification and maintain the current Ordinance as is and requested to have the sections on parking, equivalency and units in limbo clarified.

Fiscal Year 2010-2011 Budget Status Update – Mid Year Review

Assistant City Manager Mark Finigan and Finance Director Roger Wittenberg gave the presentation to the City Commission on the General Fund.

Utilities Manager Jay Gewin gave the presentation to the City Commission on Sewer, Stormwater and Solid Waste Funds.

Commissioner Rossi directed staff to draft an Ordinance to incorporate a processing fee to customers who use a credit card to pay utility bills.

Assistant City Manager Mark Finigan gave the presentation to the City Commission on the Key West Bight, Garrison Bight and Transit Funds.

The following people spoke on the matter:

City Manager Jim Scholl
Assistant City Manager David Fernandez
Marina Manager Mark Tait

New Public Transit Facility Update

Transportation Manager Myra Wittenberg gave a presentation to the City Commission.

The following people spoke on the matter:

City Manager Jim Scholl
Assistant City Manager David Fernandez

ADJOURNMENT:

There being no further business the Mayor adjourned the meeting at 8:50 p.m.

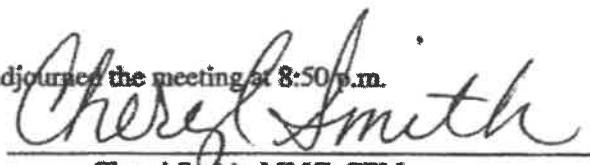

Cheryl Smith, MMC, CPM
City Clerk

EXHIBIT 2

Minutes of the Transient Unit Ordinance Workshop July 14, 2010

Approved August 19, 2010

Chairman Richard Klitenick called the Transient Unit Ordinance Workshop of July 14, 2010 to order at 6:06 pm at Old City Hall, in the antechamber at 510 Greene Street, Key West.

ITEM 1. ROLL CALL

Present were:; Chairman Richard Klitenick, Members, Jim Gilleran, Gregory Oropeza, Michael Browning, Sam Holland, Jr. , and Lisa Tennyson.

Excused Absence: Vice-Chairman, Tim Root

Also in attendance were: Planning Director, Amy Kimball-Murley; Chief Assistant City Attorney, Larry Erskine; Licensing Official, Carolyn Walker; and Planning Department staff, Brendon Cunningham, Carlene Cowart, Ashley Monnier, Nicole Malo and Patrick Wright.

ITEM 2. TRANSIENT UNIT ORDINANCE

Mrs. Kimball-Murley gave a presentation on the Transient Unit Ordinance.

The following people spoke on the matter:
Assistant City Attorney Larry Erskine
Licensing Official Carolyn Walker

Mrs. Kimball-Murley stated that the current ordinance allows transient units accompanied by licenses to be transferred from any district to conforming zoning districts. The ordinance also allows transient licenses alone to be transferred from non-conforming to conforming districts.

The members discussed the current ordinance with Mrs. Kimball-Murley, Mr. Erskine and Mrs. Walker.

Mrs. Walker informed members that some units and licenses stay in an "unassigned" pool for years as long as owners continue to pay their annual fees. Members discussed the importance of maintaining a range of unit types in the market place. Mrs. Kimball-Murley stated that there has been no direction to reduce the units.

Members discussed the fate of licenses transferred with units that cannot be used transiently. Mrs. Walker gave members examples of people who have and keep buying licenses that cannot be transferred under the ordinance as it exists today. Members inquired about how many units have people purchased that cannot be utilized. Mrs. Walker estimated that about ten have been purchased.

Mrs. Walker gave members an overview of the Wilson case where the city was sued for not allowing a license to be transferred from a conforming district to a conforming district. As a result, a person can transfer ownership of a license, which only means that a business tax receipt is transferred, but does not mean that a transient use is permitted. Therefore, people who have purchased units under some sort of pretense, end up having a no use permitted and a tax receipt for their location and no medallion, which can be very confusing for those not familiar with the ordinance.

Mr. Erskine expanded on the Wilson case and stated that their argument was that state law trumps and supersedes the ordinance. The city's argument was that they are probably right about that, but it does not mean that we do not have the right to impose our zoning regulations on the process.

EXHIBIT 2

Minutes of the Transient Unit Ordinance Workshop

July 14, 2010

Approved August 19, 2010

Members then asked staff if the unassigned units were tied to a destination. Mrs. Walker stated that there are units with Planning Board resolutions with a clear sender site and receiver site where the receiver site never became available due to construction never being started and/or they never got their certificate of occupancy. Then there are situations where the property goes into foreclosure and the owners of the property come in and request to separate the license from the unit and place it in the unassigned pool.

Mrs. Kimball-Murley informed members that Nicole Malo has prepared a spreadsheet tracking transfers from 2000 to present. She then stated that over a ten year period, transfers have remained fairly steady. Some transfers have not been developed yet or are associated with long term development approvals.

Members discussed clarifying differences between transfer of units versus licenses.

Chairman Klitenick stated that the ordinance works and serves its purpose.

Members discussed making the following changes to the ordinance which includes eliminating the sunset period and clarifying what actually happens to the licenses when they are moved with units.

Mrs. Kimball-Murley informed members that the next step in this process is to draft any changes, present them to the Planning Board, then if approved, it will move to the City Commission for a first and second reading. All of these steps would need to be done before the sunset date expires.

ITEM 3. ADJOURNMENT

Workshop adjourned at 7:35 pm.

Submitted by,
Carlene Cowart
Development Review Administrator
Planning Department

EXHIBIT 3

11/25/14

Ms. Carolyn Walker, Chief Licensing Official
City of Key West
1409 Flagler Avenue
Key West, FL 33041-1409

**RE: 1315 Whitehead Street
Business Tax Receipt¹**



Dear Ms. Walker:

The property at 1315 Whitehead Street was the subject of a transient unit transfer in 2006, pursuant to Res. No. 2006-035. As I'm sure you are aware, Sec. 122-1338(2) requires all transfers of transient units to be accompanied by a duly issued business tax receipt ("BTR"). The records show² that the four units transferred were transient and accompanied by license no. 06 19054.

The records are also clear that the four BTRs were never subsequently transferred elsewhere and thus remain associated with 1315 Whitehead Street's bundle of property rights.

The current owner intends to maintain those four BTR rights and seeks to place them into an unassigned status. I am including a BTR application for the reassignment to unassigned status and I am including a check of the estimated back fees.

Transfer fee:	\$25.00
Transient Hotel: $\$19.95 \times 4 \text{ units} \times 9 \text{ years} =$	<u>\$718.20</u>
Total:	\$743.20

If any additional fees are due the City please let us know and we will promptly make payment.

Thank you for your assistance.

Best regards,

Owen Trepanier

¹ Attachment A (BTR Application and Check)
² Attachment B (Res. No. 2003-035 including staff report)
Attachment C (Letter from KW Planning Department dated 11/07/13)
Attachment D (Letter from KW Planning Department dated 10/23/14)
Attachment E (BTR license no. 06 19054, Ctl No. 2154)

EXHIBIT 3 Business License Tax Application

City of Key West
City Hall Annex
PO Box 1409
Key West, FL 33041

Date Applied 11/25/14

License # _____
Phone 305-809-3955
Fax 305-809-3978

Business Type: 4 unassigned transient licenses (06-00019054)

Business Name: Southwhitehead, LLC

Business Location: 1315 Whitehead Street

Business Owner: Southwhitehead, LLC

State Licensed Qualifier (if applicable): N/A

C/o Trepanier & Associates, Inc.,
Mailing Address: 1421 First St., Unit 101, Key West, FL 33040

EIN / SS # 370-44-2860 Phone # (305) 293-8983

Trepanier & Associates, Inc.

Applicant name (printed)

Applicant signature

Date

State of Florida

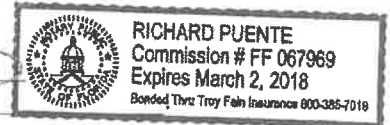
County of Monroe

The foregoing instrument was acknowledged before me this 14 day of Jan, 2015, by

Mr. Owen Trepanier.

Signature of Notary Public

(stamp or seal). Personally known
Produced id



____ Sales Tax number 3106 Flagler Ave 292-6735 City utility acct _____
____ Commercial garbage Waste Mgmt 296-8297 _____
____ Lease or deed _____
____ State License DBPR 850-487-1395 / Dept Ag 305-470-6900 _____
____ Home occupation application _____
____ Fictitious Name registration Previous use _____
____ Corporate or LLC registration _____
____ Liability / Worker's Comp Zoning _____
____ Fire Inspector 292-8179 _____
____ CO / final inspection on any permits Category _____ Fee \$ _____
____ Monroe County or local licensing _____

Licensed in accordance with Chapter 66, Key West Code of Ordinances

____ Approved _____ Denied / Reason _____

Licensing Official

Date

EXHIBIT 3

1111-11

PLANNING BOARD RESOLUTION No. 2006-035

A RESOLUTION OF THE CITY OF KEY WEST PLANNING BOARD PURSUANT TO SECTION 122-1338, LAND DEVELOPMENT REGULATIONS OF THE CODE OF ORDINANCES OF THE CITY OF KEY WEST APPROVING AN APPLICATION FOR THE TRANSFER OF FOUR (4) TRANSIENT UNITS FROM 2801 N. ROOSEVELT BOULEVARD (RE#00002410-000400) to 1315 WHITEHEAD STREET (RE#00036180-000100); PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, pursuant to Sec. 122-1338 of the Code of Ordinances of the City of Key West, Owen Trepanier representative for Parrot Key Associates, INC. the owner of 2801 Roosevelt Boulevard (the sender site), filed an application to transfer four (4) transient units from the property (sender site) to 1315 Whitehead Street (the receiver site); and

WHEREAS, the above-referenced party presented to the City proof of transient licenses, Number 2154; and

WHEREAS, Owen Trepanier, representative for Southwhitehead, LC, owner of the receiver site, simultaneously made application to transfer the licenses from the sender site to the receiver site; and

WHEREAS, the redevelopment of the sender site has begun pursuant to City Commission Resolution 06-265 and the previous buildings have been demolished; and

WHEREAS, at the Planning Board Meeting of 18 January 2007, Ms. Kenson reported that there were 52 notices sent, 4 responses received, 0 with objections, 4 non-objections, and 1 written comment, which was read into the record; and

WHEREAS, at that Meeting, Ms. Kenson referenced a staff report dated 27 December 2006, that reviewed the application for compliance with all applicable regulations and reported the comments from the Development Review Committee of 28 December 2006 and recommended approval of the requested transfer of 4 transient units based on a finding that the proposal complies with the criteria and intent of the Transfer Ordinance and with the finding that this approval is for the transfer only; and

EXHIBIT 3

5

NOW, THEREFORE, BE IT RESOLVED by the Planning Board of the City of Key West, Florida:

Section 1. That the Planning Board finds that the transfer of the four (4) transient units from 2801 N. Roosevelt Boulevard to 1315 Whitehead Street is approved.

Section 2. That this Resolution shall go into effect immediately upon its passage and adoption and authentication by the signatures of the Co-Chairman of the Planning Board and Planning Director.

Passed at a meeting held this 18th day of January 2007.

Paul V. Tagliaferri
Paul V. Tagliaferri, Co-Chairman
Key West Planning Board

1/29/07
Date

Attest:

Gail E. Kenson
Gail E. Kenson, AICP
Planning Director

29 Jan 07
Date

Filed with the Clerk:

Cheryl Smith
Cheryl Smith, City Clerk

1-29-07
Date

EXHIBIT 3



THE CITY OF KEY WEST
POST OFFICE BOX 1409
604 Simonton Street
KEY WEST, FLORIDA 33041-1409

PLANNING DEPARTMENT
(305) 809-3722

PLANNING DEPARTMENT MEMORANDUM

To: Planning Board
From: Edward Switzer, Senior Planner
Through: Gail Kenson, AICP, Planning Director

Date: 18 January 2006

Subject: Transient Unit Transfer from 2801 North Roosevelt Boulevard (00002410-000400) to 1315 Whitehead Street (RE#0036180-000000). Transfer four (4) transient units for the construction of four non-transient dwelling units.

SITE DATA

Sender Site

Owner: Parrot Key Associates, Inc.
Location: 2801 North Roosevelt Boulevard RE #: 00002410-000400
Zoning: CG
Existing Use: A former 157 unit (157 units at a .58 ROGO equivalency or 91.06 units at a 1.0 ROGO equivalency) motel. 17.06 ROGO allocations are available for transfer.
Proposed Use: To be redeveloped as a 74-unit townhouse style luxury beach house resort approved by City Commission Resolution 06-265 on July 18, 2006.

Receiver Site

Owner: Southwhitehead, LLC
Agent: Owen Trepanier, Trepanier and Associates
Location: 1315 Whitehead Street RE#: 00036180-000000
Zoning: HHDR (Historic High Density Residential)
Existing Use: Legally non-conforming commercial building which is to be demolished.
Proposed Use: 6 non-transient residential dwellings approved by City Commission Resolution 06-339 on October 17, 2006 as a major development plan.

BACKGROUND

This is a request to transfer four transient (4.0 ROGO equivalency) units from 2801 North Roosevelt Boulevard to 1315 Whitehead Street. The sender site has approval to redevelop as a 74-unit (1.0 ROGO equivalency) luxury beach house resort and is proposing to transfer the remaining 17.06 ROGO allocations and 66 transient licenses off-site as approved by the City Commission.

EXHIBIT 3

The applicant of the sender site has submitted applications to transfer transient licenses to the following sites:

- 1 transient license to 213 Ann Street
- 1 transient license to 707 Simonton Street

ANALYSIS

City Commission Resolution 06-265 permits the sender site to transfer transient units and transient licenses from a conforming site to another site with or without an accompanying transient license. This is the first application for the transfer of units (ROGO) from 2801 North Roosevelt Boulevard.

Review pursuant to Criteria Section 122-1338 and Intent		
Criteria	Proposal	Complies. Yes or No
Sender Site		
Has transient licenses from City	Occupational License Number is: 06 00019054	Yes
The units are lawful & have been counted in ROGO		Yes
Remaining # of rooms to same / does not increase ROGO count		Yes
Final use conforms with LDRs	Proposed use: Resort	Yes
Development review process required for proposed construction / redevelopment	Only building permits will be required	Yes
Mortgagee consents to transfer	Date of letter: November 10, 2006 From: Dale Bittner, BB&T	Yes
Receiver Site		
Transient use is allowed or the use is residential	Receiver zoning district is: HHDR. Use is non-transient dwelling units.	Yes
Complies with density	Allowed units: 9.987 Proposed units: 6	Yes
The transient units are two rooms or less / retain ROGO equivalency	4 ROGO allocations (1.0 equivalency each) are being transferred	Yes
Is not located in new construction in the "V" zone	No	Yes
Homeowners or Condo Assoc. Has approved	Date of letter: Not applicable	Yes
Development review process required for proposed construction.	N/A	Yes
General		
ROGO equivalency is maintained between sender and receiver sites and throughout the properties		Yes
Complies with general intent		Yes

EXHIBIT 3



RECOMMENDATION

The Planning Department has not received input from the public. The Planning Department recommends **APPROVAL** of the transfer of four transient units from 2801 North Roosevelt Boulevard to 1315 Whitehead Street based on a finding that the proposal complies with the criteria and this approval is for the transfer only and not of any proposed plans which shall be subject to the full review necessary of a building permit.

	Sender Site	Receiver Site
Location	2801 North Roosevelt Boulevard	1315 Whitehead Street
Existing Transient Allocations	17.06 ROGO and 65 Licenses	
Existing Non-Transient Allocations		2 ROGO (1.0 equivalency)
TOTAL	17.06 ROGO and 65 Licenses	
Transient Allocations Transferred	4 ROGO (1.0 equivalency)	
Non-transient Allocations Transferred		
Transient Allocations Received		4 ROGO (1.0 equivalency)
Non-transient Allocations Received		
Total Remaining Allocations	13.06 ROGO and 65 Licenses	6 ROGO (1.0 equivalency)

EXHIBIT 3



THE CITY OF KEY WEST
Post Office Box 1409 Key West, FL 33041-1409 (305) 809-3700

November 7, 2013

Owen Trepanier
Trepanier & Associates, Inc.
PO Box 2155
Key West FL 33045-2155

RE: 1315 Whitehead Street

Dear Mr. Trepanier:

In your letter dated October 28, 2013, you requested confirmation of the number of permanent and/or transient units associated with the subject property. After a quick review of the prior development approvals on the subject property, the status of the units is as follows.

The property received a beneficial use determination for two non-transient units on August 30, 2005. The approval required the owner to obtain a development plan approval and commence development within one year. A six-month extension was granted by the planning director on July 24, 2006.

The property received an approval to transfer four transient units from 2801 N Roosevelt Blvd via Planning Board Resolution No. 2006-035 on January 18, 2007. There is no expiration date on the transferred units.

A Major Development Plan approval was granted to redevelop the property as six-unit non-transient residential via City Commission Resolution No. 06-339. Development plan approvals expire 12 months after final approval if construction has not started. I found no evidence of any extensions being granted.

Building permits were applied for in 2007, but never issued and are now cancelled/void.

In order to continue the previously-approved six-unit non-transient residential project, the owner would need to re-apply for a beneficial use determination for two units, a Major Development Plan and building permits, as well as any other necessary approval such as Certificates of Appropriateness, Tree Commission, etc.

If I can help with anything else, please feel free to contact me at 305.809.3725 or kbond@keywestcity.com.
Thank you.

Kevin Bond, AICP, LEED Green Associate, Planner II
City of Key West Planning Department

EXHIBIT 3



THE CITY OF KEY WEST

Post Office Box 1409 Key West, FL 33041-1409 (305) 809-3700

10/23/14

Mr. Paul Misch, MGMBR
PP KW, LLC.
101 Gulfview Drive
Islamorada, FL 33036-4139

- Via Email: Misch1225@gmail.com -

RE: 1315 Whitehead Street - Contribution in lieu of affordable housing

Dear Mr. Misch,

Thank you for speaking with me on July 29, 2014 about your proposed seven-unit single-family development at 1315 Whitehead Street. Subsequently, you submitted an application for a major development plan approval on August 1, 2014. The redevelopment project is proposed to utilize the following BPAS and BPAS-exempt units:

- Four (4) transient units transferred to the property pursuant to Resolution No. 2006-035¹;
- Two (2) recaptured units originally allocated to the property under beneficial use in August 2005²; and
- One (1) BPAS unit which is the subject of a pending BPAS application.

Comprehensive Plan Policy 1-3.12.2 requires 30% of all new BPAS units constructed in Key West to be affordable. Policy 3-1.1.3 allows projects involving less than ten units to make an "in lieu of" contribution. Your proposed project at 1315 Whitehead Street is proposed to utilize one new BPAS unit. Therefore, your in lieu of contribution must be commensurate with 30% of one unit.

You have proposed to contribute one full permanent residential BPAS-exempt unit to the City as your in lieu of contribution. The unit would be relinquished from the bundle of property rights associated with 416 Louisa Street and identified as one of two units in the May 27, 2010 Letter of Unit Determination by Planner Nicole Malo³. 416 Louisa Street received a Certificate of Occupancy on October 22, 2014 for one single-family dwelling.

In order to effectuate and satisfy the in lieu of contribution required for the proposed redevelopment of 1315 Whitehead Street, you must sign and notarize the attached "Waiver and Release of Building Permit Allocation" affidavit⁴. This affidavit must be filed with the City's Chief Licensing Official, with a copy to my office, prior to the issuance of the first Certificate of Occupancy for the 1315 Whitehead Street project.

Thank you for your commitment and investment in our community.

Best regards,

Donaki Leland Craig, AICP, Planning Director

¹ Attachment A - Resolution No. 2006-035

² Attachment B - Beneficial Use Determination

³ Attachment C - May 27, 2010 Letter of Unit Determination by Planner Nicole Malo

⁴ Attachment D - Waiver and Release of Building Permit Allocation

ATTACH E

EXHIBIT 3

1111476

A CITY OPERATIONAL LICENSE IS A BUSINESS TAX.
Hotel: 6024 West 4th City Center and see provisions
P O Box 1999, Key West, Florida 33640 (105)809 3555

Business Name : HARRISON INN KEY WEST City: Key West State: FL Zip: 33640
Hotel/Club Addr : 2801 N ROOSEVELT BLVD
City/State/Zip : 06 19054 RENTAL, MOTEL/HOTEL/TIMESHARE
Issue date : 8/01/06 Expiration date : 9/30/06
Lic Fee : \$276.50
Penalty : \$0.00
Total : \$276.50
Comments : HOTEL, 157 ROOMS

This license must be prominently displayed

HARRISON INN KEY WEST
2801 N ROOSEVELT BLVD
KEY WEST FL 33640 MRM AT PARROT KEY INN

2006-09-01 10:00 AM



EXHIBIT 4

THE CITY OF KEY WEST

Building Department

P.O.Box 1409, Key West, FL 33040
305-809-3955

January 28, 2015

Owen Trepanier
Trepanier & Associates
1421 First Street
Key West, Florida 33040

Re: 1315 Whitehead Street

Dear Owen,

Thank you for your 1/15/15 application for 4 unassigned transient licenses for 1315 Whitehead Street. Initially I was unclear if you were applying to place these at the physical location of 1315 Whitehead Street as typed on your application, however, in your attached letter it appears as though you are actually applying to move the licenses (business tax receipts) into the "unassigned status" computer file.

I met with Larry Erskine and Kevin Bond regarding your request, and Larry has advised that: "Section 122-1338 of the code provides that "when units are transferred for non-transient use, the licenses will be extinguished." In 2006, the transient units with licenses were transferred to 1315 Whitehead Street for non-transient use. I believe the Planning Board recently approved a new development plan for the property which also utilizes the transferred transient units. Accordingly, it seems clear to me that the transient licenses have been extinguished.

Therefore, I am returning your application and check #5129 in the amount of \$743.20 that accompanied the application.

Sincerely,


Carolyn Walker
Licensing Official

Enc.

EXHIBIT 4

11/25/14

Ms. Carolyn Walker, Chief Licensing Official
City of Key West
1409 Flagler Avenue
Key West, FL 33041-1409

**RE: 1315 Whitehead Street
Business Tax Receipt¹**

TREPANIER



ASSOCIATES INC
LAND USE PLANNING
DEVELOPMENT CONSULTANTS

Dear Ms. Walker:

The property at 1315 Whitehead Street was the subject of a transient unit transfer in 2006, pursuant to Res. No. 2006-035. As I'm sure you are aware, Sec. 122-1338(2) requires all transfers of transient units to be accompanied by a duly issued business tax receipt ("BTR"). The records show² that the four units transferred were transient and accompanied by license no. 06 19054.

The records are also clear that the four BTRs were never subsequently transferred elsewhere and thus remain associated with 1315 Whitehead Street's bundle of property rights.

The current owner intends to maintain those four BTR rights and seeks to place them into an unassigned status. I am including a BTR application for the reassignment to unassigned status and I am including a check of the estimated back fees.

Transfer fee:	\$25.00
Transient Hotel: $\$19.95 \times 4 \text{ units} \times 9 \text{ years} =$	<u>\$718.20</u>
Total:	\$743.20

If any additional fees are due the City please let us know and we will promptly make payment.

Thank you for your assistance.

Best regards,

A handwritten signature in blue ink, appearing to read 'Owen Trepanier', written over a horizontal line.

Owen Trepanier

¹ Attachment A (BTR Application and Check)

² Attachment B (Res. No. 2003-035 including staff report
Attachment C (Letter from KW Planning Department dated 11/07/13)
Attachment D (Letter from KW Planning Department dated 10/23/14)
Attachment E (BTR license no. 06 19054, Ctl No. 2154)

EXHIBIT 4 Business License Tax Application

JAN 15 2015
B.T. h

City of Key West
City Hall Annex
PO Box 1409
Key West, FL 33041

Date Applied 11/25/14

License # _____
Phone 305-809-3955
Fax 305-809-3978

Business Type: 4 unassigned transient licenses (06-00019054)

Business Name: Southwhitehead, LLC

Business Location: 1315 Whitehead Street

Business Owner: Southwhitehead, LLC

State Licensed Qualifier (if applicable): N/A

C/o Trepanier & Associates, Inc.,
Mailing Address: 1421 First St., Unit 101, Key West, FL 33040

EIN / SS # 370-44-2860 Phone # (305) 293-8983

Trepanier & Associates, Inc.
Applicant name (printed)

[Signature]
Applicant signature

11/25/14
Date

State of Florida
County of Monroe

The foregoing instrument was acknowledged before me this 14 day of Jan, 2015, by
Mr. Owen Trepanier

[Signature]
Signature of Notary Public

(stamp or seal) Personally known
Produced id _____



- ____ Sales Tax number 3106 Flagler Ave 292-6735 City utility acct _____
- ____ Commercial garbage Waste Mgmt 296-8297 _____
- ____ Lease or deed _____
- ____ State License DBPR 850-487-1395 / Dept Ag 305-470-6900
- ____ Home occupation application _____
- ____ Fictitious Name registration Previous use _____
- ____ Corporate or LLC registration _____
- ____ Liability / Worker's Comp Zoning _____
- ____ Fire Inspector 292-8179 _____
- ____ CO / final inspection on any permits Category _____ Fee \$ _____
- ____ Monroe County or local licensing _____

Licensed in accordance with Chapter 66, Key West Code of Ordinances

____ Approved Denied / Reason Referenced licenses / BTR

[Signature]
Licensing Official

11/28/15
Date

units were transferred from 1002 N Ross to 1315 Whitehead.

EXHIBIT 4

1/17/07 D

PLANNING BOARD RESOLUTION No. 2006-035

A RESOLUTION OF THE CITY OF KEY WEST PLANNING BOARD PURSUANT TO SECTION 122-1338, LAND DEVELOPMENT REGULATIONS OF THE CODE OF ORDINANCES OF THE CITY OF KEY WEST APPROVING AN APPLICATION FOR THE TRANSFER OF FOUR (4) TRANSIENT UNITS FROM 2801 N. ROOSEVELT BOULEVARD (RE#00002410-000400) TO 1315 WHITEHEAD STREET (RE#00036180-000100); PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, pursuant to Sec. 122-1338 of the Code of Ordinances of the City of Key West, Owen Trepanier representative for Parrot Key Associates, INC. the owner of 2801 Roosevelt Boulevard (the sender site), filed an application to transfer four (4) transient units from the property (sender site) to 1315 Whitehead Street (the receiver site); and

WHEREAS, the above-referenced party presented to the City proof of transient licenses, Number 2154; and

WHEREAS, Owen Trepanier, representative for Southwhitehead, LC, owner of the receiver site, simultaneously made application to transfer the licenses from the sender site to the receiver site; and

WHEREAS, the redevelopment of the sender site has begun pursuant to City Commission Resolution 06-265 and the previous buildings have been demolished; and

WHEREAS, at the Planning Board Meeting of 18 January 2007, Ms. Kenson reported that there were 52 notices sent, 4 responses received, 0 with objections, 4 non-objections, and 1 written comment, which was read into the record; and

WHEREAS, at that Meeting, Ms. Kenson referenced a staff report dated 27 December 2006, that reviewed the application for compliance with all applicable regulations and reported the comments from the Development Review Committee of 28 December 2006 and recommended approval of the requested transfer of 4 transient units based on a finding that the proposal complies with the criteria and intent of the Transfer Ordinance and with the finding that this approval is for the transfer only; and

EXHIBIT 4

5

NOW, THEREFORE, BE IT RESOLVED by the Planning Board of the City of Key West, Florida:

Section 1. That the Planning Board finds that the transfer of the four (4) transient units from 2801 N. Roosevelt Boulevard to 1315 Whitehead Street is approved.

Section 2. That this Resolution shall go into effect immediately upon its passage and adoption and authentication by the signatures of the Co-Chairman of the Planning Board and Planning Director.

Passed at a meeting held this 18th day of January 2007.

Paul V. Tagliaferri 1/29/07
Paul V. Tagliaferri, Co-Chairman Date
Key West Planning Board

Attest: Gail E. Kenson 29 Jan 07
Gail E. Kenson, AICP Date
Planning Director

Filed with the Clerk: Cheryl Smith 1-29-07
Cheryl Smith, City Clerk Date

EXHIBIT 4



THE CITY OF KEY WEST
POST OFFICE BOX 1409
604 Simonton Street
KEY WEST, FLORIDA 33041-1409

PLANNING DEPARTMENT
(305) 809-3722

PLANNING DEPARTMENT MEMORANDUM

To: Planning Board
From: Edward Switzer, Senior Planner ^{ES}
Through: Gail Kenson, AICP, Planning Director ^{GK}

Date: 18 January 2006

Subject: **Transient Unit Transfer from 2801 North Roosevelt Boulevard (00002410-000400) to 1315 Whitehead Street (RE#0036180-000000).** Transfer four (4) transient units for the construction of four non-transient dwelling units.

SITE DATA

Sender Site

Owner: Parrot Key Associates, Inc.
Location: 2801 North Roosevelt Boulevard RE #: 00002410-000400
Zoning: CG
Existing Use: A former 157 unit (157 units at a .58 ROGO equivalency or 91.06 units at a 1.0 ROGO equivalency) motel. 17.06 ROGO allocations are available for transfer.
Proposed Use: To be redeveloped as a 74-unit townhouse style luxury beach house resort approved by City Commission Resolution 06-265 on July 18, 2006.

Receiver Site

Owner: Southwhitehead, LLC
Agent: Owen Trepanier, Trepanier and Associates
Location: 1315 Whitehead Street RE#: 00036180-000000
Zoning: HHDR (Historic High Density Residential)
Existing Use: Legally non-conforming commercial building which is to be demolished.
Proposed Use: 6 non-transient residential dwellings approved by City Commission Resolution 06-339 on October 17, 2006 as a major development plan.

BACKGROUND

This is a request to transfer four transient (4.0 ROGO equivalency) units from 2801 North Roosevelt Boulevard to 1315 Whitehead Street. The sender site has approval to redevelop as a 74-unit (1.0 ROGO equivalency) luxury beach house resort and is proposing to transfer the remaining 17.06 ROGO allocations and 66 transient licenses off-site as approved by the City Commission.

EXHIBIT 4

The applicant of the sender site has submitted applications to transfer transient licenses to the following sites:

- 1 transient license to 213 Ann Street
- 1 transient license to 707 Simonton Street

ANALYSIS

City Commission Resolution 06-265 permits the sender site to transfer transient units and transient licenses from a conforming site to another site with or without an accompanying transient license. This is the first application for the transfer of units (ROGO) from 2801 North Roosevelt Boulevard.

Review pursuant to Criteria Section 122-1338 and Intent		
Criteria	Proposal	Complies. Yes or No
Sender Site		
Has transient licenses from City	Occupational License Number is: 06 00019054	Yes
The units are lawful & have been counted in ROGO		Yes
Remaining # of rooms to same / does not increase ROGO count		Yes
Final use conforms with LDRs	Proposed use: Resort	Yes
Development review process required for proposed construction / redevelopment	Only building permits will be required	Yes
Mortgagee consents to transfer	Date of letter: November 10, 2006 From: Dale Bittner, BB&T	Yes
Receiver Site		
Transient use is allowed or the use is residential	Receiver zoning district is: HHDR. Use is non-transient dwelling units.	Yes
Complies with density	Allowed units: 9.987 Proposed units: 6	Yes
The transient units are two rooms or less / retain ROGO equivalency	4 ROGO allocations (1.0 equivalency each) are being transferred	Yes
Is not located in new construction in the "V" zone	No	Yes
Homeowners or Condo Assoc. Has approved	Date of letter: Not applicable	Yes
Development review process required for proposed construction.	N/A	Yes
General		
ROGO equivalency is maintained between sender and receiver sites and throughout the properties		Yes
Complies with general intent		Yes

EXHIBIT 4

①

RECOMMENDATION

The Planning Department has not received input from the public. The Planning Department recommends **APPROVAL** of the transfer of four transient units from 2801 North Roosevelt Boulevard to 1315 Whitehead Street based on a finding that the proposal complies with the criteria and this approval is for the transfer only and not of any proposed plans which shall be subject to the full review necessary of a building permit.

	Sender Site	Receiver Site
Location	2801 North Roosevelt Boulevard	1315 Whitehead Street
Existing Transient Allocations	17.06 ROGO and 65 Licenses	
Existing Non-Transient Allocations		2 ROGO (1.0 equivalency)
TOTAL	17.06 ROGO and 65 Licenses	
Transient Allocations Transferred	4 ROGO (1.0 equivalency)	
Non-transient Allocations Transferred		
Transient Allocations Received		4 ROGO (1.0 equivalency)
Non-transient Allocations Received		
Total Remaining Allocations	13.06 ROGO and 65 Licenses	6 ROGO (1.0 equivalency)

EXHIBIT 4



THE CITY OF KEY WEST

Post Office Box 1409 Key West, FL 33041-1409 (305) 804-3700

November 7, 2013

Owen Trepanier
Trepanier & Associates, Inc.
PO Box 2155
Key West FL 33045-2155

RE: 1315 Whitehead Street

Dear Mr. Trepanier:

In your letter dated October 28, 2013, you requested confirmation of the number of permanent and/or transient units associated with the subject property. After a quick review of the prior development approvals on the subject property, the status of the units is as follows.

The property received a beneficial use determination for two non-transient units on August 30, 2005. The approval required the owner to obtain a development plan approval and commence development within one year. A six-month extension was granted by the planning director on July 24, 2006.

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A Major Development Plan approval was granted to redevelop the property as six-unit non-transient residential via City Commission Resolution No. 06-339. Development plan approvals expire 12 months after final approval if construction has not started. I found no evidence of any extensions being granted.

Building permits were applied for in 2007, but never issued and are now cancelled/void.

In order to continue the previously-approved six-unit non-transient residential project, the owner would need to re-apply for a beneficial use determination for two units, a Major Development Plan and building permits, as well as any other necessary approval such as Certificates of Appropriateness, Tree Commission, etc.

If I can help with anything else, please feel free to contact me at 305.809.3725 or kbond@keywestcity.com.
Thank you.

A handwritten signature in black ink, appearing to read "KBond".

Kevin Bond, AICP, LEED Green Associate, Planner II
City of Key West Planning Department

Key to the Caribbean – average yearly temperature 77 ° Fahrenheit.

EXHIBIT 4



THE CITY OF KEY WEST

Post Office Box 1409 Key West, FL 32041-1409 (305) 809-3700

10/23/14

Mr. Paul Misch, MGMBR
PP KW, LLC.
101 Gulfview Drive
Islamorada, FL 33036-4139

- Via Email: Misch1225@gmail.com -

RE: 1315 Whitehead Street - Contribution in lieu of affordable housing

Dear Mr. Misch,

Thank you for speaking with me on July 29, 2014 about your proposed seven-unit single-family development at 1315 Whitehead Street. Subsequently, you submitted an application for a major development plan approval on August 1, 2014. The redevelopment project is proposed to utilize the following BPAS and BPAS-exempt units:

- Four (4) transient units transferred to the property pursuant to Resolution No. 2006-035¹;
- Two (2) recaptured units originally allocated to the property under beneficial use in August 2005²; and
- One (1) BPAS unit which is the subject of a pending BPAS application.

Comprehensive Plan Policy 1-3.12.2 requires 30% of all new BPAS units constructed in Key West to be affordable. Policy 3-1.1.3 allows projects involving less than ten units to make an "in lieu of" contribution. Your proposed project at 1315 Whitehead Street is proposed to utilize one new BPAS unit. Therefore, your in lieu of contribution must be commensurate with 30% of one unit.

You have proposed to contribute one full permanent residential BPAS-exempt unit to the City as your in lieu of contribution. The unit would be relinquished from the bundle of property rights associated with 416 Louisa Street and identified as one of two units in the May 27, 2010 Letter of Unit Determination by Planner Nicole Malo³. 416 Louisa Street received a Certificate of Occupancy on October 22, 2014 for one single-family dwelling.

In order to effectuate and satisfy the in lieu of contribution required for the proposed redevelopment of 1315 Whitehead Street, you must sign and notarize the attached "Waiver and Release of Building Permit Allocation" affidavit⁴. This affidavit must be filed with the City's Chief Licensing Official, with a copy to my office, prior to the issuance of the first Certificate of Occupancy for the 1315 Whitehead Street project.

Thank you for your commitment and investment in our community.

Best regards,

Donald Leland Craig, AICP, Planning Director

¹ Attachment A - Resolution No. 2006-035

² Attachment B - Beneficial Use Determination

³ Attachment C - May 27, 2010 Letter of Unit Determination by Planner Nicole Malo

⁴ Attachment D - Waiver and Release of Building Permit Allocation

EXHIBIT 4

11/11/06 10:00 AM

A City Occupational License is a business tax holder must meet all City zoning and use provisions P.O. Box 1489, Key West, Florida 33040 (195)809 1955

Business Name : HAMPTON INN KEY WEST C.I.I. Nbr. : 2154
 Location addr : 2801 N ROOSEVELT BLVD
 Lic Nbr/Class : 06 19054 RENTAL MOTEL/HOTEL/TIMESHARE
 Issue date : 9/01/06 Expiration date : 9/30/06
 Lic fee : 2376.50
 Penalty : .00
 Total : 2376.50
 Comments : HOTEL, 127 ROOMS

This license must be prominently displayed

HAMPTON INN KEY WEST MRM AT PARROT KEY INC
 2801 N ROOSEVELT BLVD
 KEY WEST FL 33049