
SPIKOWSKI PLANNING ASSOCIATES

1617 Hendry Street, Suite 416
Fort Myers, Florida 33901-2947

telephone: (239) 334-8866
fax: (239) 334-8878

e-mail: bill@spikowski.com
web site: www.spikowski.com

MEMORANDUM

TO: Fort Myers Beach Town Council
FROM: Bill Spikowski
DATE: January 27, 2003
SUBJECT: Ordinance Adopting LDC Chapter 34 (First Public Hearing, February 3, 2003)

Public hearings have been scheduled for the following dates to consider ordinance an ordinance that would adopt all of Chapter 34 into the new Land Development Code:

- February 3 at 3:00 PM
- March 3 at 6:30 PM.

You were previously provided with a complete draft of this ordinance that was dated December 17, 2002. (Additional copies can be obtained at Town Hall or downloaded from www.spikowski.com/beach.htm)

Additionally, you have received a January 5th memo from me that recommends specific changes to the December 17 draft and also provides the formal recommendations from the Local Planning Agency.

This memo supplements the January 5th memo (copy attached) and provides additional specific changes to the December 17 draft. The proposed changes are provided in this format so that the Town Council and the public will not have to read an entire new draft of Chapter 34 to identify just the changes.

- **Definition of Parking Lot, Shared Commercial (§ 34-2):** In the 12-17-02 draft of this code, the existing definition of “Parking lot, commercial” was retained but renamed as “Parking lot, shared permanent.” This name change was related to a new hierarchy of parking lot types as described in § 34-2011.

Since preparing those definitions, I have become aware that one type of parking lot wasn't properly assigned to this hierarchy: an off-site parking lot that is dedicated to a specific business. That type of parking lot has similar land use impacts to a “shared permanent” parking lot; thus the proposed definition should be modified by adding a new final clause as follows (shown here with shadowed text):

Parking lot, shared permanent ~~commercial~~ means a parking lot which constitutes the principal use of the property and which is available to the public for a fee, or which may be leased to individual persons or assigned to specific businesses or properties.

- **Redevelopment zoning districts (§ 34-662(b)):** Because Chapter 10 of this code still has not been completed, there is a possibility during the coming year that some of the buffer requirements in the existing Chapter 10 may conflict with the build-to line requirements in Chapter 34. To resolve that possible conflict, I propose adding the following language as § 34-662(b)(7):

(7) Build-to line requirements shall take precedence over any buffer or setback requirements imposed by other portions of this code.

- **SANTINI zoning district (§§ 34-681–34-683)):** A representative of the Santini shopping center and Fishtale Marina expressed concerns at the LPA hearing about some portions of the SANTINI district and about the timing of completion of the new LDC and how it might affect a pending development application for changes to the marina. The new SANTINI district is primarily concerned about the ultimate redevelopment of the shopping center, but is also worded to allow it to replace the existing CPD on the marina so that a unified redevelopment of both may be accomplished.

Since the LPA hearing, I have reworded a number of clauses in the SANTINI district in a way that resolves all of the concerns expressed on December 17. Revised versions of §§ 34-681–34-683 are included as Attachment A of this memo. However, to date the marina owners have not indicated that they wish for their marina to be rezoned into the new SANTINI district. Thus the new SANTINI district would apply at this time only to the existing shopping center.

- **VILLAGE zoning district (§§ 34-691–34-694)):** Revised versions of §§ 34-691–34-694 are included as Attachment B of this memo. This revised version includes all of the alternative language discussed in my January 5th memorandum and other minor revisions, plus the change described below.
- **VILLAGE zoning district (§ 34-694(d)(2)a):** This section was proposed as entirely new text, but in fact had been located in the previous LDC in § 34-3204. Property owners were left with the burden of proof as to the legality of mobile homes and RVs back two or

more decades ago. As a practical matter, this burden could hardly be met, despite evidence of past usage that is available from historical aerial photographs. The following revisions (indicated by shadowed text) would reduce the burden of proof to a more reasonable level:

- a. Any mobile home or non-transient recreational vehicle which has been lawfully placed on these sites may be replaced by a mobile home or park trailer of equal or smaller size. The director may use historical aerial photographs, or previous county or town permits if available, to verify that a replacement unit is not larger than a previous lawful unit, upon proof that the placement of the unit was lawful. Such proof may consist of copies of official tax records, tag registrations or county or town permits, or may be by affidavit or any other competent evidence. No additions which would cause the total size to exceed the size of the previous lawful unit will be permitted.
- **INTERIM ZONING MAP:** The following changes are recommended to the draft “Interim Zoning Map” dated June 17, 2002:
1. **VILLAGE zoning district:** There is a slight discrepancy between the VILLAGE district boundary on Figure 34-11 and the interim zoning map. Figure 34-11 is correct; the former Koreshan house on the beach just northwest of the Red Coconut should be shown in the VILLAGE district, not the RM district (STRAP 30-46-24-W2-00001.0000).
 2. **Wetlands error:** For informational purposes, wetlands are shown on the interim zoning map exactly as depicted on the Future Land Use Map. In Resolution 00-39, the Town Council corrected a wetlands mapping error on the Future Land Use Map for Captains Bay East (STRAP 04-47-24-W1-00002.0040). This same change should be made on the interim zoning map.
 3. **Planned development zoning districts:** This map depicted all properties that currently have “planned development” zoning designations (CPD, RPD, MPD, and PUD) with a solid blue outline.

Most of these properties also had a hatched internal pattern (this map’s symbol for CPD or RPD zoning), indicating that those properties would keep their planned development zoning after adoption of this map.

However, a number of CPD properties were shown ambiguously on this map, with the solid blue outline but with an underlying zoning district of either “DOWNTOWN” or “SANTINI.” This ambiguity was intentional because it was not clear at that time whether these properties should retain their CPD status or be rezoned into the DOWNTOWN or SANTINI districts.

Upon consultation with affected landowners, it has become obvious that most wish to retain their existing CPD zoning (mainly due to the investment they have made in achieving that status and their ability to later request rezoning from CPD to “DOWNTOWN” or “SANTINI”). However, the representative for one landowner

has indicated to me that they would prefer not to retain their CPD status, instead having their property regulated the same as surrounding properties. Thus my final recommendation is to *not* rezone planned developments even when that was suggested on the original map, except that the Diamondhead parking lot (formerly, the Carslake CPD at 1999 Estero), located on the bay side of Estero just northwest of Virginia Avenue, should be rezoned into the new "Downtown" district at this time.

Attachment C identifies *all* existing planned developments in the Town of Fort Myers Beach and provides details of each approval.

Copy to: Local Planning Agency, Town Attorney, Town Staff, Library Reference Desk

Attachments: A – Revised §§ 34-681–34-683, SANTINI zoning district
B – Revised §§ 34-691–34-694, VILLAGE zoning district
C – Chart identifying all existing planned developments, with details of each approval
D – January 5th memorandum describing additional changes to Chapter 34

ATTACHMENT A

SANTINI

Subdivision III. SANTINI Zoning District

Sec. 34-681. Purpose.

The purpose of the SANTINI district is to provide alternative futures for the Santini Marina Plaza, either a continuation of the current marina and shopping center or their transformation into a pedestrian-oriented neighborhood center.

- (1) The existing stores and marina in the SANTINI district may continue in full operation and may be renovated or redeveloped in accordance with § 34-682.
- (2) As an alternative, the SANTINI district provides a second set of regulations (in § 34-683) that would allow the transformation of the shopping center and marina into a pedestrian-oriented neighborhood center:
 - a. The SANTINI district can become a neighborhood center to serve visitors and the populous south end of the island in accordance with the design concepts in the Fort Myers Beach Comprehensive Plan (see Policies 3-C-1, 3-C-2, and 4-F-2-ii).
 - b. The site could support additional mixed-use buildings if provided with shared parking, a pattern of smaller blocks, and an urban plaza.
 - c. Full realization of this concept will require a partnership between the property owners and the town that will transform the adjoining portion of Estero Boulevard from a rural highway with deep swales into a street with shaded sidewalks and some on-street parking.

Sec. 34-682. District map and applicability.

The area indicated on Figure 34-10 is the outer boundary of the SANTINI district.

- (1) Properties that are zoned in a planned development (PD) district are governed by the terms of the PD zoning resolution rather than the requirements of the SANTINI district, even if the property is shown on Figure 34-10.

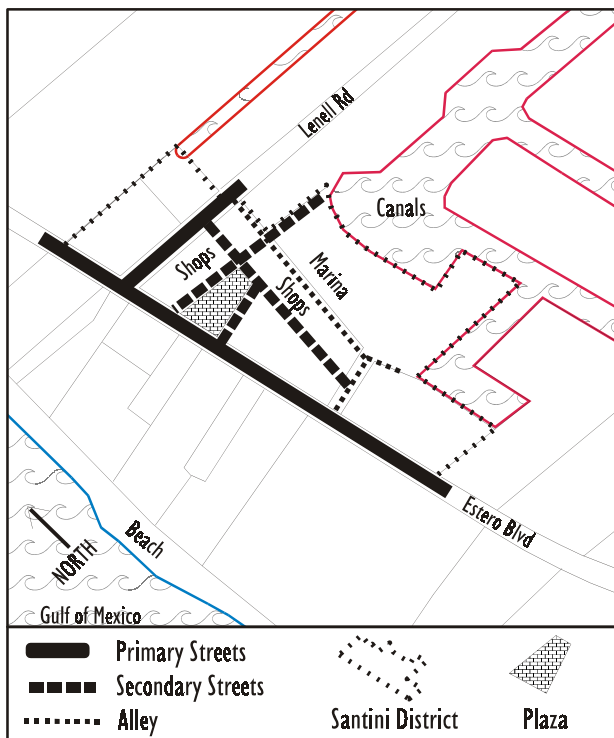


Figure 34-10

- (2) For properties zoned into the SANTINI district rather than in a PD district, the applicable regulations are as follows:
 - a. **Continued use of existing buildings.** The regulations in this subdivision apply to the continued use of existing buildings and structures for allowable uses as defined in Tables 34-1 and 34-2 for the SANTINI zoning district.
 - b. **Renovating, enlarging or replacing individual buildings.**
 1. Existing buildings may be renovated, enlarged, or replaced as follows:
 - a- Physical enlargement of existing buildings is permitted provided that the improvements do not constitute a “substantial improvement” as that term is defined in § 6-405 of this code, and
 - b- Replacements for existing buildings are permitted provided that they will not increase the existing floor area ratio, as that term is defined in § 34-633.

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2. Renovations, enlargements, and replacements to existing buildings are governed by the regulations for the CM zoning district as provided in Table 34-3 and by the other limitations in this section.
3. The commercial design standards (§§ 34-991–1010) shall apply to all commercial and mixed-use buildings, or portions thereof, that are being newly built.
4. Any specific deviations granted by prior CPD resolutions shall remain in effect for properties that are zoned into the SANTINI district.

- (3) ***Transformation of existing businesses into a neighborhood center.*** Physical enlargements of existing buildings that constitute a “substantial improvement” as that term is defined in § 6-405 must be in the form of a neighborhood center as described in § 34-683.

Sec. 34-683. Creation of neighborhood center.

(a) ***Purpose.*** This section provides detailed regulations for the transformation of existing businesses into a neighborhood center.

- (1) This transformation may be required by § 34-682(3) or may be chosen by any landowner in the SANTINI district.
- (2) Once this option is chosen or required, all subsections of § 34-683 become mandatory requirements, except where they are clearly inapplicable to a given portion of the property.

(b) ***Agreement for streetscape improvements.*** Landowners who choose to partially or fully develop their land in the SANTINI district into a neighborhood center may simultaneously request public streetscape improvements by entering into a development agreement with the town (see § 2-91–102).

- (a) This agreement would establish a public/private partnership for the necessary improvements, identifying responsibilities, timing, approximate costs, and funding.
- (2) This agreement would also contain a detailed plan for the redevelopment of the property

consistent with the regulations in the remainder of this section.

(c) ***Allowable uses.*** Allowable uses for the SANTINI zoning district are defined in Tables 34-1 and 34-2.

(d) ***Streets.*** Secondary streets and alleys shall be laid out and dedicated to the public generally in accordance with Figure 34-10 to improve circulation for vehicles and pedestrians.

(e) ***Plazas.*** An urban plaza at least 1/2 acre in size shall be provided along Estero Boulevard as a focal point for mixed-use buildings and as a public gathering place. This plaza may also be used for overflow parking.

(f) ***Build-to lines established.*** Build-to lines (see § 34-662) vary according to the streets and street types designated on Figure 34-10.

- (1) Build-to lines for all primary streets and streets surrounding the plaza are 0 feet to 5 feet.
- (2) Build-to lines for all secondary streets are 0 feet to 10 feet.
- (3) Awnings, canopies, and marquees over sidewalks and pedestrian walkways are encouraged by the commercial design standards (§ 34-991–1010), especially along Estero Boulevard.
- (4) Compliance with build-to lines is not required for buildings that are used for the storage of boats or for marina accessory uses, or for any buildings extend closer than 40 feet to the waterfront.
- (5) Buildings used for the storage of boats or cars must be separated from Estero Boulevard by a liner building that provides usable building space at least 20 feet deep (see example in Figure 34-8).
 - a. This requirement applies to all buildings that extend closer than 75 feet to Estero Boulevard.
 - b. Liner buildings must be two stories or more in height.
 - c. Liner buildings may be detached from or attached to building space used for the storage of boats or cars.
 - d. Liner buildings must be constructed simultaneously with those portions of

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buildings that are subject to this requirement.

e. Liner buildings and any visible portions of the principal facade of buildings that are used for the storage of boats or cars must meet the commercial design standards (see §§ 34-991–1010).

(g) **Setback lines.** No minimum setbacks are required (see § 34-662).

(h) **Building frontage.** Building frontage limits (see § 34-663) vary according to the street types designated on Figure 34-10:

- (1) For primary streets and streets surrounding the plaza, building frontages shall be at least 70% of the lot frontage.
- (2) For secondary streets, building frontages shall be at least 35% of the lot frontage.
- (3) For multiple adjoining lots under single control, or for a single lot with multiple buildings, the percentages above apply to the combination of lot(s) and building(s).
- (4) Phased redevelopment is permitted provided that a site plan is provided showing how the building frontage percentages will be met upon completion of the redevelopment.

(i) **Building height.** Building heights (see § 34-631) shall be limited to:

- (1) For parcels immediately abutting a plaza of at least ½ acre in size and for parcels immediately abutting canals, a maximum of 40 feet above base flood elevation and no taller than three stories.
- (2) For all other parcels, a maximum of 30 feet above base flood elevation and no taller than two stories.

(j) **Floor area ratio (FAR).** Floor area ratios shall not exceed 1.0 (see § 34-633).

(k) **Residential density.** Residential units can be constructed in the SANTINI district up to the maximum density allowed by the Fort Myers Beach Comprehensive Plan.

(l) **Guest units.** Guest units may be substituted for dwelling units in accordance with the equivalency factors found in § 34-1802.

(m) **Reductions to minimum parking requirements.** Neighborhood centers are “park-once” districts with preference given to pedestrian movement. The number of parking spaces normally required by § 34-2020 shall be multiplied by 67% to determine the adjusted parking requirement for the SANTINI district. Adjoining on-street parking spaces may be counted toward this parking requirement.

(n) **Parking location.** Off-street parking may be provided under commercial or mixed-use buildings provided that:

- (1) All under-building parking spaces must be separated from primary streets and the plaza by usable commercial space at least 20 feet deep that meets all commercial design guidelines; and
- (2) Driveways leading to under-building parking spaces must connect to a driveway, secondary street, or alley, and may not be accessed from a primary street or pedestrian plaza.

(o) **Commercial design standards.** The commercial design standards (§§ 34-991–1010) shall apply to all commercial and mixed-use buildings, or portions thereof, that are being newly built, and to “substantial improvements” to such buildings as defined in § 6-405.

Secs. 34-684--34-690. Reserved.

CORRECTED ATTACHMENT B

VILLAGE

Subdivision IV. VILLAGE Zoning District

Sec. 34-691. Purpose.

The purpose of the VILLAGE district is to provide alternative futures for the Red Coconut and/or Gulf View Colony, either a continuation of the current land uses or their transformation into a traditional neighborhood pattern.

- (1) The existing residences and businesses in the VILLAGE district may continue in full operation and may be renovated in accordance with §§ 34-692 and 34-694.
- (2) As an alternative, the VILLAGE district provides a second set of regulations that would allow the transformation of either of the existing mobile home and recreational vehicle parks into more permanent and durable housing types in a traditional neighborhood pattern, in accordance with the design concepts in the Fort Myers Beach Comprehensive Plan.

Sec. 34-692. District map and applicability.

The area indicated on Figure 34-11 is the outer boundary of the VILLAGE district.

- (1) Properties that have been zoned into a planned development (PD) district are governed by the terms of the PD zoning resolution rather than the requirements of the VILLAGE district, even if the property is shown on Figure 34-11.
- (2) For properties zoned into the VILLAGE district rather than in a PD district, existing residences and businesses may continue in full operation and may be modified in accordance with the following regulations:
 - a. **Continued use of existing mobile homes and recreational vehicles.** The continued use of existing mobile homes and recreational vehicles is permitted in accordance with § 34-694 below.
 - b. **Continued use of and renovations, enlargements, or replacement of existing permanent buildings.**
 1. Existing permanent buildings may be renovated, enlarged, or replaced as follows:
 - a- Renovations and/or physical enlargement are permitted provided

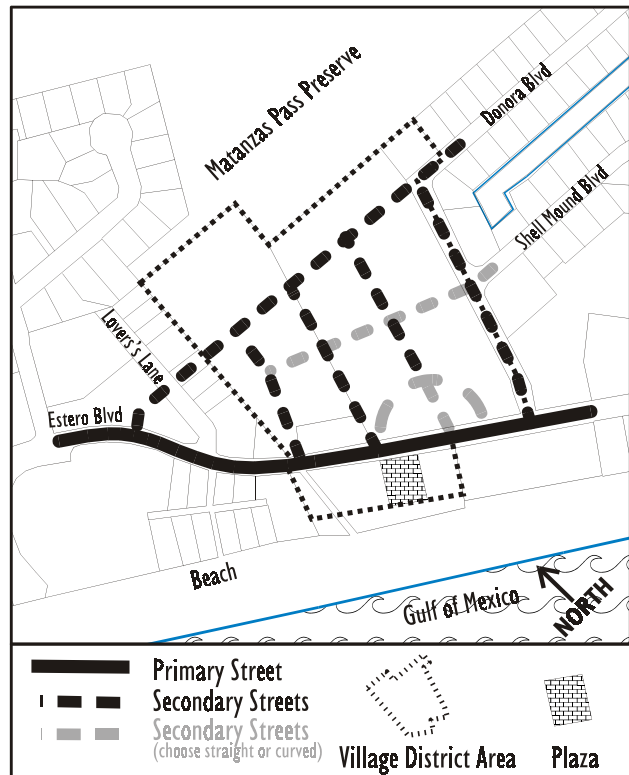


Figure 34-11

the improvements do not constitute a “substantial improvement” as that term is defined in § 6-405 of this code; or

- b- Replacement buildings are permitted provided that they do not increase the existing floor area ratio, as that term is defined in § 34-633; or
- c- Other renovations, enlargements, and/or replacements are permitted provided they comply with those regulations for the CB zoning district that are found in §§ 34-704–34-706.
2. Allowable uses in these buildings are the same as provided in § 34-703(a) for the CB zoning district.
3. The commercial design standards (§§ 34-991–1010) shall apply to all commercial and mixed-use buildings that are visible from Estero Boulevard, or portions thereof, that are being newly built, and to “substantial improvements” to such buildings as defined in § 6-405.

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(3) *Transformation of existing mobile home and recreational vehicle parks.* Policies 3-A-5, 3-A-6, and 4-F-2-iii of the Fort Myers Beach Comprehensive Plan have authorized a pre-approved redevelopment option for land in the VILLAGE district.

- a. The following concepts are expected in this redevelopment process:
1. traditional neighborhood design emphasizing streets that are interconnected and dwellings with porches or balconies on the front, primary entrances visible from the street, and cars to the rear (except for on-street parking);
 2. detached houses or cottages (with optional accessory apartments) abutting existing single-family homes;
 3. low-rise townhouses or apartments allowed elsewhere on the site;
 4. walkable narrow streets with shade trees that double as view corridors to the Preserve and Gulf;
 5. open space that allows views to be maintained from Estero Boulevard to the Gulf;
 6. mixed commercial and residential uses along the Bay side of Estero Boulevard;
 7. quiet internal street connections to the north and south;
 8. significantly reduced density from the existing level of 27 RV/mobile homes per acre at the Red Coconut to a maximum level of 15 dwelling units per acre; and
 9. a site design that accommodates a publicly acquired access point to the Matanzas Pass Preserve.
- b. At the option of landowners in the VILLAGE district, a development order may be obtained to redevelop all or part of this property in accordance with the option described in more detail in § 34-693 and generally in accordance with either of the conceptual site plans found in the Community Design Element of the Fort Myers Beach Comprehensive Plan. Until such time as this development order is obtained, the regulations in § 34-693 shall have no effect.

Sec. 34-693. Regulations to obtain development order for pre-approved redevelopment option.

(a) *Purpose.* This section provides detailed regulations for the pre-approved redevelopment option if that option is chosen by landowners, as described in § 34-692(3).

(b) *Allowable uses.* Allowable uses in the VILLAGE district are defined in Tables 34-1 and 34-2. If a development order is issued pursuant to § 34-692(3), the additional uses in the “Open” subgroup of Table 34-1 for the residential, lodging, office, and retail groups will be permitted on property that is subject to the development order.

(c) *Streets.* Secondary streets shall be laid out and dedicated to the public generally in accordance with Figure 34-11 to improve circulation for vehicles and pedestrians.

- (1) Figure 34-11 provides two acceptable options for the new network of secondary streets.
- (2) Under either option, the street design must incorporate the extension of a through street from Donora Boulevard to Lovers Lane that will be permanently accessible by the public.

OPTION ONE: (original proposal, with new closing sentence)

(d) *Plazas.* A plaza at least 100 feet wide shall be provided between Estero Boulevard and the Gulf as a focal point for abutting buildings and as part of a prominent visual corridor to the water. This plaza need not be available for public use.

OPTION TWO: (landowner request & LPA recommendation)

(d) *View corridor.* A view corridor at least 50 feet wide shall be provided between Estero Boulevard and the Gulf as a focal point for abutting buildings and as part of a prominent visual corridor to the water.

(e) *Build-to lines established.* Build-to lines (see § 34-662) for all streets shall be 0 feet to 10 feet.

(f) *Setback lines established.* Setback lines (see § 34-662) are established as follows:

- (1) For principal buildings, minimum setbacks are as follows:

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- a. Rear setbacks: 20 feet
- b. Water body setbacks: see § 34-637(d)(3).
- (2) For accessory structures, minimum setbacks are set forth in § 34-1171–1176.
- (g) ***Building frontage.*** Building frontage limits (see § 34-663) vary according to the street types designated on Figure 34-11:
- (1) For primary streets, building frontages shall be at least 50% of the lot frontage. This percentage may be reduced to 35% for properties between Estero Boulevard and the Gulf of Mexico provided that the open space thus created allows open views to the Gulf.
- (2) For multiple adjoining lots under single control, or for a single lot with multiple buildings, the percentages above apply to the combination of lot(s) and building(s).
- (h) ***Building height.*** Building heights (see § 34-631) shall be limited to:
- (1) For properties that front on the bay side of Estero Boulevard and all streets other than Estero Boulevard, a maximum of 30 feet above base flood elevation and no taller than two stories. However, for mixed-use buildings and for elevated buildings without enclosed space on the first story, the maximum height is three stories (but still limited to 30 feet above base flood elevation).
- (2) For properties that front on the beach side of Estero Boulevard, a maximum of 40 feet above base flood elevation and no taller than three stories.
- (i) ***Floor area ratio (FAR).*** Floor area ratios shall not exceed 1.2.
- (j) ***Residential density.*** Policy 4-F-2-iii of the Fort Myers Beach Comprehensive Plan allows up to 15 dwelling units per acre for redevelopment in accordance with this section. Any land used for roadway or access purposes may be included in this density computation.
- (k) ***Guest units.*** Guest units may be substituted for dwelling units in accordance with the equivalency factors found in § 34-1802.

(l) ***Circulation and parking.*** Off-street parking may be provided *under* commercial or mixed-use buildings provided that:

- (1) All under-building parking spaces must be separated from primary streets and the plaza by usable commercial space at least 20 feet deep that meets all commercial building design guidelines; and
- (2) Driveways leading to under-building parking spaces must connect to a secondary street or an alley and may not be accessed from a primary street or pedestrian plaza.

(m) ***Commercial design standards.*** The commercial design standards (§§ 34-991–1010) shall apply to all commercial and mixed-use buildings that are visible from Estero Boulevard, or portions thereof, that are being newly built, and to “substantial improvements” to such buildings as defined in § 6-405.

Sec. 34-694. Regulations for existing mobile homes and recreational vehicles.

(a) ***Definitions.*** These phrases, when used in this subdivision, shall have the following meanings:

Park trailer means a transportable recreational vehicle which has a body width not exceeding 14 feet and which is built on a single chassis and is designed to provide seasonal or temporary living quarters when connected to utilities necessary for operation of installed fixtures and appliances. “Park trailers” have a statutory definition in F.S. § 320.01(b) which may change; the use of the term “park trailer” in this subdivision is intended to change with any such statutory changes so as to be consistent with state law.

Transient RV park means a recreational vehicle development designed, intended for, or used by relatively short-stay visitors (transient guests) who bring their *transient* recreational vehicle with them and remove it at the end of their visit. The individual recreational vehicle site is then ready for another visitor. [definition moved from § 34-2]

Transient recreational vehicle unit means a camping trailer, truck camper, motor home, or travel trailer, motor home, or van conversion (as those terms are defined by F.S. § 320.01(b)) which is

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brought to the transient recreational vehicle park by the user and is removed from the park at the end of the user's visit. Park trailers are not considered to be transient recreational vehicles. *[definition moved from § 34-2]*

(b) 1987 site plan approvals. Lee County approved site plans for Gulf View Colony and Red Coconut in 1987 to formally acknowledge the right to replace mobile homes and non-transient recreational vehicles in portions of each park in accordance with previous regulations. These site plans were approved in accordance with Lee County Ordinance 86-36. The Town of Fort Myers Beach will continue to recognize those rights, which are incorporated into the regulations set forth in this section.

- (1) ~~Sites in Gulf View Colony and Red Coconut or lots located within a park shall not be reconfigured or reduced in dimension so as to increase the density for which the park was originally created.~~ *[relocated from § 34-3272(3)c.3]*
- (2) ~~No division of any parcel may be permitted which creates a lot with width, depth or area below the minimum requirements stated in this chapter, provided that Contiguous sites lots of record may be combined and redivided to create larger dimension sites lots as long as such recombination includes all parts of all sites lots, and existing allowable density is not increased, and all setback requirements are met.~~ *[previous sentence moved from § 34-3272(3)b]*
- (3) ~~Sec. 34-2351. Use as permanent residence. The use of a recreational vehicle or park trailer type unit by a permanent resident as a permanent residence, as the terms are defined in F.S. ch. 196, is has been expressly prohibited as of since September 16, 1985. Persons who have established permanent residency within a recreational vehicle park as of September 16, 1985, are exempt from the residency provisions of this section, provided that the proof of residency was established by an affidavit filed with the Lee County prior to October 31, 1985.~~ *[subsection moved from § 34-2351]*
- (4) Permits shall also be issued for reroofing and roof repairs for any existing mobile home, park model, or recreational vehicle located

~~within a mobile home or recreational vehicle park, regardless of lot size.~~ *[moved from § 34-3204]*

(c) **Gulf View Colony:** A site plan for Gulf View Colony was approved by Lee County on February 11, 1987, which showed 59 mobile homes sites plus common recreational features. This plan was drawn by G. H. Taylor and was dated January 10, 1987.

- (1) Lee County approved the replacement of a mobile home or park trailer on all 59 sites. These sites were determined to have been in compliance with regulations that were in effect at the time of their creation.
- (2) Replacement of mobile homes or park trailers on these sites must meet the following regulations:
 - a. All units mobile homes or recreational vehicles shall have a minimum separation of ten feet between units (body to body) and appurtenances thereto. Each unit shall be permitted to have eaves which encroach not more than one foot into the ten-foot separation. *[subsection moved from § 34-3272(3)c.2]*

OPTION ONE: (original proposal)

- b. Replacement mobile homes, park trailers, and additions must meet the floodplain elevation requirements of § 6-472(2), including the limitations on replacements where past flooding has caused "substantial damage" on specific sites.

OPTION TWO: (landowner request)

- b. Replacement mobile homes, park trailers, and additions must meet the floodplain elevation requirements of § 6-472(2), except that the limitations on replacements where past flooding has caused substantial damage on specific sites shall only apply under the first definition of "substantial damage" in § 6-405; the second definition shall not apply in the VILLAGE zoning district.

- c. A move-on permit must be obtained in accordance with § 34-1923 and the mobile home or park trailer must comply with the

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- tie-down and skirting requirements of that section.
- d. One freestanding storage shed or utility room, not exceeding 120 feet in floor area and ten feet in height, may be permitted in any type B (nontransient) park provided that:
1. No storage shed or utility room shall be located closer than five feet to any side or rear lot line or closer than ten feet to any mobile home or park trailer recreational vehicle under separate ownership; and
 2. The shed or room is properly tied down and complies with all building code requirements. *[moved from § 34-786(b)]*
- e. Additions to mobile homes or park trailers recreational vehicles may be permitted in nontransient parks on permanent recreational vehicles provided that:
1. The addition shall not be located closer than five feet to any side or rear lot line or closer than ten feet to any mobile home, park trailer, or addition thereto under separate ownership. The individual recreational vehicle site meets or exceeds the minimum required lot size set forth in this division;
 2. The total floor area of any additions, excluding open decks and stair landings, shall not exceed the total floor area of the mobile home or park trailer recreational vehicle; and
 3. The maximum height of additions shall not exceed one story or the height of the mobile home or park trailer recreational vehicle, whichever is less.
 4. Open decks, up to 120 square feet in area, may be permitted provided all setback requirements are met. Stair landings that are incorporated into a deck shall be calculated in the square footage of the deck.
 5. Stairs or stair landings, which are attached to an addition, and which are not incorporated into an open deck, may be permitted to encroach three feet into the side and rear setbacks. No stair landing shall exceed 12 square feet in area. *[moved from § 34-788]*
- (d) **Red Coconut:** Parts of a site plan for the Red Coconut were approved by Lee County on June 2, 1987. This plan was drawn by David Depew and was dated May 20, 1987.
- (1) **Sites approved in 1987.** Lee County approved the replacement and potential enlargement of a mobile home or park trailer on each of the following sites: A7-A9, A12-A15, B12, B14-B16, C1, C7, D1, D2, D6, D8-D17, E1-E16, E18-E20, F1-F9, and G2-G12.
- a. These sites were determined to have been in compliance with regulations that were in effect at the time of their creation.
 - b. Replacement mobile homes or park trailers on these sites must follow the same regulations as provided in § 34-694(c)(2).
- (2) **Sites not approved in 1987.** Some smaller sites that also contained a mobile home or non-transient recreational vehicle were not approved for larger units in 1987: AA, A1-A6, A10-A11, A16-A17, B1-B11, B13, C2-C6a, C8-C10, CE1-CE7, CWO0-CW6, CRD, D3-D5, D7-D7A, E17, K2, P2-P3, Z2-Z3, and 1-6 on the bay side of Estero Boulevard. Units on these sites may be replaced only by a unit of equal or smaller size, in accordance with the following regulations:
- a. Any mobile home or non-transient recreational vehicle unit which has been lawfully placed on these sites on any rental lot within any rental park, regardless whether the park has been converted to either cooperative or condominium ownership prior to June 25, 1986, may be replaced by a unit mobile home or park trailer of equal or smaller size upon proof that the placement of the unit was lawful. Such proof may consist of copies of official tax records, tag registrations or county or town permits, or may be by affidavit or any other competent evidence. No additions which would cause the total size to exceed the size of the previous lawful unit will be permitted. *[moved from § 34-3204]*
 - b. Replacement mobile homes and park trailers must meet the floodplain elevation requirements of § 34-694(c)(2)b.

- c. A move-on permit must be obtained in accordance with § 34-1923 and the mobile home or park trailer must comply with the tie-down and skirting requirements of that section.
- d. One storage shed or utility room may be permitted if in compliance with § 34-694(c)(2)d.
- e. Additions may not be constructed.
- (3) ***Transient RV park.*** The remainder of the sites shown on this plan may continue in operation as a transient RV park. These sites can be identified on the 1987 site plan as follows: on the Gulf of Mexico, sites 1-53; on the bay side of Estero Boulevard, sites H1-H10, J1-J10, K1, K3-K18, L1-L4, M1-M4, N1-N14, P1, R1-R3, Y-Y-Y-Y, and Z1. The following regulations apply to these 130 sites:
 - a. Transient recreational vehicles must comply with the floodplain regulations found in § 6-472(3).
 - b. Additions may not be constructed onto transient recreational vehicles.
 - c. Storage sheds and other accessory structures may not be placed on individual sites.
 - d. All travel trailers, motor homes or camping trailers left unattended for more than two weeks during the months of June through December. For purposes of this section only, the term “unattended” shall be interpreted to mean that the owner of the unit has not provided for a person to be responsible for the unit in the event of a hurricane watch alert as set forth in the following subsection (2)b of this section. [moved from § 34-762(2)i.2.a]
 - e. All travel trailers, motor homes or camping trailers shall be tied down within 48 hours of the issuance of a hurricane watch for the county by the National Hurricane Center. Travel trailers, motor homes or camping trailers not tied down shall be removed from the county within 48 hours of such a hurricane watch, or placed within an approved off-lot storage area. [moved from § 34-762(2)i.2.b]

Secs. 34-695--34-700. Reserved.

<i>RESOLUTION NUMBER</i>	<i>APPROVAL DATE</i>	<i>APPLICANT</i>	<i>PROJECT NAME</i>	<i>REZONING REQUEST (FROM/TO)</i>	<i>CASE NUMBER</i>	<i>SECTION TOWNSHIP RANGE</i>	<i>SHOWN HOW ON INTERIM ZONING MAP?</i>	<i>FINAL RECOMMENDATION</i>
FMB-99-07	1999/02/22	Peter Lisich	Pink Shell / Abaco Beach	amend CPD	95-01-034.03Z 02.??	24-46-23	CPD	CPD
FMB-00-07	2000/01/10	Pink Shell Resort	Pink Shell / all	amend CPD & PUD	95-01-034.03Z 03.01	24-46-23	CPD	CPD
FMB-00-07a	2000/01/29	Pink Shell Resort	Pink Shell / all	amend CPD & PUD	95-01-034.03Z 03.01	24-46-23	CPD	CPD
FMB-01-21	2001/06/25	Boykin Hotel Properties	Pink Shell / White Sands	amend PUD & CPD	DCI2001-00027	24-46-23	CPD	CPD
FMB-01-26	2001/08/27	Boykin Hotel Properties	Pink Shell / Captiva-Useppa	RM-2 to MPD	DCI2001-00071	24-46-23	CPD	CPD
FMB-99-08	1999/02/22	Peter Lisich	Hotel Casa Playa, 510 Estero Bl.	amend CPD	95-07-043.02Z 02.01	24-46-23	CPD	CPD
FMB-97-14	1997/04/07	Pink Porpoise	Edison Beach House, 830 Estero	RM-2 & CT to CPD	96-12-018.03Z 01.01	24-46-23	CPD	CPD
FMB-01-14	2001/06/04	First Central Invest.	Edison Beach House, 830 Estero	amend CPD, park. lot	DCI2000-00002	24-46-23	CPD	CPD
FMB-01-03	2001/01/22	John Richard	Rusty's, 237-320 Old San Carlos	C-1 to CPD	DCI2000-00051	24-46-23	DOWNTOWN	CPD
FMB-01-08	2001/04/09	Edward F. Streit, Trustee	Dockside Inn, 1130 First St.	C-1 to CPD	DCI2000-00059	24-46-23	DOWNTOWN	CPD
FMB-99-05	1999/02/08	Estero Bay Hotel Co.	Matanzas Inn, 414-416 Crescent	CPD & C-1 to CPD	95-01-003.02Z 02.01	19-46-24	DOWNTOWN	CPD
FMB-00-09	2000/02/14	Lighthouse Island Resort	Lighthouse Island Resort	C-1 to CPD	99-09-352.02Z	24-46-23	DOWNTOWN	CPD
FMB-02-07	2002/04/15	Seafarer's 1997 & 2000	Seafarer's Plaza	CPD & C-1 to CPD	DCI2000-00047	24-46-23	DOWNTOWN	CPD
FMB-99-26	1999/06/21	Carslake/Diamondhead	Estero Bl. at Virginia	vacated CPD to CPD	99-03-069.02Z 01.01	19-46-24	DOWNTOWN	DOWNTOWN
FMB-00-28	2000/06/12	FMB Fire Control District	Headquarters, 100-102 Voorhis	TFC-2 to CPD	DCI2000-00027	29-46-24	CPD	CPD
FMB-02-04	2002/01/14	Darin Smith	White Cap, 4631-4731 Estero Bl.	RS-1 & RM-2 to RPD	DCI2001-00029	29-46-24	RPD	RPD
FMB-98-11	1998/05/05	James Figuerado	Publix, 4791 Estero Bl.	RM-2 to CPD	96-02-186.02Z 01.01	28-46-24	CPD	CPD
FMB-98-11a	1998/05/05	James Figuerado	Publix, 4791 Estero Bl.	RM-2 to CPD	96-02-186.02Z 01.01	28-46-24	CPD	CPD
FMB-01-06	2001/02/12	Mid-Island Marina	Publix, 4791 Estero Bl.	amend CPD (signs)	DCI2000-00078	28-46-24	CPD	CPD
FMB-98-10	1998/04/20	Spas Pasev	Sandbar Resort	RM-2 to CPD	95-04-118.02Z 02.01	33-46-24	CPD	CPD
FMB-98-10a	1998/04/20	Spas Pasev	Sandbar Resort	RM-2 to CPD	95-04-118.02Z 02.01	33-46-24	CPD	CPD
Z-95-085	1995/12/18	Outrigger Resort	Outrigger Resort, 6200 Estero Bl.	RM-2 to CPD	95-07-137.02Z	33-46-24	CPD	CPD
Z-91-102	1991/12/9	Captains Bay	Captains Bay, 6661 Estero Bl.	RS-1& CT to RPD	91-10-15-DCI	03-47-24	RPD	RPD
PD-92-020	1992/11/12	Captains Bay	Captains Bay, 6661 Estero Bl.	adm. amend RPD	91-10-015-DCI-01(a)	03-47-24	RPD	RPD
Z-93-072	1993/11/15	Captains Bay	Captains Bay, 6661 Estero Bl.	amend RPD	91-10-015-DCI-01(b)	03-47-24	RPD	RPD
FMB-97-24	1997/07/07	First Union	Eckerd, 7001 Estero Bl.	CT to CPD	96-12-206.02Z 01.01	03-47-24	SANTINI	CPD
FMB-97-35	1997/10/20	First Union (see 97-24)	Eckerd, 7001 Estero Bl.	CT to CPD	96-12-206.02Z 01.01	03-47-24	SANTINI	CPD
Z-93-072	1993/11/15	Cap Plaza	121 Lenell Rd. (behind Eckerd)	CN-1 to CPD	92-3-17-DCI-1	03-47-24	SANTINI	CPD
Z-88-268	1988/10/24	Fish Tale Marina	Fish Tale Marina, 7105 Estero Bl.	C-1 & CT to CPD	88-9-8-DCI	03-47-24	SANTINI	CPD
Z-88-268A	1989/07/31	Fish Tale Marina	Fish Tale Marina, 7105 Estero Bl.	clarification of CPD	88-9-8-DCI	03-47-24	SANTINI	CPD
Z-89-043	1989/06/12	Fish Tale Marina	Fish Tale Marina, 7295 Estero Bl.	amend CPD	88-9-8-DCI(a)	03-47-24	SANTINI	CPD
PD-90-011	1990/04/18	Fish Tale Marina	Fish Tale Marina, 7295 Estero Bl.	adm amend/golf	88-9-8-DCI(b)	03-47-24	SANTINI	CPD
HEX decision	1993/12/17	Fish Tale Marina	Fish Tale Marina, 7105 Estero Bl.	outdoor seating	93-12-09-SP-05	03-47-24	SANTINI	CPD
Z-94-013	1994/05/16	Fish Tale Marina	Fish Tale Marina, 7105 Estero Bl.	amend CPD	88-9-8-DCI(c)	03-47-24	SANTINI	CPD

ATTACHMENT C

ATTACHMENT D

SPIKOWSKI PLANNING ASSOCIATES

1617 Hendry Street, Suite 416
Fort Myers, Florida 33901-2947

telephone: (239) 334-8866
fax: (239) 334-8878

e-mail: bill@spikowski.com
web site: www.spikowski.com

MEMORANDUM

TO: Fort Myers Beach Town Council
FROM: Bill Spikowski
DATE: January 5, 2003
SUBJECT: Introduction of Ordinance Adopting LDC Chapter 34 (January 13, 2003)

You were previously provided with a complete draft of an ordinance that would adopt Chapter 34 of the new Land Development Code. That draft was dated December 17, 2002. (Additional copies can be obtained at Town Hall or downloaded from www.spikowski.com/beach.htm)

At your January 13 regular meeting, you are scheduled to have this ordinance formally introduced, at which time two public hearing dates must be selected. Time has been reserved for public hearings on February 3 at 3:00 PM and March 3 at 6:30 PM.

At its December 17 public hearing, the Local Planning Agency made a formal finding of this ordinance's consistency with the Fort Myers Beach Comprehensive Plan. In addition, the LPA made the following specific recommendations regarding the text of Chapter 34:

- **Special Exception Criteria (§ 34-88):** The LPA deleted a redundant criterion for approval of special exceptions (formerly in § 34-88(2j)).
- **DOWNTOWN zoning district (§ 34-677(c)):** LPA members discussed whether the final draft of the code should include language that might allow outdoor display of merchandise on public property in Times Square and along Old San Carlos. The LPA took no formal action. To allow the Town Council to consider this possibility, I will include the following optional language in the next draft that could be inserted to allow limited outdoor display of merchandise in Times Square and along the Old San Carlos sidewalks:

§ 34-677(c)(2)e. No merchandise may be displayed on a public sidewalk or plaza except when placed on tables or shelves that are moved indoors during any hours the business is not open and that do not exceed the following dimensions:

1. Maximum height: 3 feet
2. Maximum width parallel to right-of-way line: 8 feet
3. Maximum depth: may not extend more than 2 feet beyond the right-of-way line onto the sidewalk or plaza.

The next draft will also propose limiting the number of outdoor sales carts on private property to two per parcel.

- **VILLAGE zoning district (§ 34-693(d)):** The LPA supported a request by the Red Coconut to replace the recommended requirement in 34-693(d) for a 100-foot-wide plaza on the Gulf of Mexico with a 50-foot-wide view corridor. The vote was 6-3. The LPA recommendation will be shown as Option Two in the next draft; the original language, modified to clarify that the plaza need not be available for public use, will be shown as Option One.
- **VILLAGE zoning district (§ 34-694(c)):** The Red Coconut requested to have mobile homes and RVs released from the standard town rule on repeated flood damage (as found in § 6-472) and to revert to the previous Lee County language. The LPA requested further research into this request and took no action. The landowner's request will be shown as Option Two, but I do not recommend making that change, which would eliminate exactly the language (shown here with shadowed text) that the town added to the definition of "substantial damage" in Ordinance 02-01:

"Substantial damage means damage of any origin sustained by a structure, whereby the cost of restoring the structure to its before-damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred. Substantial damage also means flood-related damage sustained by a structure on two separate occasions during a ten-year period for which the cost of repairs at the time of each such flood event, on the average, equals or exceeds 25 percent of the market value of the structure before the damage occurred (actual repair work need not have been performed on all flood-related damage)."

- **VILLAGE zoning district (§ 34-694(d)):** The Red Coconut also requested that five mobile home sites be recategorized from transient RV park use to regular mobile home use. The LPA took no action pending research on this request. In addition, please note that there is a slight discrepancy between the VILLAGE boundary on Figure 34-11 and the interim zoning map. Figure 34-11 is correct; the former Koreshan house on the beach just northwest of the Red Coconut should be shown in the VILLAGE district, not the RM district (STRAP 30-46-24-W2-00001.0000). Both changes will be shown in the next drafts.
- **SANTINI zoning district (§ 34-682(2)):** A representative of the Santini shopping center and Fishtale Marina expressed concerns at the LPA hearing over the timing of completion of the new LDC and how it might affect a pending development application for changes to the marina. The new SANTINI district is primarily concerned about the ultimate redevelopment of the shopping center, but is also worded to allow it to replace

the existing CPD on the marina. That CPD grants deviations to certain requirements of Chapter 10 that will probably be eliminated once that chapter is completed.

Since the LPA hearing, I have reworded § 34-682(2) in the SANTINI district in a way that I believe will resolve the concerns expressed on December 17.

- **Definition of Hotel/Motel (§ 34-1801):** Under the 12-17-02 draft of this code, the original definition of hotel/motel would be modified slightly, as follows:

Hotel/motel is defined as means a building, or group of buildings on the same premises and under single control, consisting of ten or more guest units ~~sleeping rooms which are kept,~~ used, maintained, or advertised as, or held out to the public to be, a place where sleeping accommodations are supplied for pay to transient guests or tenants. ~~Hotels/motels are further categorized as efficiency or business.~~

The Chamber of Commerce questioned the need for keeping the minimum of ten rooms in this definition, and the LPA requested some background research on this issue.

F.S. 509.242 defines “motel” without any minimum size. It also has a definition of “hotel” with a minimum size of 25 guests, but that wording seems to simply require hotels above that size to meet certain state requirements for hotels, thus allowing hotels below that size to be registered and regulated under some different category of public lodging establishment.

Apparently there are a few motels in the town with less than ten rooms and no desire to serve breakfast or have an operator living on-site (which are requirements for bed-and-breakfast inns). These motels probably pre-date zoning and thus may continue in operation, but they are rendered “non-conforming” due to this definition, which restricts their ability to be improved. Also, with the current definition, a small motel-like establishment might be opened in a residential area using the argument that it doesn’t require motel zoning because it’s not a motel under the LDC’s own definition.

Given these observations, I intend to modify the proposed definition of hotel/motel in the next draft to read as follows:

Hotel/motel is defined as means a building, or group of buildings on the same premises and under single control, ~~consisting of ten or more sleeping rooms~~ which are kept, used, maintained, or advertised as, or held out to the public to be, a place where sleeping accommodations are supplied for pay to transient guests for periods of one day or longer ~~or tenants.~~ ~~Hotels/motels are further categorized as efficiency or business.~~

- **SHORT-TERM RENTALS (§ 34-2391-2410):** Under the 12-17-02 draft of this code, five options were presented for regulating short-term rentals (see pages 189 through 195).

Option 1: Based on the original proposal in earlier drafts of the LDC.

Option 2: Based on the proposal made by Councilman Van Duzer on October 22.

- Option 3:** Based on the proposal from the Task Force (with stronger enforcement provisions).
- Option 4:** Based on the proposal from Neighbors for Neighborhoods.
- Option 5:** Based on the concept in the current LDC for mother-in-law apartments.

At the LPA hearing there was extensive public testimony on these and other options. In response, the LPA formally rejected Options 1 and 3, then formulated both majority and minority positions as part of its recommendation to the Town Council. The following discussion explains the LPA's actions and summarizes certain modifications to the options that are shown in detail in the attached redraft of that portion of the LDC.

A 5-to-4 majority of the LPA voted to recommend a version of "Option 2" on short-term rentals, with these changes from the 12-17 draft:

- On the bay side of Estero Boulevard, the LPA did not approve of allowing short-term rentals being allowed back 200 feet, which is how Options 1, 2, 4, and 5 were worded. The LPA voted to recommend allowing short-term rentals anywhere on the Gulf side of Estero Boulevard, but on the Bay side, only on lots *directly adjoining* Estero Boulevard. (This same change will be reflected in the next drafts of Options 1, 2, 4, and 5.)
- The LPA recommended changing the "grandfathering" date from October 22, 2002 (the date that Option 2 was first announced) to the date that LDC Chapter 34 is adopted, which may be on March 3, 2003. (The original language will be shown in the next draft of Option 2 as "Variation A"; the LPA recommendation will be shown as "Variation B.")
- The LPA recommended that "grandfathered" status for short-term rentals in areas where new rentals would not be permitted *should not* be passed on to subsequent owners of the property. However, the LPA was concerned about how this would be worded because they acknowledged that a simple title change wasn't always the best measure of ownership; for instance, a property could be transferred into a trust, without the actual owners changing; or a property could be held by a corporation whose stock could be sold without changing the name on the title. The original language will be shown in the next draft of Option 2 as "Variation C"; new language that reflects the LPA's recommendation and concerns will be shown as "Variation D."

Because the LPA vote was so close, those in the minority formulated their own position. One in the minority had only a minor disagreement with the majority position; the other three formulated the following variations on Option 3, rejecting any geographic restrictions on weekly rentals:

- Increase those rentals required to register to include all rentals of *one year or less*; Option 3 only required registration for units that were held out to the public as being available for period of *30 days or less*. (The original language will be shown in the next draft of Option 3 as "Variation E"; the LPA minority recommendation will be shown as "Variation F.")
- Delete the LPA's prior addition to the Task Force's work, where the LPA added in the LDC's definition of family. The Task Force original proposal would allow more

than one family to share a house, provided that the number of renters didn't exceed two persons per bedroom plus two additional persons. (The original language will be shown in the next draft of Option 3 as "Variation G"; the LPA minority recommendation will be shown as "Variation H.")

- Commit to these regulations for a period of five years, then allow them to "sunset" unless re-adopted by the Town Council. (The original language will be shown in the next draft of Option 3 as "Variation I"; the LPA minority recommendation will be shown as "Variation J.")

In addition to these changes, I am making several additional changes on short-term rentals in the redraft:

Definition of minimum rental period: In Options 1, 2, and 5, the restrictions would apply to any dwelling unit in a single-family zone that is rented to more than one family "*during any 28-day period.*" This wording does not prohibit a 7-day, 14-day, or 21-day rental as long as the unit is not rented at all for the rest of the month. Option 4 contains a stricter limitation that would apply to any dwelling unit that is rented to one family for anything less than "*a period of 28 days,*" thus requiring a *minimum rental period* of 28 days for each tenant.¹

This distinction is very important; in fact, it was responsible for litigation and controversy last year on Sanibel last year. Sanibel officials insisted that their code meant the latter (their exact wording is "*dwelling units may not be made available for rental or occupancy for periods of less than four (4) consecutive weeks...*"), while some rental agents thought it could be interpreted to allow the former.

The former definition is less strict but is apparently still confusing because it does not explicitly say that a weekly rental would still be acceptable provided the unit was not rented to another family any time during the remainder of the month.

To make this distinction clearer, the next draft of Options 1, 2, and 5 will be more explicit that one weekly rental would still be acceptable in a single-family zone provided that the unit is not rented to another family any time during the remainder of the month. (Or, if the Town Council prefers the stricter approach, the wording in § 34-2391 of Option 4 could replace this wording in Options 1, 2, or 5.)

In addition, the term "continuous weekly rentals" will be used to refer to the unrestricted weekly rentals that would still be allowed in RC (Residential Conservation) and RM

¹ An additional problem with the current wording is that the state registry of short-term rentals is based on rentals "for periods of less than 30 days or 1 calendar month, whichever is less." The proposed LDC is slightly different: "during any 28-day period." This discrepancy isn't meaningful from a policy standpoint, but it would make compliance with town and state law more complicated. For this reason, the next draft of the LDC will use the terms "one day," "one week," and "one month" instead of the number of days.

(Residential Multifamily) zoning districts, and which under Options 2 and 4 could be continued, but not begun, in the RS (Residential Single-Family) zone.

Behavioral rules for short-term rentals: In the 12-17 draft, Option 3 contained specific behavioral rules for short-term tenants and required operators to register their units, limit occupancy in single-family districts to one family, establish nighttime “quiet hours,” post the town’s rules and obtain signatures from tenants acknowledging them, and ensure that refuse containers weren’t left on the street more than 24 hours. Options 2 and 4 didn’t require registration of short-term rentals generally, but did require certain “grandfathered” units to register. Two logical questions have arisen:

1. Should the grandfathered units in Options 2 and 4 be required to comply with the behavioral rules and cumulative penalties described in Option 3?
2. Under Options 1, 2, 4, and 5, short-term rentals would still be allowed by right in most zoning districts (other than the RS single-family zones). Should those units be expected to comply with the same behavioral requirements, even though they would not be required to register with the town?

Anticipating positive answers to both questions, the next drafts of Options 2 and 4 will contain language requiring conformance with the behavioral rules from Option 3 for “grandfathered” short-term rentals in single-family zones as well as for short-term rentals in other zones where they are permitted by right.

Adding a “minimum regulation” option: All five existing options would add new regulations regarding short-term rentals. The Town Council also has the option to allow weekly rentals:

- without establishing new geographic restrictions (as in Options 1, 2, 4, and 5);
- without adding a town registry on top of the existing state registry (as in Options 2, 3, and 4); and
- without allowing a larger number of occupants in dwellings than are allowed today for owner-occupancy or for regular rentals (as would be allowed by Option 3 for duplexes and triplexes, and by the LPA minority recommendation for all short-term rentals).

This option could include most of the “code of conduct” drafted by the Task Force and have it be enforced through the standard methods in the land development code, thus avoiding the need for a formal registry. This concept will appear as Option 6.

All of the revisions discussed above for short-term rentals are shown in the attached redraft of Table 34-1 and §§ 34-2391–2410, all dated January 5, 2003. Also attached is a summary chart that highlights the similarities and differences between all six options, plus correspondence on short-term rentals received since the LPA hearing and also a Florida Bar article on short-term rental regulations in the Florida Keys.

Copy to: *Local Planning Agency, Town Attorney, Town Staff, Library Reference Desk*

Attachments: *Chart highlighting the similarities and differences between the six short-term rental options 1-5-03 redraft of Tables 34-1 and 34-2, with revisions to Table 34-1 in shadowed text*
1-5-03 redraft of §§ 34-2391–2410 regarding short-term rentals
Letter from the Realtor Association of Greater Fort Myers and the Beach, Inc.
Letter from the Greater Fort Myers Beach Chamber of Commerce
July 2000 Florida Bar article on short-term rental regulations in the Florida Keys

<i>(this chart is based on the January 5, 2003 draft)</i>	OPTION ONE	OPTION TWO	OPTION THREE	OPTION FOUR	OPTION FIVE	OPTION SIX
		<i>Original</i> <i>LPA maj.</i>	<i>Original</i> <i>LPA min.</i>			
WOULD RESTRICTIONS BE IMPOSED ON WEEKLY RENTALS IN MOST SINGLE-FAMILY NEIGHBORHOODS?	YES (only one per month allowed)	YES (only one per month allowed)	no	YES (monthly stay required)	YES (only one per month allowed)	no
Would existing weekly rental units get specific protection?	no	YES	—	YES	no	—
Must have existed by what date for protection?	—	10/22 '02 <i>effective date</i>	—	5/21 '02	—	—
Does protection expire on a fixed date?	—	no	—	YES (1/1 '08)	—	—
Can protection be transferred to future owners?	—	YES <i>only heirs</i>	—	no	—	—
Weekly rentals exempted if owner present/adjacent?	no	no	—	no	YES	—
WOULD MORE THAN ONE FAMILY BE ALLOWED TO SHARE A HOME IN SINGLE-FAMILY NEIGHBORHOODS?	no	no	<i>not in SF home</i> YES	no	no	no
WOULD A CODE OF CONDUCT BE IMPOSED?	no	YES	YES	YES	no	YES
AUTOMATIC “SUNSET” PROVISION?	no	no	no YES	no	no	no
WOULD REGISTRATION BE REQUIRED FOR RENTAL UNITS?						
For existing weekly rentals in single-family zones:	—	YES	YES	YES	—	no
For all weekly rentals (except condos):	no	no	YES	no	no	no
For all rentals (except condos):	no	no	no YES	no	no	no

Table 34-1, Land Uses Assigned to Use Groups and Sub-Groups (pg.1

	<i><u>Residential</u></i>	<i><u>Lodging</u></i>	<i><u>Office</u></i>		
Restricted Ⓜ	<u>Community residential home</u> P	<u>Rental of any permitted dwelling unit to a single family during any one-month period, with a minimum stay of one week (see §§ 34-2391–2410 for rules and exceptions)</u> P	AS ACCESSORY USES: <u>Home occupation (no outside help)</u> P <u>Home occupation (with outside help)</u> AA	Restricted Ⓜ	
	<u>Dwelling unit, single-family</u> P				
	<u>Home care facility</u> P				
	AS ACCESSORY USES:	AS ACCESSORY USES:			
	<u>Accessory apartment (1) (see § 34-1177)</u> SE				
	<u>Accessory apartment (see § 34-1178)</u> EO				
	<u>Residential accessory uses</u> P				
<u>Temporary mobile home (§ 34-3046)</u> TP					
Limited <i>(plus R uses)</i> Ⓡ	<u>Dwelling unit: two-family (1) live/work (see § 34-1773)</u> P SE	<u>Rental of any permitted dwelling unit to a single family for periods of one week or longer (see §§ 34-2391–2410 for rules)</u> P SE	AS ACCESSORY USES: <u>Administrative office</u> P	Limited <i>(plus R uses)</i> Ⓡ	
	<u>Mobile home or RV park (VILLAGE district only, as restricted in § 34-694)</u> EO				<u>Bed & breakfast inn (see § 34-1801)</u> SE
	AS ACCESSORY USES:	AS ACCESSORY USES:			
	<u>Accessory apartment (1) (see § 34-1177)</u> P	<u>On-premises consumption of alcoholic beverages (see division 5 of article IV)</u> AA/SE			
Open <i>(plus R & L uses)</i> Ⓞ	<u>Assisted living facility (see § 34-1411)</u> P	<u>Bed & breakfast inn (see § 34-1801)</u> P	<u>Automobile rental</u> SE	Open <i>(plus R & L uses)</i> Ⓞ	
	<u>Dwelling unit: multiple-family live/work (see § 34-1773)</u> P P	<u>Hotel/motel (see § 34-1801)</u> P	<u>Health care facility</u> P		
		<u>Rooming house</u> P <u>Timeshare units</u> P	<u>Rental of any permitted dwelling unit or guest unit for periods of one day or longer</u> P		<u>Offices, general or medical</u> P
	<u>Resorts</u> P				<u>Personal services</u> P
	AS ACCESSORY USES:	AS ACCESSORY USES:	AS ACCESSORY USES:		<u>Wholesale establishment</u> SE
	<u>Golf course</u> EO	<u>Resort accessory uses</u> P	<u>Commercial accessory uses</u> P		
	<u>Recreation facility: private on-site private off-site</u> P SE	<u>Personal services</u> P	<u>Drive-through, Type 1 (2)</u> P		
		<u>Subordinate commercial uses (see § 34-3021)</u> P	<u>Subordinate commercial uses (see § 34-3021)</u> P		<u>Subordinate commercial uses (see § 34-3021)</u> P

(1) Provided density complies with the Fort Myers Beach Comprehensive Plan (see § 34-632).
 (2) Automobile fuel pumps and all drive-throughs (whether Type 1 or Type 2) cannot be constructed within the outer perimeter of the Downtown zoning district except as provided in § 34-676(f), whether the subject property is classified in the Downtown zone or in a Commercial Planned Development zone. See also § 34-620(f)(4) regarding the prohibition on restaurant drive-throughs.

Table 34-1, Land Uses Assigned to Use Groups and Sub-Groups (pg. 2 of

	<u>Retail</u>	<u>Marine</u>	<u>Civic</u>	
Restricted Ⓜ			Beach or bay access P	Restricted Ⓜ
			Essential services (see § 34-1612(a)) P	
			Hidden path P	
			Park, neighborhood P	
	AS ACCESSORY USES:	AS ACCESSORY USES:	AS ACCESSORY USES:	
	ATM P	Dock (for sole use by occupants of principal use) P	Family day care home P	
Limited <i>(plus R uses)</i> Ⓛ	Dwelling unit: work/live (see § 34-1774) SE	Dock (for use by water taxi or water shuttle) P	Communication tower (see § 34-1441-1550) SE	Limited <i>(plus R uses)</i> Ⓛ
	Membership organization SE	Marina EO/SE	Day care center, adult or child SE	
	Recreation facilities, commercial SE	Parasailing operations office SE	Essential service building (see § 34-1612(b)) SE	
	Parking lot, seasonal (see § 34-2022) TP	Personal watercraft operations office SE	Essential service equipment P	
	Temporary uses (see §§ 34-3041-3050) SE	Rental of beach furniture P	Recreation facility: private off-site SE public P	
	AS ACCESSORY USES:	AS ACCESSORY USES:	AS ACCESSORY USES:	
	On-premises consumption of alcoholic beverages (see §§ 34-1261-1290) AA/SE	Dwelling unit, caretaker P Dock (may be leased to non-occupants of principal use) P	Dwelling unit, caretaker P Restaurant, accessory to private rec. facilities only SE	
Open <i>(plus R & L uses)</i> Ⓞ	Automobile repair SE	Boat dealer P	Cultural facility SE	Open <i>(plus R & L uses)</i> Ⓞ
	Bar or cocktail lounge AA/SE	Marina P	Day care center, adult or child P	
	Car wash SE		Park, community or regional P	
	Dwelling unit: work/live (see § 34-1774) P		Parking lot, shared permanent SE	
	Laundromat P		Place of worship P	
	Mini-warehouse SE		Religious facility SE	
	Parking lot, shared permanent (34-2015(2)b.) SE		School (see § 34-2381-2383) P	
	Personal services P		Theater SE	
	Restaurant (2) P			
	Retail store, small P			
	Retail store, large SE			
	AS ACCESSORY USES:	AS ACCESSORY USES:	AS ACCESSORY USES:	
	Commercial accessory uses P	Marina accessory uses P	Helistop SE	
	Drive-through: (2) P		Restaurant, accessory only to public recreation facilities P	
	Type 1 P		Subordinate commercial uses (see § 34-3021) P	
	Type 2 SE			
	Automobile fuel pumps (2) SE			

(2) Automobile fuel pumps and all drive-throughs (whether Type 1 or Type 2) cannot be constructed within the outer perimeter of the Downtown zoning district except as provided in § 34-676(f), whether the subject property is classified in the Downtown zone or in a Commercial Planned Development zone. See also § 34-620(f)(4) regarding the prohibition on restaurant drive-throughs.

Table 34-2 — Use Sub-Groups Permitted in Each Zoning District ¹

	<i>Residential</i>	<i>Lodging</i>	<i>Office</i>	<i>Retail</i>	<i>Marine</i>	<i>Civic</i>
	Use Groups and Sub-Groups (Restricted, Limited, Open)					
RS <i>Residential Single-family</i>	Ⓡ	Ⓡ	Ⓡ	=	Ⓡ	Ⓡ
RC <i>Residential Conservation</i>	Ⓛ	Ⓛ	Ⓡ	=	Ⓡ	Ⓡ
RM <i>Residential Multifamily</i>	Ⓞ	Ⓛ	Ⓛ	Ⓡ	Ⓡ	Ⓛ
CR <i>Commercial Resort</i>	Ⓞ	Ⓞ	Ⓞ	Ⓛ	Ⓛ	Ⓛ
CM <i>Commercial Marina</i>	Ⓡ	Ⓡ	Ⓛ	Ⓛ	Ⓞ	Ⓛ
CO <i>Commercial Office</i>	Ⓞ	Ⓛ	Ⓞ	Ⓛ	Ⓛ	Ⓞ
SANTOS	Ⓛ	Ⓛ	Ⓞ	Ⓛ	Ⓛ	Ⓛ
IN <i>Institutional</i>	Ⓛ	Ⓛ	Ⓛ	Ⓡ	Ⓛ	Ⓞ
CF <i>Community Facilities</i>	Ⓡ	Ⓡ	Ⓛ	Ⓡ	Ⓛ	Ⓞ
BB <i>Bay Beach</i>	— see § 34-651(b) —					
EC <i>Environmentally Critical</i>	— see § 34-652(d) & (e) —					
DOWNTOWN	Ⓞ	Ⓞ	Ⓞ	Ⓞ	Ⓛ	Ⓞ
SANTINI	Ⓞ	Ⓞ	Ⓞ	Ⓞ	Ⓞ	Ⓞ
VILLAGE	Ⓛ ²	Ⓛ ²	Ⓛ ²	Ⓛ ²	=	Ⓛ
CB <i>Commercial Boulevard</i>	Ⓞ	Ⓛ	Ⓛ ³	Ⓛ ³	Ⓛ	Ⓞ
RPD <i>Residential Planned Dev.</i> ⁴	ⓇⓁⓄ	ⓇⓁ	ⓇⓁ	ⓇⓁ	ⓇⓁ	ⓇⓁ
CPD <i>Commercial Planned Dev.</i> ⁴	ⓇⓁⓄ	ⓇⓁⓄ	ⓇⓁⓄ	ⓇⓁⓄ	ⓇⓁⓄ	ⓇⓁⓄ

Note 1: See Table 34-1 for a specific list of Use Groups (Residential, Lodging Office, Retail, Marine, and Civic) and Sub-Groups of each (Restricted, Limited, and Open).

Note 2: See § 34-692(3) which provides a pre-approved redevelopment option for the VILLAGE district that can also permit residential, lodging, office and retail uses in the Open Sub-Group under specified conditions.

Note 3: See § 34-702–703 for exceptions and limitations on new and expanded commercial uses.

Note 4: See § 34-933. The resolution approving a planned development zoning district (RPD or CPD) will specify which of the use groups or sub-groups enumerated in Table 34-1 will be permitted on that parcel. Note that some potential use sub-groups are not listed above for the RPD zoning district because they may not be approved in any RPD zoning resolution.

DIVISION 32-A. SHORT-TERM RENTALS

OPTION ONE: *[original proposal]*

Sec. 34-2391. Restrictions on continuous weekly rentals in certain zoning districts.

Table 34-2 restricts the rental of any permitted dwelling unit in certain zoning districts to a single family during any one-month period, with a minimum stay of one week (see the “Restricted” sub-group of the “Lodging” use group in Table 34-1). The following exceptions apply to this restriction:

- (1) This restriction on continuous weekly rentals does not apply to:
 - a. Any land between Estero Boulevard and the Gulf of Mexico.
 - b. Any land directly adjoining the bay side of Estero Boulevard.
- (2) Dwellings units on property that qualifies for either of these exceptions may be rented to a single family for periods of one week or longer, without the once-per-month maximum that would otherwise have applied.

Sec. 34-2392–34-2410. Reserved.

OPTION TWO: *[workshop proposal]*

Sec. 34-2391. Restrictions on continuous weekly rentals in certain zoning districts.

Table 34-2 restricts the rental of any permitted dwelling unit in certain zoning districts to a single family during any one-month period, with a minimum stay of one week (see the “Restricted” sub-group of the “Lodging” use group in Table 34-1). The following exceptions apply to this restriction:

- (1) This restriction on continuous weekly rentals does not apply to:
 - a. Any land between Estero Boulevard and the Gulf of Mexico.
 - b. Any land directly adjoining the bay side of Estero Boulevard.

Variation A: (original proposal)

- c. Any dwelling unit that is recognized by the Town of Fort Myers Beach as having had pre-existing continuous weekly rentals as of October 22, 2002, when registered in accordance with § 34-2392.

Variation B: (LPA recommendation)

- c. Any dwelling unit that is recognized by the Town of Fort Myers Beach as having had pre-existing continuous weekly rentals as of *[insert effective date of this provision]*, when registered in accordance with § 34-2392.
[NOTE: this same change would also be made in § 34-2392(a), (b)(2), and (b)(3).]

- (2) Dwellings units on property that qualifies for any of these exceptions may be rented to a single family for periods of one week or longer, without the once-per-month maximum that would otherwise have applied.

Sec. 34-2392. Registry of certain pre-existing continuous weekly rentals.

(a) Dwelling units in certain zoning districts are not permitted to be rented to more than a single family during any one-month period due to restrictions found in Tables 34-1 and 34-2. The owner of any such dwelling unit that was being lawfully used for continuous weekly rentals as of October 22, 2002, may apply for registration under this section to continue continuous weekly rentals.

- (1) Upon verification by the town and placement of such dwelling units on a registry of pre-existing continuous weekly rentals, the owners of registered dwelling units may continue to rent those units to a single family for periods of one week or longer, without the once-per-month maximum that would otherwise have applied.

Variation C: (original proposal)

- (2) This right shall run with the land and shall not be affected by the transfer of the property to subsequent owners.

Variation D: (LPA recommendation)

- (2) This right shall be extinguished when the property is transferred to subsequent owners. For purposes of this subsection:
 - a. A property transfer shall not be deemed to have occurred when a change in title is the result of the death of a co-owner or where the transfer is to a trust if the prior owner or heirs are beneficiaries of the trust.
 - b. A property transfer shall be deemed to have occurred if the title is held by a corporation and majority control of the corporation is transferred to a different party.

- (3) If continuous weekly rentals of a particular dwelling unit are terminated for any reason for any 12-month period, continuous weekly rentals may not thereafter be reinstated in that dwelling unit.
- (4) Dwelling units on land that is not affected by the restrictions in Tables 34-1 and 34-2 limiting rentals to no more than a single family during any one-month period should not be submitted for registration. Such units will not be placed on the registry of pre-existing continuous weekly rentals.

(b) Applications for registration of lawful pre-existing continuous weekly rental units shall be submitted to the town manager by *[insert date here: 3 months after effective date of this provision]*. Each application must include:

- (1) Name of the applicant, if different than the property owner, and the applicant's mailing address and telephone number.

- (2) Name of current property owner (and previous owner, if property has been transferred since October 22, 2002).
- (3) Street address and STRAP number of parcel.
- (4) Number of rental dwelling units at that address that are part of the application.
- (5) Evidence of lawful pre-existing continuous weekly rental use of each dwelling unit in the application as of October 22, 2002. Such evidence must include
 - a. Evidence that each dwelling unit was licensed by the state of Florida as a "resort dwelling" or as a public lodging establishment, in accordance with F.S. § 509.241.
 - b. Evidence of regular payment of Lee County's 3% tourist development tax on rentals of each dwelling unit.
 - c. Evidence of regular payment of Florida's 6% sales tax on rentals of each dwelling unit.
- (6) If desired, other evidence of lawful pre-existing continuous weekly rentals of the dwelling unit (such evidence is not required for registration but may include rental contracts, tax returns, etc.).
- (7) A local telephone number with a contact that is available 24 hours a day.
- (8) Notarized signatures of the property owner (and the applicant, if different than the property owner) attesting to the truth and accuracy of all information submitted with the application and consenting to inspection of the premises at reasonable hours to determine compliance with town and fire codes.

(c) The town manager will evaluate each application and notify applicants in writing within 60 days whether each dwelling unit is being registered with the town as a pre-existing continuous weekly rental unit or whether the dwelling unit does not qualify for such registration. Reasons for disqualification will be stated in the written notice.

- (1) All applications and written responses are public records and will be available for inspection at town hall.
- (2) Registrants may supplement their application at any time to provide a different local telephone number with a contact that is available 24 hours a day.

(d) Decisions by the town manager pursuant to this subsection may be appealed to the town council by the applicant or adjoining property owner in accordance with § 34-86. In addition to the criteria in this subsection, the town council may consider evidence submitted by the appellant alleging equitable considerations for registration of a dwelling unit despite noncompliance with a particular requirement of this division. The town council shall consider the advice of the town attorney when evaluating allegations for equitable relief.

Sec. 34-2393. Code of conduct for short-term rentals.

(a) The town hereby establishes a code of conduct that applies to operators and guests of all short-term rental units, including those on the registry of pre-existing continuous weekly rentals and also those rentals between one week and one month that are permitted by right in accordance with Table 34-2. The code of conduct is as follows:

- (1) **Maximum Occupancy:** Occupancy of each short-term rental unit must be consistent with the definition of “family” that is found in § 34-2 of this code, which defines a family as one or more persons occupying a dwelling unit and living as a single, nonprofit housekeeping unit, provided that a group of five or more adults who are not related by blood, marriage, or adoption shall not be deemed to constitute a family.
- (2) **Refuse Collection:** Refuse containers shall not be moved to the street more than 24 hours prior to scheduled curbside collections nor remain there more than 24 hours after scheduled collections, as required by § 6-11 of the Fort Myers Beach land development code. In addition, if a property owner or property manager is unable to comply with this requirement around the weekly pick-up day, arrangements for additional refuse collection must be secured by the operator.
- (3) **Quiet Hours:** Between the hours of 10:00 PM and 7:00 AM, all guests shall observe quiet hours. This means all outdoor activity, including swimming, shall be kept to a reasonable noise level that is non-intrusive and respectful of neighbors. Town of Fort Myers Beach Ordinance 96-24 sets limits on noise levels during quiet hours and these levels must be obeyed by all guests.

(4) **Mandatory Evacuations:** All guests staying in short-term rental units must comply with mandatory evacuations due to hurricanes and tropical storms, as required by state and local laws.

(b) Operators are required to provide guests with the town’s code of conduct for short-term rentals.

- (1) The town shall provide operators with a printed version of the code of conduct and a standardized agreement for compliance.
- (2) The operator shall provide guests of short-term rental units with the code of conduct and obtain the signature of guests on the agreement indicating that they are aware of and intend to comply with the code of conduct.
- (3) The code of conduct shall also be posted at the primary entrance/exit to each short-term rental unit.

(c) Operators must provide the town with a current local telephone number of a contact for each short-term rental unit. This telephone number must be answered 24 hours a day to respond to complaints. These telephone numbers are public records and will be available at town hall during regular business hours.

Sec. 34-2394. Enforcement and penalties.

(a) The director is authorized to pursue any one or combination of the enforcement mechanisms provided in this code (for example, § 1-5, or article V of ch. 2) for any violation of this division.

(b) Persons who may be charged with a violation of this division include property owners, operators, rental agents, guests, and any other person using the structure where the violation has been committed.

(c) For properties on the registry of pre-existing continuous weekly rentals (see § 34-2392), the following additional requirements shall apply:

- (1) Violations of F.S. ch. 509 shall also be considered to be violations of this division as follows:
 - a. Failure to maintain licensure or any other provisions of ch. 509.
 - b. Failure to eject guests who indulge in any conduct which disturbs the peace and comfort, as provided by § 509.141.

(2) Repeated violations of this division on a registered property shall lead to cumulative penalties. These penalties shall accrue as follows whenever a violation results in a fine being imposed on or paid or whenever a finding of violation is made by a judge or code enforcement hearing examiner:

a. First violation: \$250 fine.

b. Second violation: \$500 fine.

c. Third violation: six-month suspension of registration under § 34-2392.

d. Fourth violation: two-year suspension of registration under § 34-2392.

After any period of three years during which there were no fines imposed or paid and no formal findings of violations of this division, the next violation shall be deemed to be the first violation for purposes of this section.

Sec. 34-2395–34-2410. Reserved.

R E D R A F T

OPTION THREE: [task force proposal]

NOTE – if Option Three is chosen:

- (1) The following restriction in Table 34-1 of this code (page 76) in the “Restricted” sub-group would be eliminated as follows: “Rental of any permitted dwelling unit to a single family during any one-month period, with a minimum stay of one week (see §§ 34-2391–2410 for rules and exceptions)”
- (2) The following restriction in Table 34-1 would be moved from the “Limited” sub-group to the “Restricted” sub-group: “Rental of any permitted dwelling unit to a single family for periods of one week or longer (see §§ 34-2391–2410 for rules)”

Sec. 34-2391. Purpose and intent.

The purpose and intent of this division is to:

- (1) Provide safe, clean, and comfortable accommodations to guests staying in short-term rental units;
- (2) Provide information to guests on relevant town regulations;
- (3) Educate guests about local standards of respectful conduct in residential neighborhoods; and
- (4) Create and protect a compatible atmosphere between short-term rental properties, resident property owners, and residential neighborhoods.

Sec. 34-2392. Definitions.

Guest means any patron, customer, tenant, lodger, boarder, or occupant of a short-term rental unit.

Operator means the owner, licensee, proprietor, lessee, manager, assistant manager, or appointed agent of a short-term rental unit.

Variation E: (original proposal)

Short-term rental unit means any single-family or two-family dwelling unit, or a unit in multiple family building with three or four dwelling units, which is rented more than three times in a calendar year for periods of one week to one month, or which is advertised or held out to the public as a place regularly rented for periods of one week to one month.

Variation F: (LPA minority position)

Short-term rental unit means any single-family or two-family dwelling unit, or a unit in multiple family building with three or four dwelling units, which is rented for periods of one week to one year, or which is advertised or held out to the public as a place regularly rented for periods of one week to one year.

Sec. 34-2393. State licensure and town registration.

(a) All short-term rental units must be licensed by the state of Florida as a “resort dwelling” or a “public lodging establishment,” pursuant to F.S. § 509.241.

(b) In addition to licensure with the state of Florida, within 3 months of [insert effective date of this provision], the operator of each short-term rental unit located in the town must submit a short-term rental license application to the town, and within an additional 90 days must have obtained registration from the town. Thereinafter, a new registration application must be completed annually or upon change of ownership or property manager. The license application shall include:

- (1) Name of the operator, if different than the property owner, and the operator’s mailing address and telephone number.
- (2) A local telephone number with a contact that is available 24 hours a day.
- (3) Name of current property owner and evidence of ownership.
- (4) Street address and STRAP number of parcel.
- (5) Number of rental dwelling units at that address that are part of the application.
- (6) Evidence that each dwelling unit is licensed by the state of Florida as a “resort dwelling” or as a public lodging establishment, in accordance with F.S. § 509.241.

- (7) Notarized signature of the operator consenting to inspection of the premises at reasonable hours to determine compliance with town and fire codes.

Sec. 34-2394. Term of registration and fee.

Each registration is valid for one year, renewable by January 1 of each calendar year. The operator must notify the town within 30 days of any change in the telephone number of the local contact or any change in the operator of any registered short-term rental unit.

- (1) The application and fee shall not be deemed late until January 31 of the applicable calendar year.
- (2) The annual application fee shall be \$120 per short-term rental unit.
- (3) The fee shall be pro-rated for new applications made after January 31; renewal registrations shall not be prorated.
- (4) Failure to receive a license or complete a renewal by January 31, in combination with the use of a dwelling unit for short-term rentals, shall be a violation of this code.

Sec. 34-2395. Acknowledgment by guests of code of conduct.

The operator is required to provide guests with the town's code of conduct for short-term rentals (see § 34-2396).

- (1) The town shall provide operators with a printed version of the code of conduct and a standardized agreement for compliance.
- (2) The operator shall provide guests of short-term rental units with the code of conduct and obtain the signature of guests on the agreement indicating that they are aware of and intend to comply with the code of conduct.
- (3) The code of conduct shall also be posted at the primary entrance/exit to each short-term rental unit.

Sec. 34-2396. Code of conduct for short-term rentals.

The following code of conduct applies to operators and guests of all short-term rental units:

Variation G: (original proposal)

- (1) ***Maximum Occupancy:*** Occupancy of each short-term rental unit shall not exceed more than 2 guests for every bedroom in each unit, plus 2 additional guests. Occupancy of single-family homes must also be consistent with the definition of "family" that is found in § 34-2 of the Fort Myers Beach land development code, which defines a family as one or more persons occupying a dwelling unit and living as a single, nonprofit housekeeping unit, provided that a group of five or more adults who are not related by blood, marriage, or adoption shall not be deemed to constitute a family.

Variation H: (LPA minority position)

- (1) ***Maximum Occupancy:*** Occupancy of each short-term rental unit shall not exceed more than 2 guests for every bedroom in each unit, plus 2 additional guests.
- (2) ***Refuse Collection:*** Refuse containers shall not be moved to the street more than 24 hours prior to scheduled curbside collections nor remain there more than 24 hours after scheduled collections, as required by § 6-11 of the Fort Myers Beach land development code. In addition, if a property owner or property manager is unable to comply with this requirement around the weekly pick-up day, arrangements for additional refuse collection must be secured by the operator.
- (3) ***Quiet Hours:*** Between the hours of 10:00 PM and 7:00 AM, all guests shall observe quiet hours. This means all outdoor activity, including swimming, shall be kept to a reasonable noise level that is non-intrusive and respectful of neighbors. Town of Fort Myers Beach Ordinance 96-24 sets limits on noise levels during quiet hours and these levels must be obeyed by all guests.
- (4) ***Mandatory Evacuations:*** All guests staying in short-term rental units must comply with mandatory evacuations due to hurricanes and tropical storms, as required by state and local laws.

Sec. 34-2397. Enforcement and penalties.

(a) The director is authorized to pursue any one or combination of the enforcement mechanisms provided in this code (for example, § 1-5, or article V of ch. 2) for any violation of this division.

(b) Violations of F.S. ch. 509 by an operator shall also be considered to be violations of this division as follows:

- (1) Failure to maintain licensure or any other provisions of ch. 509.
- (2) Failure to eject guests who indulge in any conduct which disturbs the peace and comfort, as provided by § 509.141.

(c) Persons who may be charged with a violation of this division include property owners, operators, rental agents, guests, and any other person using the structure where the violation has been committed.

(d) Violations of this division by a guest shall subject the guest to the general penalty provisions of this code.

(e) Violations of this division by an operator or any guests of that operator shall subject the operator to cumulative penalties. This penalties shall accrue as follows whenever a violation results in a fine being imposed on or paid by the operator or whenever a finding of violation is made by a judge or code enforcement hearing examiner:

- (1) First violation: \$250 fine.
- (2) Second violation: \$500 fine.
- (3) Third violation: six-month suspension of all registrations.
- (4) Fourth violation: two-year suspension of all registrations.

After any period of three years during which an operator has no fines imposed or paid and no formal findings of violations of this division, the next violation by the operator shall be deemed to be the first violation for purposes of this section.

Variation I: (original proposal)
Sec. 34-2398–34-2410. Reserved.

Variation J: (LPA minority position)
Sec. 34-2398. Sunset provision.

Division 32-A of this code regarding short-term rentals shall be automatically repealed on *[insert date here: 5 years after effective date of this provision]*, unless extended by the town council by an amendment to this code. However, violations of this division prior to such repeal shall remain as violations of this code.

Sec. 34-2399–34-2410. Reserved.

RAFT

OPTION FOUR: *[Neighbors for Neighborhoods proposal]*

NOTE – if Option Four is chosen: *The following restriction in Table 34-1 of this code (page 76) in the “Restricted” sub-group would be modified as follows: “Rental occupancy of any permitted dwelling unit to be by a single family for a period of one month or longer during any one-month period, with a minimum stay of 7 days (see §§ 34-2391–2410 for rules and exceptions)”*

Sec. 34-2391. Exceptions to short-term rental restrictions.

Table 34-2 restricts the rental occupancy of any permitted dwelling unit in certain zoning districts by a single family for a period of one month or longer (see the “Restricted” sub-group of the “Lodging” use group in Table 34-1). The following exceptions apply to this restriction:

- (1) This restriction on short-term rentals does not apply to:
 - a. Any land between Estero Boulevard and the Gulf of Mexico.
 - b. Any land directly adjoining the bay side of Estero Boulevard.
 - c. Any dwelling unit that is recognized by the Town of Fort Myers Beach as having had pre-existing weekly rentals as of May 21, 2002, when registered in accordance with § 34-2392.
- (2) Dwellings units on property that qualifies for any of these exceptions may be rented to a single family for periods of one week or longer, in lieu of the monthly minimum rental period that would otherwise have applied.

Sec. 34-2392. Registry and amortization of certain pre-existing short-term rental units.

(a) The Town of Fort Myers Beach hereby provides a limited amortization period for certain dwelling units that would otherwise be restricted immediately by Table 34-2 to rentals to a single family for periods of one month or longer. This amortization period applies only to dwelling units that are recognized by the Town of Fort Myers Beach as having had regular weekly rentals as of May 21, 2002.

(b) In order to qualify for this limited amortization period, the owner of any such dwelling unit that was being lawfully used for weekly rentals as of May 21, 2002, may apply for registration under this section.

- (1) Upon verification by the town and placement of any such dwelling unit on a registry of pre-existing short-term rentals, the owners may continue to rent those units for to a single family for period of one week or longer until January 1, 2008, as long as the dwelling unit remains licensed.
- (2) This right is limited to the owners of the property as of May 21, 2002, and shall not be transferable to subsequent owners.
- (3) Dwelling units on land that does not require or qualify for the amortization period should not be submitted for registration. Such units will not be placed on the registry of pre-existing short-term rentals.
- (4) If short-term rentals of a particular dwelling unit are terminated for any reason for any 12-month period, short-term rentals may not thereafter be reinstated in that dwelling unit.

(c) Applications for registration of lawful pre-existing weekly rentals shall be submitted to the town manager by *[insert date here: 3 months after effective date of this provision]*. Each application must include:

- (1) Name of the applicant, if different than the property owner, and the applicant’s mailing address and telephone number.
- (2) Name of current property owner and proof of ownership on May 21, 2002.
- (3) Street address and STRAP number of parcel.
- (4) Number of rental dwelling units at that address that are part of the application.
- (5) Evidence of lawful pre-existing weekly rentals of each dwelling unit in the application as of May 21, 2002. Such evidence must include
 - a. Evidence that each dwelling unit was licensed by the state of Florida as a “resort dwelling” or as a public lodging establishment, in accordance with F.S. § 509.241.
 - b. Evidence of regular payment of Lee County’s 3% tourist development tax on rentals of each dwelling unit.
 - c. Evidence of regular payment of Florida’s 6% sales tax on rentals of each dwelling unit.

- (6) If desired, other evidence of lawful pre-existing weekly rentals of the dwelling unit (such evidence is not required for registration but may include rental contracts, tax returns, etc.).
- (7) Notarized signatures of the property owner (and the applicant, if different than the property owner) attesting to the truth and accuracy of all information submitted with the application and consenting to inspection of the premises at reasonable hours to determine compliance with town and fire codes.
- (8) The name, address, and local telephone number of the rental manager with assurance that a contact is available 24 hours per day, seven days a week for the purpose of promptly responding to complaints.
- (9) The initial application fee for pre-existing short-term rental shall be \$120 per rental unit.

(d) The town manager will evaluate each application and notify applicants in writing within 60 days whether each dwelling unit is being registered with the town as a pre-existing short-term rental or whether the dwelling unit does not qualify for registration. Reasons for disqualification will be stated in the written notice. All applications and written responses are public records and will be available for inspection at town hall.

(e) Decisions by the town manager pursuant to this subsection may be appealed to the town council by the applicant or adjoining property owner in accordance with § 34-86. In addition to the criteria in this subsection, the town council may consider evidence submitted by the appellant alleging equitable considerations for registration of a dwelling unit despite noncompliance with a particular requirement of this division. The town council shall consider the advice of the town attorney when evaluating allegations for equitable relief.

(f) A notice of vacation rental, including the contact information in § 34-2392(c)(8), will be sent by the town to all property owners located within 300 feet of each dwelling unit that is approved for registration under this division.

Sec. 34-2393 Terms of registration and fee.

(a) The initial registration and each renewal of a lawful pre-existing short-term rental is valid for one year, renewable by January 1 of each calendar year.

The renewal application must contain:

- (1) Any changes to the initial application information described in § 34-2392(c).
- (2) An affidavit stating that weekly rentals of the dwelling unit have not terminated for any reason for any 12-month period since May 21, 2002.
- (3) Notarized signatures of the property owner (and the applicant, if different than the property owner) attesting to the truth and accuracy of all information submitted with the renewal application and consenting to inspection of the premises at reasonable hours to determine compliance with town and fire codes.
- (4) The annual renewal fee shall be \$120 per short-term rental unit.

(b) Renewal applications shall be processed using the procedures found in § 34-2392(d)–(f).

Sec. 34-2394. Code of conduct for short-term rentals.

(a) The town hereby establishes a code of conduct that applies to operators and guests of all short-term rental units, including those on the registry of pre-existing short-term rentals and also those rentals between one week and one month that are permitted by right in accordance with Table 34-2. The code of conduct is as follows:

- (1) **Maximum Occupancy:** Occupancy of each short-term rental unit must be consistent with the definition of “family” that is found in § 34-2 of this code, which defines a family as one or more persons occupying a dwelling unit and living as a single, nonprofit housekeeping unit, provided that a group of five or more adults who are not related by blood, marriage, or adoption shall not be deemed to constitute a family.
- (2) **Refuse Collection:** Refuse containers shall not be moved to the street more than 24 hours prior to scheduled curbside collections nor remain there more than 24 hours after scheduled collections, as required by § 6-11 of the Fort Myers Beach land development code. In addition, if a property owner or

property manager is unable to comply with this requirement around the weekly pick-up day, arrangements for additional refuse collection must be secured by the operator.

- (3) **Quiet Hours:** Between the hours of 10:00 PM and 7:00 AM, all guests shall observe quiet hours. This means all outdoor activity, including swimming, shall be kept to a reasonable noise level that is non-intrusive and respectful of neighbors. Town of Fort Myers Beach Ordinance 96-24 sets limits on noise levels during quiet hours and these levels must be obeyed by all guests.
- (4) **Mandatory Evacuations:** All guests staying in short-term rental units must comply with mandatory evacuations due to hurricanes and tropical storms, as required by state and local laws.

(b) Operators are required to provide guests with the town's code of conduct for short-term rentals.

- (1) The town shall provide operators with a printed version of the code of conduct and a standardized agreement for compliance.
- (2) The operator shall provide guests of short-term rental units with the code of conduct and obtain the signature of guests on the agreement indicating that they are aware of and intend to comply with the code of conduct.
- (3) The code of conduct shall also be posted at the primary entrance/exit to each short-term rental unit.

(c) Operators must provide the town with a current local telephone number of a contact for each short-term rental unit. This telephone number must be answered 24 hours a day to respond to complaints. These telephone numbers are public records and will be available at town hall during regular business hours.

Sec. 34-2395. Enforcement and penalties.

(a) The director is authorized to pursue any one or combination of the enforcement mechanisms provided in this code (for example, § 1-5, or article V of ch. 2) for any violation of this division.

(b) Persons who may be charged with a violation of this division include property owners, operators, rental agents, guests, and any other person using the structure where the violation has been committed.

(c) For properties on the registry of pre-existing short-term rental units (see § 34-2392), the following additional requirements shall apply:

- (1) Violations of F.S. ch. 509 shall also be considered to be violations of this division as follows:
- a. Failure to maintain licensure or any other provisions of ch. 509.
- b. Failure to eject guests who indulge in any conduct which disturbs the peace and comfort, as provided by § 509.141.
- (2) Repeated violations of this division on a registered property shall lead to cumulative penalties. These penalties shall accrue as follows whenever a violation results in a fine being imposed on or paid or whenever a finding of violation is made by a judge or code enforcement hearing examiner:
- a. First violation: \$250 fine.
- b. Second violation: \$500 fine.
- c. Third violation: six-month suspension of registration under § 34-2392.
- d. Fourth violation: two-year suspension of registration under § 34-2392.

After any period of three years during which there were no fines imposed or paid and no formal findings of violations of this division, the next violation shall be deemed to be the first violation for purposes of this section.

Sec. 34-2396–34-2410. Reserved.

OPTION FIVE: [*“adjacent owner” proposal*]

Sec. 34-2391. Restrictions on continuous weekly rentals in certain zoning districts.

Table 34-2 restricts the rental of any permitted dwelling unit in certain zoning districts to a single family during any one-month period, with a minimum stay of one week (see the “Restricted” sub-group of the “Lodging” use group in Table 34-1). The following exceptions apply to this restriction:

- (1) This restriction on continuous weekly rentals does not apply to:
 - a. Any land between Estero Boulevard and the Gulf of Mexico.
 - b. Any land directly adjoining the bay side of Estero Boulevard.
 - c. Any dwelling unit where the immediate presence of a property owner can be presumed to mitigate any negative effects that might result from continuous weekly rentals. To qualify for this exception, the owner of the dwelling unit or an immediate family member must be in residence on the premises, or on an immediately adjoining lot, during any period when the dwelling unit is continuously rented for weekly periods.
- (2) Dwellings units on property that qualifies for any of these exceptions may be rented to a single family for periods of one week or longer, without the once-per-month maximum that would otherwise have applied.

Sec. 34-2392–34-2410. Reserved.

OPTION SIX: [*minimum-regulation proposal*]

NOTE – if Option Six is chosen:

- (1) *The following restriction in Table 34-1 of this code (page 76) in the “Restricted” sub-group would be modified as follows: “Rental of any permitted dwelling unit to a single family ~~during any one-month period~~, with a minium stay of one week (see §§ 34-2391–2410 for rules and exceptions)”*
- (2) *The following restriction in Table 34-1 in the “Limited” sub-group would be eliminated as follows: “Rental of any permitted dwelling unit to a single family for periods of one week or longer (see §§ 34-2391–2410 for rules)”*

Sec. 34-2391. Purpose and intent.

The purpose and intent of this division is to:

- (1) Establish standards of respectful conduct in residential neighborhoods and educate guest about those standards, and
- (2) Increase communication between residential neighborhoods and operators of short-term rental units.

Sec. 34-2392. Definitions.

Guest means any patron, customer, tenant, lodger, boarder, or occupant of a short-term rental unit.

Operator means the owner, licensee, proprietor, lessee, manager, assistant manager, or appointed agent of a short-term rental unit.

Short-term rental unit means any single-family or two-family dwelling unit, or a unit in multiple family building with three or four dwelling units, which is rented more than three times in a calendar year for periods of one week to one month, or which is advertised or held out to the public as a place regularly rented for periods of one week to one month.

Sec. 34-2393. Code of conduct for short-term rentals.

(a) The following code of conduct applies to operators and guests of short-term rental units:

- (1) **Maximum Occupancy:** Occupancy of each short-term rental unit must be consistent with the definition of “family” that is found in § 34-2 of this code, which defines a family as one or more persons occupying a dwelling unit and living as a single, nonprofit

housekeeping unit, provided that a group of five or more adults who are not related by blood, marriage, or adoption shall not be deemed to constitute a family.

- (2) **Refuse Collection:** Refuse containers shall not be moved to the street more than 24 hours prior to scheduled curbside collections nor remain there more than 24 hours after scheduled collections, as required by § 6-11 of the Fort Myers Beach land development code. In addition, if a property owner or property manager is unable to comply with this requirement around the weekly pick-up day, arrangements for additional refuse collection must be secured by the operator.
- (3) **Quiet Hours:** Between the hours of 10:00 PM and 7:00 AM, all guests shall observe quiet hours. This means all outdoor activity, including swimming, shall be kept to a reasonable noise level that is non-intrusive and respectful of neighbors. Town of Fort Myers Beach Ordinance 96-24 sets limits on noise levels during quiet hours and these levels must be obeyed by all guests.
- (4) **Mandatory Evacuations:** All guests staying in short-term rental units must comply with mandatory evacuations due to hurricanes and tropical storms, as required by state and local laws.

(b) Operators are required to provide guests with the town's code of conduct for short-term rentals.

- (1) The town shall provide operators with a printed version of the code of conduct and a standardized agreement for compliance.
- (2) The operator shall provide guests of short-term rental units with the code of conduct and obtain the signature of guests on the agreement indicating that they are aware of and intend to comply with the code of conduct.
- (3) The code of conduct shall also be posted at the primary entrance/exit to each short-term rental unit.

(c) Operators must provide the town with a current local telephone number of a contact for each short-term rental unit. This telephone number must be answered 24 hours a day to respond to complaints. These telephone numbers are public records and will be available at town hall during regular business hours.

Sec. 34-2394. Enforcement and penalties.

(a) The director is authorized to pursue any one or combination of the enforcement mechanisms provided in this code (for example, § 1-5, or article V of ch. 2) for any violation of this division.

(b) Persons who may be charged with a violation of this division include property owners, operators, rental agents, guests, and any other person using the structure where the violation has been committed.

Sec. 34-2395–34-2410. Reserved.

REDACT

REALTOR® Association of Greater Fort Myers and the Beach, Inc.
2840 Winkler Avenue
Fort Myers, Florida 33916
(941) 936-3537, Fax (941) 936-2836
Email: association@swflrealtors.com

December 30, 2002

Mayor, Daniel Hughes & Town Council
C/O Bill Spikowski
Spikowski Planning Associates
1617 Hendrey Street, Suite 416
Fort Myers, Florida 33901-8866

Subject: Town of Fort Myers Beach, Short Term Rental Ordinance

Dear Mayor Hughes:

On behalf of the membership of the REALTOR® Association of Greater Fort Myers and the Beach, Inc., I am writing in regard to a proposed ordinance that would ban short-term rentals of certain properties located in designated residential areas in the town of Fort Myers Beach. If enacted, such a measure would have a detrimental impact upon the local economy, property owners, and will definitely have a negative impact on the vital tourism industry.

The REALTOR® Association of Greater Fort Myers and the Beach, Inc. is opposed to the proposed ordinance banning short-term rentals in residential areas. It is further our contention that such intervention on the part of a governmental entity constitutes the circumvention of a citizen's private property rights, which is unacceptable. This proposed ban on short-term rentals would render the community unable to fully accommodate the thousands of visitors who visit our beautiful Southwest Florida area, which will create a substantial negative impact upon our thriving economy.

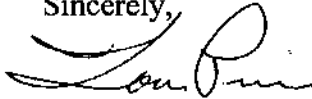
This Association recognizes the efforts of the Town Council's appointed, Short Term Rental Task Force and their proposed ordinance, dated September 13, 2002 for consideration by the LPA and Town Council. This ordinance is referred to as "Option Three" in Sec. 34-2391. The REALTOR® Association of Greater Fort Myers and the Beach, Inc. which is made up of over 2500 active members, would support Option Three as suggested by the members of the Short Term Rental Task Force, as the most viable option for the ordinance which addresses the Short-Term Rental issue on Fort Myers Beach.



This Association also suggests an Option Six. This alternative option would allow short-term rentals in the town of Fort Myers Beach in its present form with more stringent code enforcement and additional emphases on respectful conduct in residential neighborhoods, including better communications between private homeowners and individuals renting their homes on a short-term basis.

Therefore, without hesitation, the REALTOR® Association of Greater Fort Myers and the Beach, Inc. submits its official opposition to the proposed restrictions on short-term rentals which has been suggested by a majority of the LPA at their December 17, 2002 meeting. The proposed restrictions are based on a variation of Option Two ("workshop proposal"). This Association requests that you give favorable consideration to Option Three as suggested by the Task Force and the additional option six suggested by this Association. I very much welcome the opportunity to discuss this issue with you and the Town Council in more detail.

Sincerely,

A handwritten signature in black ink, appearing to read "Tom Pierce", written in a cursive style.

Tom Pierce, President

REALTOR® Association of Greater Fort Myers and the Beach, Inc.



The Greater
Fort Myers Beach
Area Chamber of Commerce

(941) 454-7500 1-800-782-9283 FAX (941) 454-7910
17200 San Carlos Boulevard, Fort Myers Beach, Florida 33931
E Mail: info@fmbchamber.com • Web Site: www.fmbchamber.com

ANGIE PARKER - Chairman of the Board
KEN KATCKO - Chair Elect
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SCOTT GREGORY - Past Chairman
D.J. PETRUCCELLI - President

Thursday 2 January 2003

The Honorable Dan Hughes
Mayor, Town of Fort Myers Beach
% Bill Spikowski
1617 Hendry Street, Suite #416
Fort Myers, Florida 33901-8866

Good morning Dan:

I am writing on behalf of the Greater Fort Myers Beach Area Chamber of Commerce regarding the proposed ordinance that would ban short-term-rentals of certain properties in special designated residential areas on Fort Myers Beach.

If any change is made to the present ordinance, the results will be disastrous, not only to the economy of our Town but to the economy of all of Lee County and to the property owners here on Fort Myers Beach. We truly believe that personal property rights would be violated and we are positive that you would not want this to occur.

Our Chamber office receives several thousands of inquiries each year from individuals who are anxious to spend a short time on our beautiful tropical island and our office survey reveals that more than 78% of all inquiries are for stays of less than seven (7) days. Any ban on short-term-rentals would mean that thousands of our regular visitors would not be accommodated and they would look elsewhere to spend their free time and their dollars.

According to the Lee County Tourist Development Council, the estimated loss of tourist dollars to Fort Myers Beach would be \$143,000,000.00 -- if there is a ban on our present short-term-rentals. Every business owner and citizen would be adversely affected!

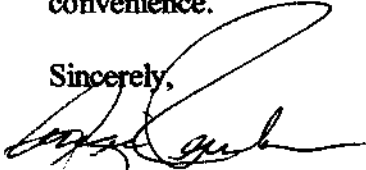
In 2002, the Town appointed a special Short-Term-Rental Task Force and they prepared an ordinance and this is known as "Option Three" in Sec.34-2391 and our Chamber is in full support of "Option Three" and our Chamber also suggests an "Option Six", which would allow short-term-rentals on Fort Myers Beach in its present form with stringent code enforcement and additional emphasis on acceptable conduct in our residential neighborhoods. This would assure better communications between private homeowners and individuals renting their homes on a short-term basis.

With this letter, the Fort Myers Beach Chamber of Commerce is informing you of its official opposition to the proposed restrictions on short-term-rentals as was suggested by a majority of the LPA at their meeting on December 17, 2002 which was based on a variation of "Option Two" ("workshop proposal").

We urge you to give favorable consideration to "Option Three" which the Special Task Force adopted and "Option Six" as recommended by the Board of Realtors.

It would be my pleasure to discuss this with you and all of the members of our Town Council at your earliest convenience.

Sincerely,



Angie Parker, Board Chairperson

GREATER FORT MYERS BEACH AREA CHAMBER OF COMMERCE



Overview - Executive Council - Section Administration - Publications
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Section Reporter

July 2000

Larry Sellers - Chair

Robert Manning, John Fumero and Cathy Sellers - Editors

ARTICLES



Vacation Rentals, Improved Subdivisions and the Florida Keys: Property Right or Incompatible Land Use

Ralf G. Brookes (formerly Special Counsel to Monroe County)

The Florida Keys are the canary in the coal mine, an early indicator of issues that will affect Florida's future. For visitors from Dade, Broward, Palm Beach and beyond, the Keys evolved into Florida's playground. To these casual visitors driving south on US 1, the residential communities of the Keys are easy to overlook. But to the growth management practitioner, the geographically limited islands are reminiscent of Darwin's isolated Galapagos, a hothouse for the evolution of issues that will eventually affect other parts of Florida.

The communities of the Florida Keys date back to a time when more people lived in Key West than Miami. When wrecking, the rescue and plunder of ships unfortunate enough to run into the reef brought Key West the title of the wealthiest city in the United States, only to later declare bankruptcy. Shipping channels were replaced by rail and road; access, commerce and the economy were forever altered. Original rail worker encampments on Pigeon Key gave rise to the fast growing communities of Marathon, Islamorada, and Matecumbe. Tourism became the number one industry.

On the islands connected by bridges, developers dredged rows of canals and platted the seeds of new communities on the spoils. Tarpon, bonefish, tuna, snapper, even conch and lobster could be caught in abundance. The idyllic fishing and boating in the crystal, gin-clear waters that surround the islands proved hard to resist. Subdivisions sprung out of the low-lying islands of Cudjoe, Big Pine and Duck Key. More and more people were drawn by the lure of the Keys. The coral reef is now the center of recreational diving in the United States - all within a few hours drive of south Florida. Our love for Florida's own set of Caribbean islands grew as fast as its population and threatened to bring about its early demise.

Commercial uses along US 1 turned the Overseas Highway into a corridor of shell shops, strip malls and convenience stores seeming to stretch on forever, even by Florida standards. But with the provision of all the commercial conveniences of south Florida, life in the Keys became even more comfortable, and residential development in Monroe County continued to flourish.

More and more people built homes on fragile islands connected by bridges, but not yet served by modern sewers. Many became full-time residents and thrived off the tourist-based economy. Other people built second homes - their place in the islands for seasonal vacations or retirement. Still others brought RVs and mobile homes and left them in the Keys for occasional visits. Hurricane evacuation times on the Overseas Highway reached 30 hours; growth outpaced even the meteorologist's ability to estimate impending landfall.

Some local residents favored state oversight of local land use decisions. Local decisions were too often motivated by desire for even more development at the expense of the environment and quality of life. The fox was in the henhouse and Florida's unique national treasure was at stake. The state legislature adopted Chapter 380, recognized their plea, and the Florida Keys became one of the most important, and already over-developed, Area of Critical State Concern. Decisions made in the Keys were from that day forward placed under a state microscope, as state oversight brought local land use and growth management decisions to the halls of Tallahassee. Many of the ideas originally contained

in Chapter 380 eventually made their way to the rest of Florida under Chapter 163 in Florida's Growth Management Act of 1985.

Vacation rentals are the newest in a long line of hot issues to make first landfall in the Florida Keys. You have probably seen them in your community or where you vacation. Perhaps you have even rented one. Every land use practitioner who has seen a vacation rental in an improved subdivision must turn their head and wonder: What is it zoned? Is it allowed? And what do the neighbors think?

As a former Monroe County planning director testified, the vacation rental issue was previously not a problem requiring the adoption of an ordinance. In the recent past, there were perhaps less than 100 such vacation rental units. Rental agents now estimate that there may be more than 4100 vacation rental units in Monroe County alone. The vast majority of these vacation rentals are located in improved subdivision land use or zoning districts, which have traditionally served as family neighborhoods for more permanent residents of the Florida Keys.

As you might imagine, neighbors became concerned. A number of potential adverse impacts on neighborhoods, community character and the environment, were raised. A self-imposed vacation rental agent "hot line" was created to respond to neighbor complaints, but did little to appease the most vocal opponents who would rather call their Commissioner. The County Commission asked the County attorney to bring a test case under the nearly silent existing Code, which he likened to "going to play major league baseball, with a whiffle bat." Thus, in 1995, the Monroe County Board of County Commissioners directed that a series of public hearings be held to draft an ordinance that expressly addressed vacation rentals in residential neighborhoods.

After 9 public hearings, competing local interests reached a stalemate. The planning commission recommended two ordinances to the County Commission: one allowing vacation rentals and one prohibiting vacation rentals. The County Commission fared little better and was unable to decide the politically charged, hot issue of the day. The realtors asked for an advisory referendum and the Commission willingly agreed to put the matter on the ballot. In November 1996, the following question was posed directly to the voters: "Should transient rentals of less than 28 days be allowed in (IS) Improved Subdivisions?" The voters of Monroe County responded 51% to 49% in favor of prohibiting transient rentals of less than 28 days in Improved Subdivisions.

The Board of County Commissioners was back in the hot seat, and after 3 more public hearings, finally passed and adopted Ordinance 004-1997. The Ordinance prohibits vacation rentals of less than 28 days in Improved Subdivisions (IS) and other environmentally sensitive areas, but allows vacation rentals in most commercial districts. The Ordinance also created a new land use sub-district, called "Improved Subdivision-Tourist Housing (IS-T)" district, which expressly allows short-term vacation rentals. Where vacation rentals are allowed, a special permit is required under standards regulating short-term vacation rentals to ensure that the use was compatible with surrounding land uses, community character and the natural environment. Although any IS district could be rezoned IS-T subject to a set of standards to prevent spot re-zoning, the rental agents claimed that obtaining an IS-T rezoning would be a difficult, if not insurmountable task.

Because the Ordinance affects the use of land in an Area of Critical State Concern, Section 380.05, Florida Statutes, mandates that amendments to local land development regulations be reviewed by the Department of Community Affairs, for consistency with the Principles for Guiding Development set forth in Section 380.0552, Fla. Stat. Notice of a proposed rule approving the Ordinance was published in the Florida Administrative Weekly, and a challenge was filed under Section 120.56.

After the 12 hearings that were previously held by the local government, the state held 3 more public hearings on the issues. In the interim, newly amended Section 380.05(6) Fla. Stat., became effective and changed the rules of the game in mid-stream; the Department was now required to approve or reject the Ordinance by final order, rather than by rule. By stipulation of the parties, the DCA withdrew its proposed rule (which might have been subject to the APA's EIS requirement) and filed a final order instead. The DCA's final order was then challenged and taken to hearing by a group of property owners, the newly-formed Vacation Rental Managers Association, the lower Keys and Marathon Chambers of Commerce, and the Pacific Legal Foundation, as an amicus. At the request of the Department, Monroe County intervened and led the defense of its own Ordinance in the state Administrative Hearings conducted under Sections 120.569 and 120.57(1), Fla. Stat.

Both the ALJ and the Secretary found the Ordinance to be consistent with the Principles for Guiding Development adopted under the Florida Keys ACSC. Rathcamp v. DCA and Monroe County (Final Order DCA98-OR-184, DOAH Case No. 97-5952). The petitioners then appealed this decision

to the 3rd DCA. Rathcamp v. DCA and Monroe County, 24 Fla. L. Weekly D1807 (Fla. 3rd DCA, August 13, 1999). In August 1999 Third District Court of Appeal found that there was substantial, competent evidence sufficient to support the DCA's Final Order approving Ordinance 004-1997. Three years after Monroe County's initial public hearings on the issue, the vocal opponents of vacation rentals had the final decision they had been seeking.

The vacation rental case of Rathcamp is reminiscent of the landmark zoning case of Village of Euclid v. Ambler Realty Co., 272 U.S. 365 (1926). Central to both Euclid and the instant case, is the concept that uses of property may be separated into compatible areas. As the ALJ noted in Rathcamp, a vacation rental "is more like the rental of a hotel or motel rental, rather than the long-term lease of property." Failing to separate such commercial uses or allowing them to proliferate unregulated, can result in many impacts, some of them expected and some unintended. What issues and valid concerns were raised in this hearing and sustained by the first District Court of Appeals?

The ALJ noted the following types of problems "not uncommonly associated with short term rental property" they stay up later at night, late night parties are not limited to weekends, excessive number of vehicles, boats, jet skis, RV's (with noisy self-containing generators), and boat trailers, which they park in driveways, yards or on residential streets, multiple boats docked on seawalls." The ALJ also found the vacation renter to be "unfamiliar with garbage and recycling schedules, trash and garbage are left outside several days before pickup, unfamiliar pets are left to roam free, [and] occupants are less likely to adhere to neighborhood practices, less concerned about trespassing on seawalls and yards, [and] less familiar with nearshore waters." Noting that these traits are not limited to vacation renters, but are also caused by some permanent residents, the ALJ distinguished "the degree to which the problems are caused [as] much higher" for vacation renters. Partly because they have "less reason to be concerned, they will be leaving the community in a short time." Further, the ALJ noted that not all owners use local managers and as absentee owners, "are not available to handle complaints as they arise." Although many of these issues are addressed by state and local ordinances, the local police and code enforcement process are poorly equipped to handle the problems created by vacation rental tenants night after night, week after week by an ever-changing stream of tenants.

For the Keys tourist, recreational activity is the rule, on a daily basis, rain or shine. Continuous fun is a temporary vocation. But for the residents, the keys are home a place where people have to get up and go to work in the morning. The ALJ placed emphasis on the community character issue holding that "the crucial issue is essentially a local one and consequently, some deference should be afforded the County to make this difficult choice." This is primarily because the "ordinance does no harm to the environment and waters of the Florida Keys ACSC, and, in fact, has some small beneficial consequence to the environment."

Although seen as minimal when compared to the community character issues, these small benefits resulting from the Ordinance accrued to the Keys sensitive environment. Tourists utilizing vacation rental homes are generally unfamiliar with the shallow patch reefs, the ecological importance of seagrass beds and many of the federal and state-listed endangered and threatened species within Monroe County, such as Key Deer. For example, feeding Key Deer is a popular, but illegal, tourist activity as it encourages the diminutive deer to interact and rely on humans for food. Each week, a new group of tourists must be re-educated to the sensitive nature of the islands, not just garbage days and school-night parties.

Education is made more difficult when tourists are dispersed throughout neighborhoods and no longer concentrated at traditional hotels and marinas. Navigation routes are frequently unmarked, and markedly different at the end of each residential canal within each IS district. And there are no marina personnel to guide them. What appears to be a boater's paradise from the seven-mile bridge, nearshore waters are filled with coral heads and seagrass flats. These obstacles can be obscured from view under less than optimal conditions when tourists are more likely to "venture out" than permanent residents more familiar with the waters, and who can more readily wait for sunny days when the water is easier to "read."

Outdated septic tank systems would require review with a change in use review to prevent adverse water quality impacts. Septic tanks for most single family homes in the Keys were approved many years ago when the home was first constructed. Single-family homes, hotels, and cottages all have a different minimum required capacity. In addition, a current maximum density loading is four (4) septic tanks per acre. The EPA Septic Tank Manual, states that a "dry" area of at least 4 feet should exist between the septic system mat and the watertable. The watertable in most of the islands areas in the Keys is insufficient to obtain a 4 foot differential. Many lots, platted and developed long ago, do not meet the current standards.

Restrictions on new housing, created by the dwelling unit allocation ordinance (commonly referred to as ROGO or the Rate of Growth Ordinance) have exacerbated the demand for long-term rental housing for permanent residents. The return of nearly 4100 vacation rental homes to the long-term rental market may in turn "free up less expensive housing^{1/4}that will generally trickle-down through the entire housing market" and provide more affordable housing for all sectors of the population as required by Section 380.0552(7)(j), Fla. Stat..

The ALJ noted that when determining consistency with the principles under Section 380, "it may be determined that some of the principles have little or no application," and the principles must be construed as a whole. The Ordinance had little or no bearing on the other principles of Section 380.0552.

Although not specifically addressed in the administrative hearing, and not raised on appeal, it is also unlikely that the Ordinance would result in an unconstitutional taking either on its face or as applied. The ordinance does not completely prohibit vacation rentals within Monroe County. Vacation rentals are still allowed in many zoning districts, including the newly-created IS-T. There is still a consumer market for vacation rentals in self-regulating condominiums and gated communities, which are exempt under the Ordinance.

Other municipalities within Monroe County, such as Key West, the newly incorporated Village of Islamorada, and Key Colony Beach have yet to expressly regulate vacation rental uses. The ALJ did consider these areas as mitigating against the dire predictions of a modern day bankruptcy in Margaritaville reminiscent of Key West's economic past. A rational basis for separating commercial uses from residential dates all the way back to Euclid. But how would the courts treat such a hybrid?

The regulation neither prevents other uses of property nor results in an unconstitutional taking as applied to individual landowners in most conceivable instances. Homes in IS districts that can no longer be used as vacation rentals can still be rented to long-term residents. Weekly rates and rental agent commissions are higher for short-term vacation rentals. But the petitioner's own testimony was that on average it is more profitable to the landowner to rent long-term than short-term, due to the full-time occupancy rate. An owner may also apply for rezoning of property IS-T, and if they no longer wish to occupy a second home themselves. Or an owner could still rent (or even sell) their house for a reasonable return to someone for use as a purely residential, single family home. A ripe takings claim under this ordinance would be hard to make, ...and may be even harder to find than the last mango in paradise, but not as hard to find as a vacation rental even under the new ordinance. [Stay tuned for the enforcement story].

