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MEMORANDUM

TO: Fort Myers Beach Town Council
FROM: Bill Spikowski
DATE: May 26, 2003
SUBJECT: SMALL-SCALE COMPREHENSIVE PLAN AMENDMENTS

During the final adoption hearings for Chapter 34 of the Land Development Code, several property owners objected to the zoning districts that were being assigned to their lots. However, the zoning districts they preferred were inconsistent with the Comprehensive Plan's future land use map; thus the Town Council was unable to consider the merits of their requests at that time.

The property owners then requested an immediate review of their classification under the Comprehensive Plan. Normally, requests to amend the plan are processed only once per year, with the application deadline being the end of the calendar year.

Because the affected properties are just a handful of subdivided lots owned by individuals, the Town Council was asked to consider these requests under an expedited provision of state law that local governments may choose for evaluating "small-scale" plan amendments. The Town Council agreed to learn more about this expedited system before making a decision whether or not to authorize it in this case or at other times.

The attached memorandum to the Local Planning Agency provides background information on this matter. At its April 15 meeting, the LPA voted to recommend that a single round of small scale plan amendments be allowed, limited to those properties whose representatives appeared during public hearings on the new zoning map but who were unable to have the merits of their requests heard due to inconsistency with the Comprehensive Plan's Future Land Use Map.

ACTION REQUESTED

The Town Council needs to decide whether the town should accept small scale plan amendments more frequently than its current annual cycle. If the answer is yes, the LPA's suggestion would provide a single opportunity for several aggrieved parties to be heard, without creating a recurring opportunity for continued amendments to the Future Land Use Map. (A deadline of July 31 would allow those parties time to formulate their requests and make formal application.)

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MEMORANDUM

TO: Fort Myers Beach Local Planning Agency
FROM: Bill Spikowski
DATE: April 6, 2003
SUBJECT: SMALL-SCALE COMPREHENSIVE PLAN AMENDMENTS

WHAT IS BEING CONSIDERED

During the final adoption hearings for Chapter 34 of the Land Development Code, several property owners objected to the zoning districts that were being assigned to their lots. However, the zoning districts they preferred were inconsistent with the Comprehensive Plan's future land use map; thus the Town Council was unable to consider the merits of their requests at that time.

The property owners then requested an immediate review of their classification under the Comprehensive Plan. Normally, requests to amend the plan are processed only once per year, with the application deadline being the end of the calendar year.

Because the affected properties are just a handful of subdivided lots owned by individuals, the Town Council was asked to consider these requests under an expedited provision of state law that local governments may choose for evaluating "small-scale" plan amendments. The Town Council asked to learn more about this expedited system before making a decision whether or not to authorize it in this case or at other times. This memorandum provide background information on this matter.

STATE LAW ON "SMALL SCALE" PLAN AMENDMENTS

Florida law normally allows a local government to amend its Comprehensive Plan as often as twice per year. However, given the lengthy amendment process, twice-per-year amendment cycles overlap each other and are not permitted by many local governments (including Fort Myers Beach and Lee County).

There are a number of exceptions to the twice-per-year statutory limit (see §163.3187, *Florida Statutes*, copy attached). The most common exception is for "small scale development amendments," which can change the future land use map for up to ten acres of land. However, they cannot change even a single word of the Comprehensive Plan's text. There are several differences in the procedural requirements, the most important of which is that only a single public hearing is required before the Town Council instead of the normal two hearings. The single LPA hearing is unchanged.

TOWN LAW ON "SMALL SCALE" PLAN AMENDMENTS

At present, the Town of Fort Myers Beach does not provide priority processing for "small scale" plan amendments. In fact, it would be a rare occurrence for any proposed amendment to the future land use map to be larger than ten acres because nearly all land has already been subdivided into smaller parcels.

The current Comprehensive Plan addresses future plan amendments as follows:

> ***"MAP AMENDMENTS:*** *The intensity and density levels allowed by the Future Land Use Map may be increased through formal amendments to this plan if such increases are clearly in the public interest, not just in the private interest of a petitioning landowner. Petitions from landowners will be accepted annually. The Town Council may accept applications more frequently at its sole discretion." [Policy 4-C-10, page 4–50]*
>
> *"This plan, including the Future Land Use Map, may be amended with such frequency as may be permitted by applicable state statutes and in accordance with such administrative procedures as the Town Council may adopt. Petitions for changes from landowners will be accepted annually; the Town Council may accept applications more frequently at its sole discretion." [page 15–5]*

Thus the Town is not required by its Comprehensive Plan to accept small scale amendments more frequently than the regular annual cycle, but it is not forbidden from doing so, if the Town Council decides that doing so is desirable.

The current Land Development Code addresses future plan amendments as follows:

> ***Sec. 34-92. Comprehensive plan amendments.***
> *(a) Amendments to any part of the Fort Myers Beach Comprehensive Plan may be proposed by private parties. All amendments requested during a calendar year will be considered simultaneously with any public amendment proposals put forth by the town council or local planning agency.*
> *(b) Private applications for amendments must be received at town hall by the last business day of the calendar year. Amendment proposals do not need to include all of the information required by § 34-201, but must be sufficient to identify the parties making the request and the exact nature of the request, and must provide adequate supporting material in support of the request.*
> *(c) Proposals to amend the Future Land Use Map must meet Comprehensive Plan Policy 4-C-10.*

This language provides minimum standards for plan amendments that are proposed by private parties. If the Town Council decides to accept small scale amendments on a more frequent basis, the new policy should be added to this section of the Land Development Code. (However, it does not seem essential that such an amendment be completed prior to acceptance of small-scale amendments, should the Town Council change its current policies.)

POTENTIAL OPTIONS FOR "SMALL SCALE" PLAN AMENDMENTS

There a number of different options that the town could choose in responding to the recent request to accept applications for small scale plan amendments:

(1) Continue to accept these applications only during the current annual amendment cycle.
(2) Applications could be accepted at other times but only if the Town Council (or LPA?) decides that a proposed application has unusual merit or there are some other extenuating circumstances.
(3) Allow a second annual cycle for *all* applications that meet the statutory requirements for "small scale development amendments," perhaps with an application deadline of June 30. This would allow a second opportunity each year to accept these applications.
(4) Allow small scale development applications at any time during the year, processing them individually in the order that complete applications are received.

Communities that allow frequent plan amendments often fall into two types: One is a community whose Comprehensive Plan is out-of-date and therefore is an impediment rather than an aid to healthy development or redevelopment. A second is a community whose future land use map is identical to its zoning map, and thus individual zoning changes require a plan amendment (for example, Sanibel and Fort Myers).

Other than this second type, communities that encourage frequent plan amendments seem to broadcast a message that their Comprehensive Plans don't need to be taken seriously. Options (3) and (4) above might send this message, which is at odds with the actual depth of care and community involvement that went into preparing the Fort Myers Beach Comprehensive Plan.

The major difficulty with Option (2) is that it requires the Town Council (or LPA) to pass some level of judgment, however preliminary, on an application that hasn't yet been filed. However, this might work in the current situation, where several specific landowners seem to have been unaware of changes that affected their property due to the adoption of the Comprehensive Plan (which became effective on January 1, 1999).

If Options (2), (3), or (4) are chosen, specific guidelines would have to be prepared that would specify the application procedure, the fees to be paid, and the processing schedule.

ACTION REQUESTED

The Local Planning Agency may wish to make a recommendation to the Town Council as to whether the town should accept small scale plan amendments more frequently than its current annual cycle.

Attachment: § 163.3187, *Florida Statutes*

163.3187 Amendment of adopted comprehensive plan.--

(1) Amendments to comprehensive plans adopted pursuant to this part may be made not more than two times during any calendar year, except:

(a) In the case of an emergency, comprehensive plan amendments may be made more often than twice during the calendar year if the additional plan amendment receives the approval of all of the members of the governing body. "Emergency" means any occurrence or threat thereof whether accidental or natural, caused by humankind, in war or peace, which results or may result in substantial injury or harm to the population or substantial damage to or loss of property or public funds.

(b) Any local government comprehensive plan amendments directly related to a proposed development of regional impact, including changes which have been determined to be substantial deviations and including Florida Quality Developments pursuant to s. 380.061, may be initiated by a local planning agency and considered by the local governing body at the same time as the application for development approval using the procedures provided for local plan amendment in this section and applicable local ordinances, without regard to statutory or local ordinance limits on the frequency of consideration of amendments to the local comprehensive plan. Nothing in this subsection shall be deemed to require favorable consideration of a plan amendment solely because it is related to a development of regional impact.

(c) Any local government comprehensive plan amendments directly related to proposed **small scale** development activities may be approved without regard to statutory limits on the frequency of consideration of amendments to the local comprehensive plan. A **small scale** development amendment may be adopted only under the following conditions:

1. The proposed amendment involves a use of 10 acres or fewer and:

a. The cumulative annual effect of the acreage for all **small scale** development amendments adopted by the local government shall not exceed:

(I) A maximum of 120 acres in a local government that contains areas specifically designated in the local comprehensive plan for urban infill, urban redevelopment, or downtown revitalization as defined in s. 163.3164, urban infill and redevelopment areas designated under s. 163.2517, transportation concurrency exception areas approved pursuant to s. 163.3180(5), or regional activity centers and urban central business districts approved pursuant to s. 380.06(2)(e); however, amendments under this paragraph may be applied to no more than 60 acres annually of property outside the designated areas listed in this sub-sub-subparagraph. Amendments adopted pursuant to paragraph (k) shall not be counted toward the acreage limitations for **small scale** amendments under this paragraph.

(II) A maximum of 80 acres in a local government that does not contain any of the designated areas set forth in sub-sub-subparagraph (I).

(III) A maximum of 120 acres in a county established pursuant to s. 9, Art. VIII of the State Constitution.

b. The proposed amendment does not involve the same property granted a change within the prior 12 months.

c. The proposed amendment does not involve the same owner's property within 200 feet of property granted a change within the prior 12 months.

d. The proposed amendment does not involve a text change to the goals, policies, and objectives of the local government's comprehensive plan, but only proposes a land use change to the future land use map for a site-specific **small scale** development activity.

e. The property that is the subject of the proposed amendment is not located within an area of critical state concern, unless the project subject to the proposed amendment involves the construction of affordable housing units meeting the criteria of s. 420.0004(3), and is located within an area of critical state concern designated by s. 380.0552 or by the Administration Commission pursuant to s. 380.05(1). Such amendment is not subject to the density limitations of sub-subparagraph f., and shall be reviewed by the state land planning agency for consistency with the principles for guiding development applicable to the area of critical state concern where the amendment is located and shall not become effective until a final order is issued under s. 380.05(6).

f. If the proposed amendment involves a residential land use, the residential land use has a density of 10 units or less per acre, except that this limitation does not apply to **small scale** amendments described in sub-sub-subparagraph a.(I) that are designated in the local comprehensive plan for urban infill, urban redevelopment, or downtown revitalization as defined in s. 163.3164, urban infill and redevelopment areas designated under s. 163.2517, transportation concurrency exception areas approved pursuant to s. 163.3180(5), or regional activity centers and urban central business districts approved pursuant to s. 380.06(2)(e).

2.a. A local government that proposes to consider a plan amendment pursuant to this paragraph is not required to comply with the procedures and public notice requirements of s. 163.3184(15)(c) for such plan amendments if the local government complies with the provisions in s. 125.66(4)(a) for a county or in s. 166.041(3)(c) for a municipality. If a request for a plan amendment under this paragraph is initiated by other than the local government, public notice is required.

b. The local government shall send copies of the notice and amendment to the state land planning agency, the regional planning council, and any other person or entity requesting a copy. This information shall also include a statement identifying any property subject to the amendment that is located within a coastal high hazard area as identified in the local comprehensive plan.

3. **Small scale** development amendments adopted pursuant to this paragraph require only one public hearing before the governing board, which shall be an adoption hearing as described in s. 163.3184(7), and are not subject to the requirements of s. 163.3184(3)-(6) unless the local government elects to have them subject to those requirements.

(d) Any comprehensive plan amendment required by a compliance agreement pursuant to s. 163.3184(16) may be approved without regard to statutory limits on the frequency of adoption of amendments to the comprehensive plan.

(e) A comprehensive plan amendment for location of a state correctional facility. Such an amendment may be made at any time and does not count toward the limitation on the frequency of plan amendments.

(f) Any comprehensive plan amendment that changes the schedule in the capital improvements element, and any amendments directly related to the schedule, may be made once in a calendar year on a date different from the two times provided in this subsection when necessary to coincide with the adoption of the local government's budget and capital improvements program.

(g) Any local government comprehensive plan amendments directly related to proposed redevelopment of brownfield areas designated under s. 376.80 may be approved without regard to statutory limits on the frequency of consideration of amendments to the local comprehensive plan.

(h) Any comprehensive plan amendments for port transportation facilities and projects that are eligible for funding by the Florida Seaport Transportation and Economic Development Council pursuant to s. 311.07.

(i) A comprehensive plan amendment for the purpose of designating an urban infill and redevelopment area under s. 163.2517 may be approved without regard to the statutory limits on the frequency of amendments to the

comprehensive plan.

(j) Any comprehensive plan amendment to establish public school concurrency pursuant to s. 163.3180(13), including, but not limited to, adoption of a public school facilities element and adoption of amendments to the capital improvements element and intergovernmental coordination element. In order to ensure the consistency of local government public school facilities elements within a county, such elements shall be prepared and adopted on a similar time schedule.

(k) A local comprehensive plan amendment directly related to providing transportation improvements to enhance life safety on Controlled Access Major Arterial Highways identified in the Florida Intrastate Highway System, in counties as defined in s. 125.011, where such roadways have a high incidence of traffic accidents resulting in serious injury or death. Any such amendment shall not include any amendment modifying the designation on a comprehensive development plan land use map nor any amendment modifying the allowable densities or intensities of any land.

(l) A comprehensive plan amendment to adopt a public educational facilities element pursuant to s. 163.31776 and future land-use-map amendments for school siting may be approved notwithstanding statutory limits on the frequency of adopting plan amendments.

(2) Comprehensive plans may only be amended in such a way as to preserve the internal consistency of the plan pursuant to s. 163.3177(2). Corrections, updates, or modifications of current costs which were set out as part of the comprehensive plan shall not, for the purposes of this act, be deemed to be amendments.

(3)(a) The state land planning agency shall not review or issue a notice of intent for **small scale** development amendments which satisfy the requirements of paragraph (1)(c). Any affected person may file a petition with the Division of Administrative Hearings pursuant to ss. 120.569 and 120.57 to request a hearing to challenge the compliance of a **small scale** development amendment with this act within 30 days following the local government's adoption of the amendment, shall serve a copy of the petition on the local government, and shall furnish a copy to the state land planning agency. An administrative law judge shall hold a hearing in the affected jurisdiction not less than 30 days nor more than 60 days following the filing of a petition and the assignment of an administrative law judge. The parties to a hearing held pursuant to this subsection shall be the petitioner, the local government, and any intervenor. In the proceeding, the local government's determination that the **small scale** development amendment is in compliance is presumed to be correct. The local government's determination shall be sustained unless it is shown by a preponderance of the evidence that the amendment is not in compliance with the requirements of this act. In any proceeding initiated pursuant to this subsection, the state land planning agency may intervene.

(b)1. If the administrative law judge recommends that the **small scale** development amendment be found not in compliance, the administrative law judge shall submit the recommended order to the Administration Commission for final agency action. If the administrative law judge recommends that the **small scale** development amendment be found in compliance, the administrative law judge shall submit the recommended order to the state land planning agency.

2. If the state land planning agency determines that the plan amendment is not in compliance, the agency shall submit, within 30 days following its receipt, the recommended order to the Administration Commission for final agency action. If the state land planning agency determines that the plan amendment is in compliance, the agency shall enter a final order within 30 days following its receipt of the recommended order.

(c) **Small scale** development amendments shall not become effective until 31 days after adoption. If challenged within 30 days after adoption, **small scale** development amendments shall not become effective until the state land

planning agency or the Administration Commission, respectively, issues a final order determining the adopted **small scale** development amendment is in compliance.

(4) Each governing body shall transmit to the state land planning agency a current copy of its comprehensive plan not later than December 1, 1985. Each governing body shall also transmit copies of any amendments it adopts to its comprehensive plan so as to continually update the plans on file with the state land planning agency.

(5) Nothing in this part is intended to prohibit or limit the authority of local governments to require that a person requesting an amendment pay some or all of the cost of public notice.

(6)(a) No local government may amend its comprehensive plan after the date established by the state land planning agency for adoption of its evaluation and appraisal report unless it has submitted its report or addendum to the state land planning agency as prescribed by s. 163.3191, except for plan amendments described in paragraph (1)(b) or paragraph (1)(h).

(b) A local government may amend its comprehensive plan after it has submitted its adopted evaluation and appraisal report and for a period of 1 year after the initial determination of sufficiency regardless of whether the report has been determined to be insufficient.

(c) A local government may not amend its comprehensive plan, except for plan amendments described in paragraph (1)(b), if the 1-year period after the initial sufficiency determination of the report has expired and the report has not been determined to be sufficient.

(d) When the state land planning agency has determined that the report has sufficiently addressed all pertinent provisions of s. 163.3191, the local government may amend its comprehensive plan without the limitations imposed by paragraph (a) or paragraph (c).

(e) Any plan amendment which a local government attempts to adopt in violation of paragraph (a) or paragraph (c) is invalid, but such invalidity may be overcome if the local government readopts the amendment and transmits the amendment to the state land planning agency pursuant to s. 163.3184(7) after the report is determined to be sufficient.

History.--s. 10, ch. 75-257; s. 1, ch. 77-174; s. 5, ch. 77-331; s. 9, ch. 85-55; s. 10, ch. 86-191; s. 8, ch. 92-129; s. 11, ch. 93-206; s. 4, ch. 94-273; s. 1446, ch. 95-147; s. 12, ch. 95-310; s. 3, ch. 95-322; s. 5, ch. 95-396; s. 1, ch. 96-205; s. 27, ch. 96-410; s. 4, ch. 96-416; s. 3, ch. 97-253; s. 14, ch. 98-75; s. 13, ch. 98-176; s. 66, ch. 99-251; s. 5, ch. 99-378; s. 26, ch. 2000-151; s. 16, ch. 2000-158; s. 1, ch. 2000-284; s. 8, ch. 2002-296.