

# Questions & Answers

As of August 8, 2023

## Ordinance:

**Question (1)** I have been wondering who drafted this ordinance and why these two matters were being considered together. It then dawned on me that State Law requires that only one item be considered in an ordinance.

After a little research I came upon Louisiana Revised Statutes 33§406, Enactment, Recording, and Publication of Ordinances and Resolutions. A copy is attached. The relevant portion reads:

- B. (1) A proposed ordinance may be introduced by any alderman at any board meeting. Each proposed ordinance shall be in writing. **An ordinance shall contain only one subject which shall be indicated in its title except for ordinances involving the annual operating budget, a capital improvements budget, or a codification of municipal ordinances.**

I then looked at the Mandeville City Charter and specifically Section 2-11. - Ordinances in general. A copy is attached. The relevant portion reads:

- B. **All proposed ordinances shall be introduced in writing and in the form required for adoption and, except for codifications, the operating budget and capital improvement budget, shall be confined to one subject, expressed clearly in the title.**

Under Louisiana State Law and the Mandeville Charter an ordinance must be confined to one subject.

Then we have the CLURO rule 4.3.3.3. Concurrent Applications

Application for a Conditional Use Permit and for Rezoning or Planned District zoning for the same property may be made concurrently, subject to the fees applicable to a rezoning or Planned District zoning only. The Planning Commission and Zoning Commission **may hold the public hearing on the Rezoning and the Conditional Use Permit at the same meeting** and may combine the two hearings. The City Council likewise **may hold the two public hearings in combination and may approve both the Conditional Use and rezoning or Planned District zoning by one ordinance.**

Clearly, 4.3.3.3. contemplates that a Conditional Use Permit and a Rezoning are two different matters, except it states that they can be made concurrently. In fact, it further states that the City Council likewise **may hold the two public hearings in combination and may approve both the Conditional Use and rezoning or Planned District zoning by one ordinance.**

Ordinance 23-16 contains two subjects; 1) a re-zoning of Parcel D; and, 2) consideration of a conditional use permit for Sucette Harbor. **Can anyone explain to me why CLURO 4.3.3.3. and Ordinance 23-16 do not violate State Law and the Mandeville City Charter?**

Thank you for your questions and inquiry – as always, it is well thought out and put together. This afternoon, I did have an opportunity to speak to our City Attorney on your questions and I also was able to do a little additional research myself.

Long story short, after consulting with the City Attorney, who has confirmed that as far as back as 1917, the Louisiana Supreme Court has held that “the “one subject” language of La. R.S. 33:406 is to be given a broad and extended meaning, so as to allow the Legislature full scope to include in one act all matters having a logical or natural connection.” *Town of Ruston v. Dewey*, 76 So. 719, 720 (La. 1917). The City of Mandeville, which as you know is a home rule charter municipality, has consistently taken a similar position in how its interpreted its Charter when drafting and proposing it’s past ordinances. The City’s reasoning behind its own adoption of Charter 2-11 simply mirrors the Lawrason Act’s concern that an issue not get lost/ buried in “legislative chaos” and that the public could easily discern from the text of the ordinance what subject was governed by the text of the ordinance, including all matters sharing a legitimate connection under that subject. Rather than contradicting state law and the City Charter, CLURO 4.3.3.3 codifies the intention of this legislative principle and illustrates the exact logical and natural connection between the conditional uses and the zoning amendment for the subject of developing Planned District Parcel D. To determine otherwise, would not only be inefficient, but unnecessarily duplicitous and potentially creates an irreconcilable inconsistency in the legislative process.

I hope this brief overview helps answer your question. I look forward to seeing you on Thursday evening as we continue the discussions on Ordinance 23-16, along with several other items of important City business.

(2) If they don’t get approved for the change in zoning, can they still build the over 55 apartments? Is the change to combined-use zoning to add the hotel and marina? **The property does not have any permitted uses allowed by right. Anything built would require the Conditional Use approval process. Yes the Planned District – Combined Use allowed for multi family and commercial uses, the Conditional Use requests is choosing the uses for the property.** So if the zoning stayed Planned Residential, can they ask for multi-family as a conditional use (later)? **If the zoning stayed Planned District Residential – an applicant could propose a single family or multifamily development without having to change the zoning but yes, they would be required to go thru the Conditional Use process.** If the current zoning stays planned residential, the 55 and over apartments are a conditional use that they can still request

In order to request any of the other conditional uses (hotel, marina, retail), they have to change the zoning to planned combined use. **Yes, all uses require conditional use approval in a Planned District**

Does the 15 acres used for density calculations include flag lots, public/private easements and right-of-way to another lot? The CLURO defines Lot Area as “The net horizontal area within bounding lot lines, but excluding any portion of a flag (panhandle) lot providing access to a street and excluding any public or private easement or right-of-way providing access to another lot.” The Overall Site Plan document

seems to identify a 30 ft. Servitude of Passage within the Parcel-D property line. **The density calculation excludes the servitude area**

**Only servitude on property is the pathway to the lakefront. That right of way varies from 30 feet wide to 15 feet wide depending on location. It covers approximately 19863 S.F.**

The Ordinance needs to specify the exact Departures requested. I will be offering an Amendment to the Ordinance at the appropriate time removing the following, “BE IT FURTHER ORDAINED by the City Council that all variances and departures from the CLURO are granted for the subject project consistent with the attached site plans for Sucette Harbor.” This is absolutely too broad. Once the individual variances and/or departures are identified, they can be listed individually in this Ordinance so that carte blanche approval is not given based on the Site Plan. **The ordinance does need to be amended to reflect any proposed changes, departures, and the final uses. You also may include any site plans/tables etc that further clarify what is being reviewed.**

June 28:

CLURO section 4.3.3.12 states in part as follows:

#### **4.3.3.12. Lapse of Conditional Use Permit or Uses Approved in Conjunction with Planned District Zoning**

2. **Except as otherwise stated in these regulations, authority to issue construction or occupancy permits pursuant to an approved Conditional Use Permit shall expire two years following City Council approval unless during the two-year period, a construction permit is obtained.** If a construction permit is obtained, the Conditional Use Permit shall continue in force and effect until (1) two years following the issuance of such construction permit, or (2) two years following the issuance of a Certificate of Occupancy, whichever is later, providing that construction is not stopped for a period of six months or more. If construction is stopped, the Conditional Use Permit shall expire (1) at the end of such six-month period, or (2) two years following the issuance of such construction permit, whichever is later.

**QUESTION 1: When was CLURO section 4.3.3.12 adopted?**

(4) CLURO section 4.3.3.17 states in part as follows:

#### **4.3.3.17. Prior Special Permits and Covenants**

1. **A use legally established pursuant to a Conditional Use Permit or a Planned District zoning prior to the date of adoption of these regulations shall be deemed a pre-existing conditional use or planned development and shall be permitted to continue, provided that it is operated and maintained in accord with any conditions prescribed at the time of its establishment.**

**QUESTION 2: When was CLURO section 4.3.3.17 adopted?**

**QUESTION 3: If a conditional use permit was approved in 1998 in connection with Ord. 98-40 (Al Copeland, Sr.) why wouldn't 4.3.3.17 subsection 1 deem this a pre-existing condition and still in force today?**

Neither construction permits nor a certificate of occupancy were ever obtained. The proposed uses of Ordinance 98-40 were not pursued so it does not meet the requirements of 4.3.3.17 which require that the PD be operated and maintained in accordance with the conditions set forth in the ordinance creating them to run with the land.

**June 29:**

**QUESTION 1: WHAT CONSTITUTES CALLING PARCEL U A MARINA?**

The final plat for Phases 1 and 2 of the Mariner's Village (1982) designated Parcel U as a harbor, used interchangeably with marina at that time. Since that original designation, the zoning map has identified Parcel U as a Planned District. At the time of its designation as PD, Parcel U was actively used as a marina. Under CLURO 4.3.3.17, Parcel U was operated and maintained in accord with the conditions prescribed at the time it was established prior to the adoption of CLURO 4.3.3. CLURO 8.2.3.9 indicates that Provisions of Section 4.2 non-conforming provisions do not apply.

**QUESTION 2: WHAT ELEMENTS OR CRITERIA JUSTIFY CALLING PARCEL U A MARINA?**

CLURO 6.4.53 defines marina uses.

**QUESTION 3: HOW MUCH TIME WOULD HAVE TO PASS BEFORE YOU COULD NOT CALL PARCEL U A MARINA?**

Because of CLURO 8.2.3.9, the issue is not time, but the use of the parcel itself.

**QUESTION 4: HOW IS THIS DIFFERENT FROM SAY THE SIX UNIT APARTMENT BUILDING ON LIVINGSTON ST. ACROSS FROM WOODLAKE SCHOOL THAT HAD NOT BEEN USED AS AN APARTMENT BUILDING FOR YEARS AND THEREAFTER LOST ITS DESIGNATION BECAUSE OF A ZONING CHANGE AND NON-USE?**

Livingston St zoning amendment request was to rezone a parcel from R-1 to R-3. A four – plex structure is located on the parcel. The 4-plex had been vacant since 2006, the parcel lost its non-conforming statues due to the lack of power for more than 6 months. The zoning of the property was established in 1993. See CLURO Sec. 4.2 Non-Conforming Provisions

Livingston Suites is in active litigation, and the First Circuit recently remanded the case to the trial court for disposition of the property owner's regulatory takings claim. The parcel of land was subject to the provisions of CLURO 4.2, the application of which is currently being litigated.

**June 29:**

**QUESTION 1: Isn't it premature to discuss amending the ordinance when we have not completed public comment on the existing plan? See highlight in yellow below.**

CLURO 4.3.3, with specific emphasis on 4.3.3.8, is designed to be a collaborative process where modifications to the site plan are considered. Any modifications to the site plan would need an amended ordinance.

**QUESTION 2: If it is not premature, why?**

See response to No. 1

**QUESTION 3: What is the criteria for changes in the plan that would require it to be sent back to Planning and Zoning?**

The CLURO does not expressly address that exact scenario, however, if the uses or footprint were to be expanded, Planning and Zoning would need to review those modifications that were not previously before it.

**June 30:**

**QUESTION 1: Is Succette entitled to a zoning change from the city of Mandeville?**

The official zoning map lists Parcel D as PD. LSUHF follows the procedure set forth in CLURO 4.3.3. and follows the procedure required for zoning amendments. LSUHD is seeking to define the PD designation as PD Combined Use, which is required by CLURO 7.5.15. Under CLURO 4.3.3.8, Council makes the final determination whether the zoning amendment to PDCU is appropriate.

**QUESTION 2: Where is that rule located?**

See above

**QUESTION 3: Under what condition is Succette entitled to a zoning change?**

CLURO 4.3.3. requires the Council to consider 4.3.3.1 and 4.3.3.8 when making the determination as to whether a zoning amendment to accomplish the PDCU designation is appropriate.

**QUESTION 4: Where is that rule located?**

See above

**QUESTION 5: Under what condition can Succette be denied a zoning change?**

The Council uses the same criteria to determine whether the PDCU designation is appropriate or not appropriate when evaluating whether the zoning amendment should be granted or denied.

**QUESTIONS:**

1. Why wasn't B1 criteria guidance clearly defined publicly for the Planning Commission and cited in the P&Z and Council reviews for this application?
2. Will the departure (90,000+ sq ft) that is well above the CLURO limit allowed for B1 zoning of 15,000 sq ft total be addressed? B1 is surrounded by residential property which this location is and applicant asks to be collocated with residential units. It is also not adjacent to any major highway, only narrow neighborhood streets.