

To: **Sarasota Board of County Commissioners**  
From: **Siesta Key Community Inc**  
Written by SKC President: **Lourdes Ramirez**  
Public Hearing: **October 27, 2021**

## **Hotel proposal (UDC amendment #32) violates Sarasota County's Comprehensive Plan**

Siesta Key Community Inc, a ten-year-old organization on Siesta Key, is opposed to UDC Amendment #32 which eliminates density limits for hotels throughout Sarasota County including the barrier islands. We are opposed to Special Exception 1824 for a hotel development on Calle Miramar and Beach Road since it proposes a 170-unit hotel with a restaurant, bar and public parking spaces on less than one acre. The UDC amendment would allow a hotel proposed on Calle Miramar and Beach Road on Siesta Key (Special Exception #1824) to increase density from the current maximum of 26 units per acre (without kitchens) to 170 units on less than one acre. It will also increase intensity by adding four commercial uses on one parcel including the 170-unit hotel, bar, restaurant and public parking. This would violate several policies in our Comprehensive Plan.

This opposition paper will provide details on how the elimination of 'density' limits and subsequent addition of hundreds of hotel units are in clear violation of state statutes that require all development orders to be consistent with each goal, policy, and objective in the Comprehensive Plan. This paper also addresses additional violations to the Comprehensive Plan, the state of transient accommodations on Siesta Key, economic development on the barrier islands, and the protection of human life of the resident and seasonal population.

Siesta Key Community Inc. was incorporated in 2011 to promote the quality of life on Siesta Key and to advocate for the protection of neighborhoods and the environment on the barrier island. Its president, Lourdes Ramirez, has lived on Siesta Key for 22 years. A dedicated advocate of Siesta Key, Lourdes has been involved in local zoning issues since she moved to the island. She was vice president of The Alliance for Siesta Key's Future (TASK) until 2003 and was on the board of the Siesta Key Association from 2002-2011 of which she was president for 5 years. One of her most proud accomplishments is leading the defeat of proposed changes to the Zoning Code and Comprehensive Plan while president of SKA including the controversial 'duplex' issue in 2007. The duplex scandal involved the same Comprehensive Plan language which is being violated by the density increase of the proposed mega-hotels. As an aggrieved person living on Siesta Key, Lourdes is negatively impacted by the proposed hotels because it would result in large increases of vehicle traffic which can affect her family's safe evacuation during an emergency and for increasing of the amount of time emergency vehicles can get to her home or take her to the hospital.

## Summary

The proposed UDC amendment #32 that will eliminate density limits for hotels on the barrier islands is inconsistent with the Comprehensive Plan. Zoning amendments that are inconsistent with the Comprehensive Plan are illegal under state statutes (FL S 163.3161 (6)). It reads as follows:

FL S 163.3161 (6): *It is the intent of this act that adopted comprehensive plans shall have the legal status set out in this act and that no public or private development shall be permitted except in conformity with comprehensive plans, or elements or portions thereof, prepared and adopted in conformity with this act.'*

The proposed change that will result in an increase in density for hotels will violate several Comprehensive Plan policies including FLU Policy 2.9.1.

FLU Policy 2.9.1 which is unambiguous and clear, reads as follows:

*Barrier Islands are designated on the Future Land Use Map to recognize existing land use patterns and to provide a basis for hurricane evacuation planning and disaster mitigation efforts. **The intensity and density of future development on the Barrier Islands of Sarasota shall not exceed that allowed by zoning ordinances and regulations existing as of March 13, 1989.** (Emphasis added)*

Following the strict scrutiny of the comp plan language, the county must look at the density and intensity of use of transient accommodations in the 1989 zoning ordinances and regulations. This is a required step in ensuring any approval of development is consistent with the Comprehensive Plan.

In the 1989 Zoning regulations, Transient Accommodations are labeled as a residential use and have a maximum density of 26 units per acre (without kitchens).

Since the 1989 Zoning ordinances provide clear maximum density limits for transient accommodations, the County can't legally redefine density for hotels as a way to circumvent the Comprehensive Plan.

The purpose of zoning and the Comprehensive Plan is to ensure orderly growth and the protection of human life. The proposed mega-hotel will increase the number of vehicles using Siesta Key's two-lane main road and two bridges. This will lead to increased hurricane evacuation times and an increase in the time for emergency vehicles to serve the community on the barrier island.

The proposed UDC amendment #32 and Special Exception 1824 violates the Comprehensive Plan in several areas including Public Safety Goal #2, Barrier Island Land Use FLU policies 2.9.1 and 2.9.2, Coastal objectives 1.2 and 1.3, Coastal Policies 1.2.1, 1.2.2, 1.2.5, 1.2.6 and Transportation Policy 1.1.4.

A CG property owner has several options to build successful businesses by using the current zoning requirements and in compliance with our Comprehensive Plan. The hotel proposed in Special Exception 1824 is based on a flawed traffic study, provides conflicting statements on density, ignores the seasonal population, and increases hazards for the entire population of Siesta Key.

Sarasota County must follow state law and reject the UDC Amendment #32 and deny Special Exception 1824 since it will impede public safety and is in violation of the Comprehensive Plan.

## 1989 Zoning Ordinances

The following are key points in the 1989 regulations on transient accommodations:

- In Section 28.163, Transient accommodations... (see Attachment A)
  - Are defined as a 'dwelling unit, or other accommodation used as a dwelling unit'.
  - Hotels are listed as an example of transient accommodations.
  - States 'A transient accommodation shall be considered a residential use'
- In Section 88. F, Maximum Residential Density, transient accommodations are listed along with multifamily dwellings with a maximum density. For transient accommodations, the maximum density limits are (see Attachment B):
  - Twenty-six (26) units per acre without cooking facilities
  - Thirteen (13) units per acre with cooking facilities

## County's clear intention to limit density

For the purpose of potential legal proceedings, it's important to show the intent of maximizing density by the Sarasota County government. The intent of the County to limit density for transient accommodations for decades is clear. The various ordinances and comprehensive plan policies show past county commissioners' unambiguous intent to limit density on the barrier islands including for transient accommodations.

- Ordinance 83-08 was adopted in 1983 to provide for the 'establishment and clarification of transient accommodations use' and to amend the CG district to include 'maximum residential density'. This ordinance was a basis for changes to the 1975 Zoning Code and was in effect in the 1989 Zoning ordinances. In ordinance 83-08, Section II, B (see Attachment C1 – C3)
  - Section II.B.1.A. The Intent clause includes the section 'Whenever transient accommodations are involved, maximum density shall be guided by...within the "Future Land Use" plan chapter's guiding principles of Apoxsee' (Comprehensive Plan).
  - Section II.B.3.F lists the maximum density of the various portions of our county. At that time, there were several intensity Levels labeled as 'Bands' Copy of this section of the ordinance is attached.
- The Comprehensive Plan has policies to support limits on densities on the barrier islands:
  - Comprehensive Plan Policy 1.2.2 requires that any proposed land use amendments in Evacuation A (Siesta Key) and B hurricane vulnerability zone be consistent with **Future Land Use Policy 2.9.1.**

- Comprehensive Plan Policy 1.2.3 encourages hotel/motel development in the storm evacuation zones category C, D, and E **rather than evacuation zones A and B.** (emphasis added to the reference of Siesta Key evacuation zone)
  - Comprehensive Plan Policy 1.2.6 discourage the intensification of land uses within Hurricane Evacuation Zones A and B, **consistent with Future Land Use Policy 2.9.1,** and Coastal Objective 1.2 and policies 1.21 – 1.25
- The proposed increases in density in UDC #32 will violate Comprehensive Plan polices 1.2.2 and 1.2.6 since it will not be consistent with Future Land Use Policy 2.9.1.
- The proposed hotel (Special Exception #1824) will violate Comprehensive Plan Policy 1.2.6 because it encourages hotel development in storm evacuation zone category A instead of C, D, and E.
- The proposed UDC amendment #32 violates Comprehensive Plan Policy 2.9.2 which states:
 

‘FLU Policy 2.9.2: **Barrier Island residential density shall be in accordance with FLU Policies 2.9.1, and 1.2.3, and shall not exceed the maximum gross density zoning requirements existing as of March 13, 1989.**’

Transient Accommodations are clearly defined as a ‘*residential use*’ in 1989 and in the current zoning as ‘*residential use for density purposes*’. Since transient accommodations have been and currently have residential density limits, any proposed language that allows more hotel units on the barrier islands will be an increase in density which would violate the comprehensive plan.

- Transient Accommodations as defined in 1989
  - **Transient Accommodations.** *A transient accommodation means a dwelling unit or other accommodation used as a dwelling unit or other place of human habitation with sleeping accommodations (hereinafter collectively referred to as "an accommodation") which is rented, leased or sub leased for less than monthly periods or which is subject to time share periods. "Monthly" shall mean either a calendar month or 30 days. Transient accommodations shall include hotels, motels, inn, extended-stay facility, bed and breakfasts, boatels or other similar uses. A transient accommodation shall be considered a residential use. Each transient unit not having a kitchen shall be equal to ½ dwelling unit. Each transient unit having kitchen facilities shall be equal to one (1) dwelling unit. (Attachment A)*
- Transient Accommodations as it’s defined in the Unified Development Code (UDC) in 2021
  - **Transient Accommodations.** *A transient accommodation means a dwelling unit or other accommodation used as a dwelling unit or other place of human habitation with sleeping accommodations (hereinafter collectively referred to as "an accommodation") which is rented, leased or sub leased for less than monthly periods or which is subject to time sharing pursuant to general law for less than monthly time share periods. "Monthly" shall mean either a calendar*

*month or 30 days. **Transient accommodations shall include hotels, motels, inn, extended-stay facility, bed and breakfasts, boatels or other similar uses. A transient accommodation shall be considered a residential use for density purposes.** Each transient unit not having a kitchen shall be equal to ½ dwelling unit. Each transient unit having kitchen facilities shall be equal to one dwelling unit. (Attachment F)*

Since Transient Accommodations are considered ‘residential use’ since 1989, any increases in density as proposed in the Special Exception 1824 will violate FLU Policy 2.9.2.

## **State law requires strict adherence to the Comprehensive Plan**

The County can NOT pick and choose which comprehensive plan policy to follow. It must follow the entire Plan and further all of the goals, objectives, and policies when approving development orders.

*Florida Statutes 163.3194*

*(1)(a) After a comprehensive plan, or element or portion thereof, has been adopted in conformity with this act, **all development undertaken by, and all actions taken** in regard to development orders by, governmental agencies in regard to land covered by such plan or element shall be consistent with such plan or element as adopted. (emphasis added)*

*(3)(a) A development order or land development regulation shall be consistent with the comprehensive plan if the land uses, **densities or intensities, and other aspects of development permitted by such order or regulation are compatible with and further the objectives, policies, land uses, and densities or intensities** in the comprehensive plan and if it meets all other criteria enumerated by the local government. (emphasis added)*

## **State law defines density, intensity, and transient accommodations**

While the hotel developers use the definition of density and hotels based loosely on NAICs (industry standards), state law has clear definitions of density, intensity, hotels, and transient public lodgings.

- State law defines density and intensity as objective measurements. Since transient accommodations were listed in our 1989 ordinances and current zoning codes as having density or dwelling units, then we can state there is an objective measurement for hotels.
- Approving up to 170 dwelling units per acre on the barrier islands will clearly exceed the maximum density requirements of our Comprehensive Plan. Redefining the word density today will not change that fact.
  - FL Statutes 163.3164 (Community Planning Act definitions)
    - (12) “Density” means an objective measurement of the number of people or residential units allowed per unit of land, such as residents or employees per acre
    - (22) “Intensity” means an objective measurement of the extent to which land may be developed or used, including the consumption or use of the space above, on, or below ground; the measurement of the use of or demand on natural

*resources, and the measurement of the use of or demand on facilities and services.*

- FI Statutes 509.242 Public lodging establishments; classifications.—
  - *(a) Hotel.—A hotel is any public lodging establishment containing sleeping room accommodations for 25 or more guests and providing the services generally provided by a hotel and recognized as a hotel in the community in which it is situated or by the industry.*
- FI Statutes 509.013 (Lodging and Food Service Establishments) Definitions.—
  - *1. “Transient public lodging establishment” means any unit, group of units, dwelling, building, or group of buildings within a single complex of buildings which is rented to guests more than three times in a calendar year for periods of less than 30 days or 1 calendar month, whichever is less, or which is advertised or held out to the public as a place regularly rented to guests.*

## Grammar

- In their proposals, hotel developers ignore grammar rules in an attempt to justify their request for increasing density and intensity of use
  - The hotel developers try to interpret the statute differently than the actual intent of the state’s statutes.
    - Definition of Density per state statute: (12) “Density” means an objective measurement of the number of people or residential units allowed per unit of land, such as residents or employees per acre
      - In their hotel proposals, the developers limit the objective measurement of density to only ‘residents or employees’. The comma in that sentence before ‘such as’ make the following statement non-restrictive clause. That makes ‘such as residents or employees per acre’ an example of the objective measurement but not the only possible measurement. Another objective measurement can be dwelling units for hotels.
    - Definition of Intensity per state statute: (22) “Intensity” means an objective measurement of the extent to which land may be developed or used, including the consumption or use of the space above, on, or below ground; the measurement of the use of or demand on natural resources, and the measurement of the use of or demand on facilities and services.
      - In the hotel proposals, the developers focused on ‘consumption of the space’ ignoring the first part of that definition where it lists the ‘objective measurement of the extent to which the land may be developed or used. Again, the comma after ...developed or used, makes it a non-restrictive clause so consumption of use is just one example of

how the land may be developed or used. Adding restaurant and bar uses to a transient accommodations use is an increase in how the land is developed therefore an increase in intensity.

- In their proposal, the hotel developers chose to ignore the word 'and' in the first sentence of Policy 2.9.1 but instead focuses their arguments only on hurricane mitigation. *Barrier Islands are designated on the Future Land Use Map to recognize existing land use patterns **and** to provide a basis for hurricane evacuation planning and disaster mitigation efforts.* These are two distinct statements. The County must 1) recognize existing land use patterns **AND** 2) plan for hurricane evacuations. The County must follow through with each statement and can't ignore the first portion to emphasize the second portion of this sentence.
- Comprehensive Plan Policy 2.9.1, includes the word **SHALL**. This leaves the County no room to interpret the policy differently than what is clearly stated. *The intensity and density of future development on the Barrier Islands of Sarasota **shall** not exceed that allowed by zoning ordinances and regulations existing as of March 13, 1989.*

### County acknowledges density limits exist

- County staff's report to the Planning Commission on August 19, 2021, contain written admissions that density limits currently exist for transient accommodations and is proposing to change the definition in UDC amendment #32. This elimination of the definition of density for hotels on the barrier islands to add hundreds of more units will be a violation of our Comprehensive Plan 2.9.1 which requires the county to follow the density and intensity as listed in the 1989 Zoning ordinances.
- In the developer's hotel application, there were two definitions of density. Hotel density is being proposed to be eliminated in unincorporated Sarasota County except for Nokomis Center Revitalization Plan and BRR/PD (UDC 124-305 Terms). Two conflicting density definitions in the zoning code is illogical and will not stand up in court.
- Public workshops on the hotel proposals illustrate the developers' knowledge the density and intensity of use violate Policy 2.9.1 and originally proposed 'exempting hotels' from those requirements. This demonstrates an understanding that their proposal will violate the Comp Plan. The current hotel proposal is now to ignore the Comp Plan and change the definition of density. Documented proof of hotel developer's changes in handling Comp Plan policy 2.9.1 will show the courts that the developers' intent is to increase density and intensity and are trying to find a way around our Comprehensive Plan.

### Increases in Intensity is NOT allowed in our Comprehensive Plan

The hotel proposals are asking for four (4) different commercial uses for the parcel on Calle Miramar and Beach Road: Hotel, Restaurant, Public Parking, and Bar. This is a clear increase in the intensity of use. Since the developers use the NAICs standards to define a hotel as a commercial use, then we will identify the other commercial uses by their NAICs.

- Hotel: NAICS 721110

- Bar: NAICS 722410
- Restaurant: NAICS 722511
- Parking: NAICS 812930

Four distinct commercial uses on one acre are an increase in intensity on the Barrier Islands which would violate FLU Policy 2.9.1.

### **NAICS categories includes apartment buildings and has density**

The hotel developers are using the NAICS industry standard to justify increases in density since it is supposedly listed as a commercial use. They claim, as a commercial business establishment, hotels (NAICS 72110) do not have density. However, the NAICS describes hotels as ‘*This industry comprises establishments primarily engaged in providing short-term **lodging** in facilities known as hotels, motor hotels, resort hotels, and motels.*’ (Attachment J-1)

- Lodging is legally defined as a ‘temporary dwelling place’. Merriam-Webster’s definition of lodging:
  - 1. a place to live: [DWELLING](#)
  - 2. sleeping accommodations found *lodging* in the barn
  - 3. a temporary place to stay: *lodging* for the night
- Just because hotels have a NAICS classification, it does not mean it does not have density. Apartment buildings are also considered ‘commercial’ uses since they are managed by corporations and have a NAICS designation: 531110 (See Attachment J-2). Since apartments are counted as density in the zoning code then density can apply to units in hotels.

### **Public Safety: Seasonal population’s lives matter**

The hotel developer’s lawyers argue their proposal does not increase the ‘residential’ or ‘permanent’ population in addressing County staff’s concerns about compliance with Coastal Objective 1.2 and Coastal Policy 1.2.1 (See developer lawyers response letter dated May 17, 2021).

- Coastal Objective 1.2 - *Encourage appropriate densities in the CHHA: To encourage low-density land uses in the Coastal High-Hazard Area (CHHA) in order to direct population concentrations away from this area.*
- Policy 1.2.1: *Land Development Regulations and limits on urban infrastructure improvements shall both be used to limit development on coastal barrier islands and other high-hazard coastal areas to prevent a concentration of population or excessive expenditure of public and private funds.*

But Coastal Objective 1.2 and Coastal Policy 1.2.1 do not restrict the population to ‘permanent’ residents or to the length of time people live on Siesta Key. It states only the word ‘population’. Since state statutes require comprehensive plans to include seasonal residents, our Coastal Objective and Policy applies to both seasonal (tourist) and resident populations. In reviewing this hotel proposal, the county must also consider the definition of population.

- Merriam-Webster defines **population** as:
  - the whole number of people or inhabitants in a country or region
  - the total of individuals occupying an area or making up a whole
- Sarasota Comprehensive Plan definitions
  - The Sarasota Comprehensive Plan includes both ‘seasonal population’ and ‘resident population’ definitions. On Page Volume 1- Definition’s page 586 of the Comprehensive Plan, the seasonal population is defined as temporary residents, such as tourists...
    - *RESIDENT POPULATION: According to Census guidelines (and followed by BEBR, our State Data Center), resident population includes persons at their usual place of residence. Usual residence is defined as the place where a person lives and sleeps most of the time. This place is not necessarily the same as a person’s voting residence or legal residence. Resident status is self-reported by the survey respondent at the time of the decennial census. Each decennial census is the benchmark for the interim annual resident population estimates produced by BEBR.*
    - *SEASONAL POPULATION: The seasonal population can include temporary residents, such as tourists, snowbirds or migrant workers. There are no official or government sources of seasonal population estimates. The definition and calculation of an estimated seasonal population can vary by organization, geography, and data need and availability. (For example, Sarasota County Planning Services views seasonal population from a housing and residential land use perspective, and therefore, calculates the seasonal population based on the number of housing units identified by the Census Bureau as being for seasonal or occasional use.*
- Florida Statute 163.3177 recognizes the need to plan for both permanent and seasonal residents in Comprehensive Plans:
  - 163.3177 3. *The comprehensive plan shall be based upon permanent and seasonal population estimates and projections...*
  - 163.3177 (6) (a) 2 *The future land use plan and plan amendments shall be based upon surveys, studies, and data regarding the area, as applicable, including:*
    - *b. The projected permanent and seasonal population of the area.*

Since the 1980s, Sarasota County’s Comprehensive Plan included policies to reduce density on the barrier islands ‘to lessen the **impact of a destructive storm on human life, public facilities, private structures, and coastal natural resources in Sarasota County**’ (Attachment D). Protection of human life is not limited to ‘permanent’ residents but seasonal populations and to all of those who stay, no matter how brief, on the barrier islands.

The proposed UDC #32 with hundreds of proposed hotel rooms will create an increase in the seasonal population which is in violation of Coastal Objective 1.2 and Coastal policy 1.2.1 and would negatively impact the resident population by increasing hurricane evacuation times.

### **Comprehensive Plan policies are about protecting human life**

The proposed increase in density for hotels will negatively impact the safety of the barrier island and coastal mainland populations since it will increase hurricane evacuation times. The entire coastal population will be placed at risk of being stranded due to lack of sufficient mainland shelters and accommodations. Emergency evacuations are not limited to hurricanes. Siesta Key has witnessed several damaging storms which resulted in severe flooding and tornadoes.

On September 8, 2021, the County Commissioners approved a single-family home seaward of the Gulf Beach Setback Line. During that presentation, the petitioner showed the impact severe flooding will have on Siesta Key properties. By using the County's GIS (Geographic Information System) software, they demonstrated that if Siesta Key suffered a 7-foot storm surge, 97% of the barrier island would be underwater. The average elevation on the barrier island is 3.4 NAVD (North American Vertical Datum of 1988) with only 17 parcels on Siesta Key with an elevation of over 12 NAVD<sup>1</sup>. That illustration shows that the high risk of flooding on Siesta Key will impact the majority of homes and transient accommodations. A large increase in vehicles, which will result if the mega hotels are approved, will negatively impact evacuation efforts of the barrier island.

The Comprehensive Plan includes FLU Goal 2 states:

***'Maintain distinct land use categories that promote health, safety, and welfare and minimize negative impacts posed by hazards, nuisances, incompatibility, and environmental degradation.'***

Sarasota County must ensure to maintain the land use category Barrier Island which limits density and intensity, to protect public safety, and minimize negative impacts caused by proposed developments.

In addition, UDC amendment #32 violates Coastal policy 1.2.2 :

***'Proposed land use plan amendments in Evacuation zones A and B hurricane vulnerability zone (storm surge areas) may be considered if such increases in density and intensity do not adversely impact hurricane evacuation times and are consistent with Future Land Use Policy 2.9.1 and Appendix A, Article 4, Section 4.6, Residential District Intent Statement, Code of Ordinances of Sarasota County'***

The proposed hotel density increase will adversely impact hurricane evacuation times and are inconsistent with FLU Policy 1.2.2 and Policy 2.9.1.

The proposed increases in density for hotels will violate Coastal Objective 1.3 which states:

***'Safe and Timely Evacuation: To protect the public safety during an emergency evacuation by reducing or maintaining emergency evacuation clearance time; maintaining an adequate emergency evacuation roadway system; and ensuring adequate shelter space.'***

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<sup>1</sup> <https://sarasotanewsleader.com/graphics-depicting-flood-surge-effects-on-siesta-key-prompt-commissioner-detert-to-join-her-colleagues-in-approving-new-home-construction-seaward-of-countys-gulf-beach-setback-line/>

The hotel's proposed density will dramatically increase emergency evacuation times. The County has eliminated our bus services on and off Siesta Key and we cannot expand our two-lane road resulting in an inadequate emergency roadway system. The County does not have adequate shelter space to accommodate hundreds of additional tourists if the proposed hotel density increase is approved.

The proposed increases in density for hotels will violate Policy 1.2.6: *'Discourage the intensification of land uses within Hurricane Evacuation Zones A and B (Map 1-8, Environment Chapter), consistent with Future Land Use Policy 2.9.1, and Coastal Objective 1.2 and Policies 1.2.7. - 1.2.5.'*

The proposed hotel will encourage, not discourage, intensification of land uses with Hurricane Evacuation A and B and is inconsistent with FLU Policy 2.9.1, Coastal Objective 1.2, and Policies 1.2.1-1.2.5'

Unlike commercial uses such as restaurants and retail stores where customers can go to their mainland home to get away from a storm event, Siesta's seasonal including tourist population will need to be evacuated.

Local airports shut down early when a hurricane approaches. Sarasota International and Tampa airports closed on July 6, 2021, when Hurricane Elsa was in the Gulf of Mexico. Even though Hurricane Elsa was miles away, all flights were canceled in the Sarasota and Tampa Bay area. In an event of a natural disaster (hurricane, excessive flooding, tidal surges), stranded visitors on Siesta Key would have to find hotel rooms or shelters on the mainland displacing Siesta Key residents who need shelter.<sup>2</sup>

There is no public transportation going off Siesta Key to help with evacuation which will result in the seasonal (tourist) population using their cars to get off the island. This will lead to increases in hurricane evacuation times of both the seasonal and resident population.

Safe and timely hurricane evacuation policies were created decades ago to **protect human life**. Storms can be unpredictable such as the 'No Name' storm in March 1993 in which 15 people lost their lives and caused \$2 billion in property damage<sup>3</sup>. The No Name storm took Florida by surprise and was devastating. Even with advanced technology, no one can guarantee that the barrier island's population will get enough notice of a major storm event. With seasonal and permanent population evacuating using the only two-lane road going off Siesta Key and with only two bridges, it will cause gridlock leading to people being put in harm's way.

## **Siesta Key is #1 in Transient Accommodations**

Hotel developers claim that Siesta Key lacks hotel rooms which is clearly untrue. Besides several hotels including the Hyatt (built in 2009), Siesta Key Resorts, and Tropical Breeze Resorts (see Attachment E on hotel listings found on Hotel.com), many of the local condos can be rented by the night. Daily and short-term condo rentals, hotels, and resorts are all categorized as 'Transient Accommodations' in our local

<sup>2</sup> <https://www.mysuncoast.com/2021/07/06/elsa-spurring-flight-cancellations-srq-tpa/>

<sup>3</sup> <https://www.weather.gov/tbw/93storm>

codes and state laws. As of August 2021, Siesta Key is number 1 in Sarasota County in the number of Transient Accommodations and Bed Taxes.

- Siesta Key is #1 in Transient Accommodations
  - In August 2021, Sarasota Tax Collector's office released its report on bed taxes for Sarasota County. Siesta Key is #1 in bed tax collections with over 27% of bed tax collected coming from our barrier island. This does not include bed taxes collected by online platforms, such as Airbnb, which do not reveal the addresses of those using their programs. (Attachment G)
  - Of the 11,012 living units on Siesta Key, 3,879 units are listed as transient accommodations which contribute towards the bed taxes.<sup>4</sup>
  - Research was conducted over the summer by Siesta Key Community Inc on the number of condo associations that offer transient accommodations. Of the 80 condominium associations researched, 19% offer daily rentals. The rest were 3-day minimums to monthly rentals. The number of rooms for rent in each of these condo associations was not available. The research does not include hotels such as the Hyatt (built in 2009) or other hotels such as Siesta Beach and Tropical Beach resorts. See Exhibit --- for information. (Attachment H 1-3)

## **Economic opportunities: CG property owners have options**

One argument made by the hotel developer's lawyers is that the proposed 170-unit hotel is the minimum they need to be an economically feasible project. However, developments made within a few feet of the proposed hotel project on Calle Miramar and Beach Road show that transient accommodations can be successful even with fewer units.

One example of a successful business: A new transient accommodation built in 2017 located .1 (one-tenth) mile from the proposed hotel on 221 Beach Road. The new four-story building at 329 Beach Road has 2 units with 11 bathrooms and 11 bedrooms (sleeps 25). The land is 11,584 sq feet which is similar in size to the proposed hotel at 221 Beach Road (11,646 sq feet). This new transient accommodation successfully rents for \$900 to \$1200 per night. There are other examples of successful transient accommodations within 1 mile of the proposed hotel site (see Exhibit I). There are several lots on Siesta Key where old homes were redeveloped into transient accommodations.

The developers can build similar four-story transient accommodations using the formula of a maximum of 26 units per acre on each of the four lots they own (density will vary due to the size of the lots) and have a successful business.

Although the developers will argue they need the increase in density and the addition of four commercial uses to make their project profitable, our government is under no obligation to enhance the value of that property by changing our local planning laws or by ignoring our Comprehensive Plan. The hotel developers can have any legal use under CG/SKOD as listed in the 1989 regulations including a 25-

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<sup>4</sup> Source: Sarasota Tax Collector's office

unit hotel on their less than one-acre parcel or a table service restaurant. The U.S. Supreme Court has ruled when a government uses its power to protect the health, morals, and safety of the public, it can impose limits on a property and it won't be considered a regulatory taking (reference: Penn Transportation Central v New York City (1978) or Tahoe-Sierra Preservation Council v. Tahoe Regional Planning Agency (2002))

### **Developers can combine small parcels on Siesta Key - Proposed Calle Miramar/Beach Road project has 4 underlying small lots.**

At Planning Commission meetings, county staff stressed that the proposed change to the definition of density will not impact all of the parcels located in CG/SKOD districts since there are many small lots. They assume that developers will not purchase and combine small lots for the purpose of building a mega-sized hotel. The county's staff makes that claim despite the fact that the proposed hotel at Calle Miramar and Beach Road is made of four (4) small lots which prove that combining small CG lots is possible. Staff also ignores the fact that many of the CG parcels located on Siesta Key are owned by just a few parties including Mr. Sypret (5218 – 5250 Ocean Blvd), Mr. Davidson (owns over 2 acres, 5132 and 5141 Ocean Blvd and 230 Avenida Madera), Mr. Brown (5148, 5151 and 5200 Ocean Blvd and 149 Avenida Messina) and Mr. Kompethecras (1260 and 1266 Old Stickney Point and 6519 Midnight Pass Rd).

### **Hotel Developers flip/flop on Density: Use of density to get a liquor license**

The hotel developers originally acknowledged the proposed density increase for hotels violated the Comprehensive Plan. In their original pre-application dated May 18, 2020, the developer proposed a Comp Plan amendment that would allow '*transient accommodations which exceed the density and intensity restrictions existing of that date without violating this policy*' which refers to the 1989 Code restrictions in Comprehensive Policy 2.9.1. Obviously, the hotel developers were aware when submitting the pre-application for the hotel on Calle Miramar and Beach Road that the proposed density for the hotel would violate Comp. Plan Policy 2.9.1 since it will increase density and intensity on Siesta Key. They later withdrew their proposed amendment to Comp. Plan Policy 2.9.1 in favor of redefining density in the UDC.

Although the hotel developer proposes not counting hotel rooms as density, they are relying on state law which requires a minimum number of units to get a liquor license. Florida Statute 561.202(2)(a)1 allows hotels with 100 units or more located in a county with 50,000 residents or more to apply for a liquor license. If the hotel developer does not want the county to count units for density, they can't justify counting units to get a liquor license. (See attachment L)

If the county is only considering the hotels' building footprint (floor area ratio) in determining legal hotel use and does not consider units as 'measurable' then how can they suddenly count units to determine if the hotel is eligible to have a restaurant or bar?

The hotel developer wants the county to rely on Floor Area Ratios (FAR) instead of counting units in determining if their mega hotel complies with the Comprehensive Plan yet plan on charging guests by the unit instead of by the square foot. This contradicts their argument that square feet are what matters with hotels, not units.

## **Commercial uses in CG district in 1989 were less intense than current uses**

The hotel developers claim that other commercial uses allowed in the CG are more intense than the four commercial uses proposed for the Calle Miramar/Beach Road location. At the Planning Commission hearing, the developer's lawyers used fast-food restaurants as an example of intensive commercial use that may be allowed on Siesta Key. Although it is ridiculous to believe that parcels worth close to \$1 million can have a fast-food restaurant, the fact is the 1989 Zoning Code prohibited fast-food or drive-through restaurants (See Attachment M). Since a fast-food restaurant is not a permitted use in the CG/SKOD district in 1989 and that all development orders must comply with FLU Policy 2.9.1, then it should not be considered a credible argument to justify increasing intensity on the barrier islands for a hotel.

There is a history of the County's intent to reduce intensity on the barrier island. In the 1980 Comprehensive Plan, there was a clause to reduce the intensity of future development on the barrier islands and included the following statement showing the county's intent to downzone CG uses:

*'Parcels which are undeveloped and zoned for Commercial General (CG) uses are to be down zoned to a less intensive zoning district category' (See Attachment N)*

## **Transportation: Traffic Study flawed, no public transportation off the Key**

The proposed hotel's traffic study is seriously flawed since it contained only one commercial use in calculating vehicle trips instead of calculating four commercial uses. The four commercial uses proposed for the property at Calle Miramar and Beach Road include a 170-unit hotel, restaurant, bar, and public parking garage.

The four commercial uses and the proposed increases in density for hotels violates FLU Policy 1.1.4 which states:

*'Sarasota County recognizes the interconnection between land use decisions and transportation needs and options and **will work to ensure the transportation impacts are considered in land use decisions and vice versa. Land use strategies and development patterns that reduce vehicle miles traveled will be encouraged'***

Increasing density and adding commercial uses for hotels will add, and not reduce, vehicle miles traveled along a two-lane road on Siesta Key.

The proposed addition of hundreds of additional vehicles will negatively impact the two-lane major road on Siesta Key (Higel and Midnight Pass Road) and clog the two egresses off the island (North and South bridges). The level of service (LOS) of major portions of this road including the section leading up to the bridges is F (Failed) for the southern bridge and E for the northern bridge. This road is constrained with no room to add lanes. All local roads feed into the constrained and failing Midnight Pass Road. (See Attachment K of the Siesta Key Community Plan 1999). The impact of hundreds of vehicles for hotel guests, restaurant or bar customers, public parking, and employees will cause delays in hurricane evacuation and emergency vehicles.

## History of Siesta Key zoning

Since 1948, residents have lobbied for regulations on Siesta Key to ensure the development of Siesta Key does not negatively impact the population. County Commissioners in the 1980s were concerned about public safety, especially with hurricane evacuations, and downzoned most of Siesta Key including the CG district. By 1989, the County Commissioners decided to lock in the density and intensity allowed on the barrier islands. This protected vested property rights while ensuring no additional density or intensity is allowed. All of the steps taken to reduce density and intensity were to protect human life.

### 1955

- Siesta Key Zoning Code adopted by BCC on Dec. 7.

### 1960

- County decides to expand the zoning code throughout the County.

### 1969

- Density was reduced in residential areas on the barrier islands.

### 1972

- County begins the process of developing the Comprehensive plan

### 1973

- Zoning Ordinance 73-20 adopted
  - Section 2.d. (Findings of Fact) states:  
'Decreasing Densities, in particular multiple family zoning districts, is well recognized as one important approach, in fact a necessity, to help close the gap between accelerating growth rate and a lagging program of providing public facilities and services'

### 1975

- Zoning Ordinance 75-38 replaces old zoning codes including 73-20.
  - Residential and Commercial districts renamed
- Comprehensive Plan (Resolution 75-44 adopted 3/13/75) states:
  - Policy 5. 'Shoreline Development should occur in a manner which will enhance its natural character, avoid damage to indigenous environmental factors, and assure an adequate amount of public access to waterfront areas.'
    - Policy 5. H: Specifically discourages multi-family and hotel/motel development on the Keys.

### 1980

- Comprehensive Plan updated
  - Page 78, Comp plan A-2  
'The intensity of future development on the barrier islands of Sarasota County shall not exceed that allowed by existing zoning. Parcels already developed at densities less than that permitted by the existing zoning should be down zoned to the zoning district most closely corresponding to the existing development on the parcel taking into consideration existing plats. **Parcels which are developed and zoned for Commercial General (CG) uses are to be down zoned to a less intensive zoning district category.'**

1982

Sarasota County down zoned all properties on Siesta Key.

1989

- Zoning Code and Comprehensive Plan updated
  - Policy 1.6.4  
'Barrier Islands are designated on the Future Land Use Map to recognize existing land use patterns and to provide a basis for hurricane evacuation planning and disaster mitigation efforts. The intensity and density of future development on the Barrier Islands of Sarasota shall not exceed that allowed by existing zoning.'

1997

- Comprehensive Plan updated
  - Policy 1.1.2  
'Barrier Islands are designated on the Future Land Use Map to recognize existing land use patterns and to provide a basis for hurricane evacuation planning and disaster mitigation efforts. The intensity and density of future development on the Barrier Islands of Sarasota shall not exceed that allowed by zoning ordinances and regulations existing as of March 13, 1989.'

1999

- Siesta Key Community Plan developed by County with input from Siesta Key stakeholders.

2000

- Adoption of the Siesta Key Overlay District.

2003

- Update of Zoning Code 75-38 titled 2003-052. No change in density or intensity on barrier islands

2018

- County adopts the Unified Development code to replace the County's zoning code. No change in density or intensity on barrier islands

## Florida court cases on comp plans

Over the past few decades, Court decisions upheld the requirement that governments must follow the clear language of ordinances and Comprehensive Plans. The following are a few examples of case law.

- Florida South Properties v Sarasota County Board of Zoning Appeals, 2007
  - Case Summary: The County must follow the clear language of the zoning ordinance.
  - *'When ordinance language is clear, courts must read the ordinance as written, for to do otherwise constitute an abrogation of legislative power. Koile, 934 So. 2<sup>nd</sup> at 1231.'*
  - In the current hotel proposal, the county must follow the 1989 Zoning Ordinances which clearly limit density for transient accommodations.
- Machado v Musgrove, 1988

- Summary: Finding that a local land use plan is like a constitution for all future development within the governmental boundary<sup>5</sup>. The courts find land-use plans such as the Comprehensive Plan must be strictly applied.
- In one portion of the decision, the court states '*Zoning, on the other hand, is the means by which the comprehensive plan is implemented, City of Jacksonville Beach v Grubbs, 461 So. 2d 160 (Fla. 1<sup>st</sup> DCA 1984), and involves the exercise of discretionary powers within the limits imposed by the plan. Baker v Milwaukee, 533 p.2<sup>nd</sup> at 775. It is said that a zoning action not in accordance with a comprehensive plan is ultra vires. (for the non-legal reader, ultra vires means 'beyond one's legal power or authority')*
- Further, the court states: *A Comprehensive Land Use Plan is not a 'vest-pocket tool', Baker v City of Milwaukee, for making individual zoning changes based on political vagary, see Harr Kaden, ... It is a broad statement of legislative objective 'to protect human, environmental, social and economic resources, and to maintain, through orderly growth and development, the character and stability of present and future land use and development in this state'*
- This court decision makes clear that any zoning decision must comply with the Comprehensive Plan and all decisions must follow strict scrutiny review
- Pinecrest Lakes Inc v Shidel (2001)
  - Summary: Courts found an approved development was not consistent with the comprehensive plan and ordered the developer to tear down the apartment buildings.
  - The court concluded: '*The statute says that an affected or aggrieved party may bring an action to enjoin an inconsistent development allowed by the County under its Comprehensive Plan. The statutory rule is that if you build it, and in court it later proves inconsistent, it will have to come down. The court's injunction enforces the statutory scheme as written. The County has been ordered to comply with its own Comprehensive Plan and restrained from allowing inconsistent development; and the developer has been found to have built an inconsistent land use and has been ordered to remove it. The rule of law has prevailed.*'
- City of Jacksonville v Dixon, 2002 Appeals court
  - The appeal court reversed a lower court decision because the development order approved by the City of Jacksonville is not consistent with the comprehensive plan.
  - The court concluded development plans must meet the clear and plain language of the Comprehensive Plan "*Indeed, were we to adopt the deferential standard applied to the plan by the lower court, the ultimate determination of a planned development would be placed within the discretion of whoever composes the membership of the governmental body's planning department at any given time, and the goal of certainty and order in future land-use decision-making would be circumvented.*"

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<sup>5</sup> Casetext.com

## Conclusion

The County must follow state law and reject the UDC Amendment #32 as it applies to Barrier Islands and reject Special Exception 1824 since it would violate the Comprehensive Plan.

The County can NOT pick and choose which Comprehensive Plan policy to follow. It must follow the entire Comprehensive Plan and further all of the goals, objectives and policies when approving development orders.

To protect human life, Sarasota County Commissioners have determined over the decades to reduce density and intensity on the barrier islands. Siesta Key was downzoned in 1982 to ensure the seasonal and resident population can safely evacuate in the event of a natural disaster or emergency. In creating the Comprehensive Plan years ago, the County decided to keep the density and intensity of use as it was in the 1989 regulations and ordinances. This protected vested property rights while ensuring the protection of the population of the barrier island.

Comprehensive Plan Policy 2.9.1 states ***The intensity and density of future development on the Barrier Islands of Sarasota shall not exceed that allowed by zoning ordinances and regulations existing as of March 13, 1989. (Emphasis added)***. The 1989 zoning ordinances and regulations include maximum density limits for transient accommodations. Clear zoning and Comprehensive Plan language exist that prohibits any increase in density and intensity on our barrier islands. If the County starts to arbitrarily change the meaning of a comprehensive plan policy through zoning action, when will it stop? Would density then be eliminated for condos on the barrier islands in the future?

The proposed UDC amendment #32 and Special Exception 1824 violates the Comprehensive Plan including Public Safety Goal #2, Barrier Island Land Use FLU policies 2.9.1 and 2.9.2, Coastal objectives 1.2 and 1.3, Coastal Policy, 1.2.1, 1.2.2, 1.2.5, 1.2.6, and Transportation Policy 1.1.4.

A CG property owner has several options to build a successful business using the current zoning requirements and in compliance with our Comprehensive Plan.

Florida court's determinations have clearly stated that local governments can't approve zoning changes that conflict with the Comprehensive Plan. Transient Accommodations have a maximum limit of 13 units per acre with kitchens and 26 units per acre without kitchens since 1983. Changing the definition of hotel density will not alter the fact that more units are being added and the Comp Plan requires the County to follow the 1989 density and intensity requirements for barrier islands.

The County must follow state law and reject the UDC Amendment #32 as it applies to Barrier Islands. The County must deny Special Exception 1824 due to the fact the hotel developers are proposing 170-room hotel with three other commercial uses which would violate several policies in the Comprehensive Plan