

TOWN OF FORT MYERS BEACH — 2008 PROPOSED COMPREHENSIVE PLAN AMENDMENTS

Application #: 2008-03-TEXT

Description: Revise Policy 4-D-1 and revise or repeal Policy 5-C-7 regarding “repetitive loss” properties under the National Flood Insurance Program

Pages to be changed: Comprehensive Plan Pages 4-12, 4-51, 5-14, and 5-28 (proposed changes are attached)

Discussion in E/A Report (adopted on Jan 16 '07): From Pages 10-11: “EVALUATION OF POLICY 5-C-7: This policy was an attempt to speed up the replacement of buildings that were particularly subject to flooding. A single flood loss of \$1,000 or more since 1978 would force a building to be replaced when the next flood damage occurred, regardless of how minor the damage. This is in contrast to the standard rule that a building need not be replaced unless flood damage exceeded 50% of the building’s value. (Language similar to Policy 5-C-7 is also contained in Policy 4-D-1-i.)

“This strict policy is encouraged by the Federal Emergency Management Agency and is rewarded by credits that can reduce flood insurance premiums for all other property owners in the same community. However, the cost to an affected building owner is extremely high, often requiring the demolition of their homes. Figure 6 of the Coastal Management Element mapped the structures that would be affected as of 1993; that map does not include later flood damage from Tropical Storm Gabrielle in 2001 or Hurricane Charley in 2004.

“The town council considered implementing this policy when adopting the new land development code but decided that the extreme costs to individuals outweighed the small potential benefits to all. The corresponding code language was repealed from the code in 2004. A somewhat less restrictive repetitive loss provision was put into the code in its place, requiring that structures damaged repeatedly by flooding during any ten-year period would have to be replaced if flood damage from two or more flood events averaged more than 25% of the building’s value.

“Policy 5-C-7 (and the similar language in Policy 4-D-1) no longer reflect the current policy of the town. This language should be eliminated from the comprehensive plan.”

From Page 71: “This element [coastal management] also noted a Lee County program begun in 1995 to identify individual buildings that have been repeatedly damaged by flooding based on flood insurance claims of at least \$1,000. County officials wanted to require that if these buildings were damaged again by more than 20% of their value, they would have to be brought into compliance with current standards for new construction (primarily by elevating the building). This “repetitive loss” program is conceptually

admirable but was extremely punitive as originally proposed. County officials have backed away from this approach altogether. Town officials placed this policy into the comprehensive plan effective in 1999:

POLICY 5-C-7: Continue to inventory buildings that are repeatedly damaged by flood waters to identify those that have recorded one or more National Flood Insurance Program (NFIP) flood losses of \$1,000 or more since 1978. Require that such buildings be brought into compliance with current regulatory standards for new construction if they are damaged again by flooding.

“When implementing this “repetitive loss” policy through Chapter 6 of the land development code, town officials made it less punitive than the original concept. Policy 5-C-7 should be revised or repealed, as should similar language in Policy 4-D-1-i, as the current language no longer states the town’s official policy on this matter.”

Action by LPA: During a public hearing on May 20, 2008, the LPA recommended that the Town Council approve these changes as proposed in this report:

- Changes to Page 4-12 of the narrative in the Future Land Use Element
- Changes to Policies 4-D-1 of the Future Land Use Element
- Changes to Page 5-14 of the narrative in the Coastal Management Element
- Changes to Policies 5-C-7 of the Coastal Management Element

~~The minutes of the public hearing are attached.~~

Action by Town Council: During a public hearing on November 17, 2008, the Town Council voted unanimously to transmit this amendment for state review.

DCA Objection: None

DCA Recommendation: None

Response to DCA: N/A

Proposed Final Action: The Town Council should adopt the transmitted amendment, as described above, as part of Ordinance 09-03.

Final Action: The Town Council adopted this amendment on August 17, 2009, as part of Ordinance 09-03. (Text shown in red is new or has changed since the initial transmittal of this amendment in January 2009.)

determine if they might jeopardize the community's continued participation in the NFIP.

Lee County began participating in the NFIP in 1984 immediately after all of its coastal areas were mapped. Fort Myers Beach was covered under the county's program until the end of 1996, at which time it began the process of joining the program on its own. The previous Lee County regulations are currently in effect in Section 6-401 through 475 of the Fort Myers Beach Land Development Code; the town now has the responsibility for modifying and updating them.

As to residential buildings, these rules have become a fact of life in all coastal communities. They cause a hardship to many elderly people who have difficulty climbing the required entrance stairs in homes; they often create a strange pattern in neighborhoods with old and new houses; and they reduce the desirable connection between indoor living space and Florida's pleasant outdoors. However, these factors are generally outweighed by the desirability of keeping new homes out of harm's way during recurring floods. There is little prospect or reason for changing this development pattern as it applies to *new homes*.

Properties Repeatedly Damaged By Flooding

A number of structures within the town have experienced damage as a result of past floods. Lee County ~~began a program in 1995~~ considered a program to identify individual buildings that have been repeatedly damaged by flooding, as evidenced by claims under the National Flood Insurance Program (NFIP) of \$1,000 or more since 1978. If damaged again by more than 20% of their value, these buildings would have to be brought into compliance with current standards for new construction before other major improvements were made to the building. However, those regulations weren't adopted because the extreme costs to a few homeowners did not justify the potential benefits.

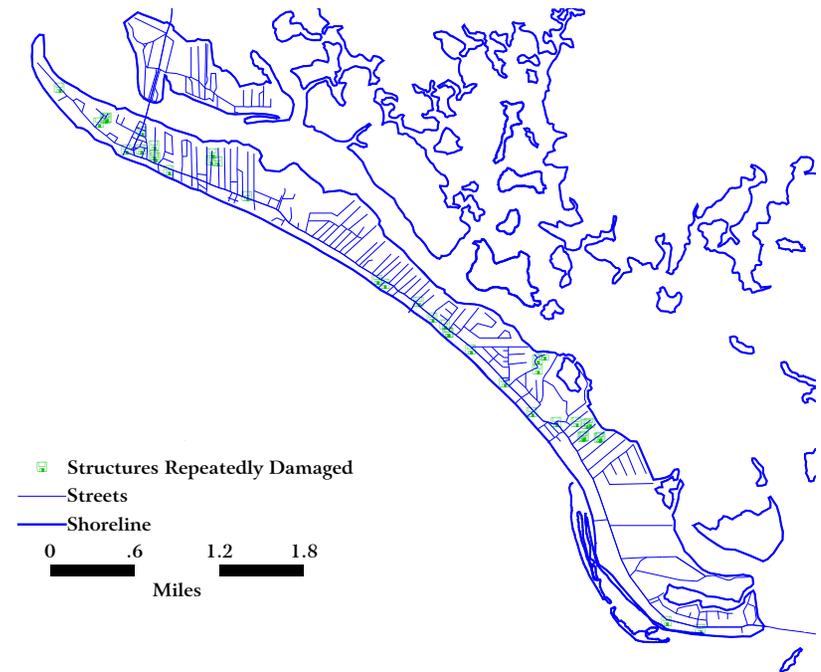


Figure 4, Repeated Flood Damage

That program identified the properties in Figure 4 (as described in more detail in the Coastal Management Element of this plan). No meaningful pattern appears on the map that would suggest neighborhood-wide flooding remedies. Of particular interest, however, is that none of the floods that caused considerable damage at Fort Myers Beach in the past 15 years were even minimal hurricanes; in fact two weren't even strong enough to be considered tropical storms.

Lee County is conducting a detailed assessment of the costs of improving the buildings in the unincorporated area that have been repeatedly damaged by flooding. The county hopes to obtain 75% federal funding for many of the actual improvements. If the county is successful, the town may be able to qualify for a similar grant.

on Palermo Circle. These options would be explored by a privately-funded but town-initiated planning process, with full involvement of affected and nearby landowners.

POLICY 4-C-12 WETLAND BUFFERS: Upland development shall maintain a 75-foot separation between wetlands and buildings or other impervious surfaces. This requirement shall not apply to platted lots, or to a previously approved development order to the extent it cannot reasonably be modified to comply with this requirement (see Chapter 15 of this plan for details).

OBJECTIVE 4-D POST-DISASTER REDEVELOPMENT — Provide for the organized and healthy reconstruction of Fort Myers Beach after a major storm by showcasing successful local examples of flood-proofing, by requiring redevelopment activities to meet stricter standards for flood- and wind-resistance, and by improving the current post-disaster buildback policy.

POLICY 4-D-1 POST-DISASTER BUILDBACK POLICY: Following a natural disaster, land may be redeveloped in accordance with the Future Land Use Map or, at the landowner’s option, in accordance with the following “buildback policy” begun by Lee County in 1989. This policy applies only where development is damaged by fire, hurricane or other natural disaster, and allows the following options:

- i. Buildings/development damaged *less than 50%* of their replacement cost (measured at the time of damage) can be

rebuilt to their original condition, subject only to current building and life safety codes; ~~however, this threshold is reduced to 20% for buildings previously damaged by flooding of \$1,000 or more under the National Flood Insurance Program.~~

- ii. Buildings/development damaged *more than 50%* of their replacement cost can be rebuilt to their legally documented actual use, density, intensity, size, and style provided the new construction complies with:
 - a. federal requirements for elevation above the 100-year flood level;
 - b. any building code requirements for floodproofing;
 - c. current building and life safety codes;
 - d. Coastal Construction Control Line requirements; and
 - e. any required zoning or other development regulations (other than density or intensity), except where compliance with such regulations would preclude reconstruction otherwise intended by this policy.
- iii. Redevelopment of damaged property is not allowed for a more intense use or at a density higher than the original lawful density except where such higher density is permitted under this plan and the town’s land development regulations. To further implement this policy, the town may establish blanket reductions in non-vital development regulations (e.g. buff-

Structures with Repeated Damage Due to Storms

A number of structures within the town have experienced damage as a result of past floods. Lee County began a program in 1995 to identify individual buildings that have been repeatedly damaged by flooding, as evidenced by claims under the National Flood Insurance Program (NFIP) of \$1,000 or more since 1978. If damaged again by more than 20% of their value, these buildings must be brought into compliance with current standards for new construction (primarily by elevating the building).

That program identified the properties in Table 5-6, which are mapped in Figure 6. No meaningful pattern appears on the map that would suggest neighborhood-wide flooding remedies. Of particular interest on Table 5-6, however, is that *none* of the floods that caused considerable damage at Fort Myers Beach in the past 15 years were even minimal hurricanes; in fact two weren't even strong enough to be considered tropical storms.

Lee County is conducting a detailed assessment of the costs of improving the buildings in the unincorporated area that have been repeatedly damaged by flooding. The county hopes to obtain 75% federal funding for many of the actual improvements. If the county is successful, the town may be able to qualify for a similar grant.

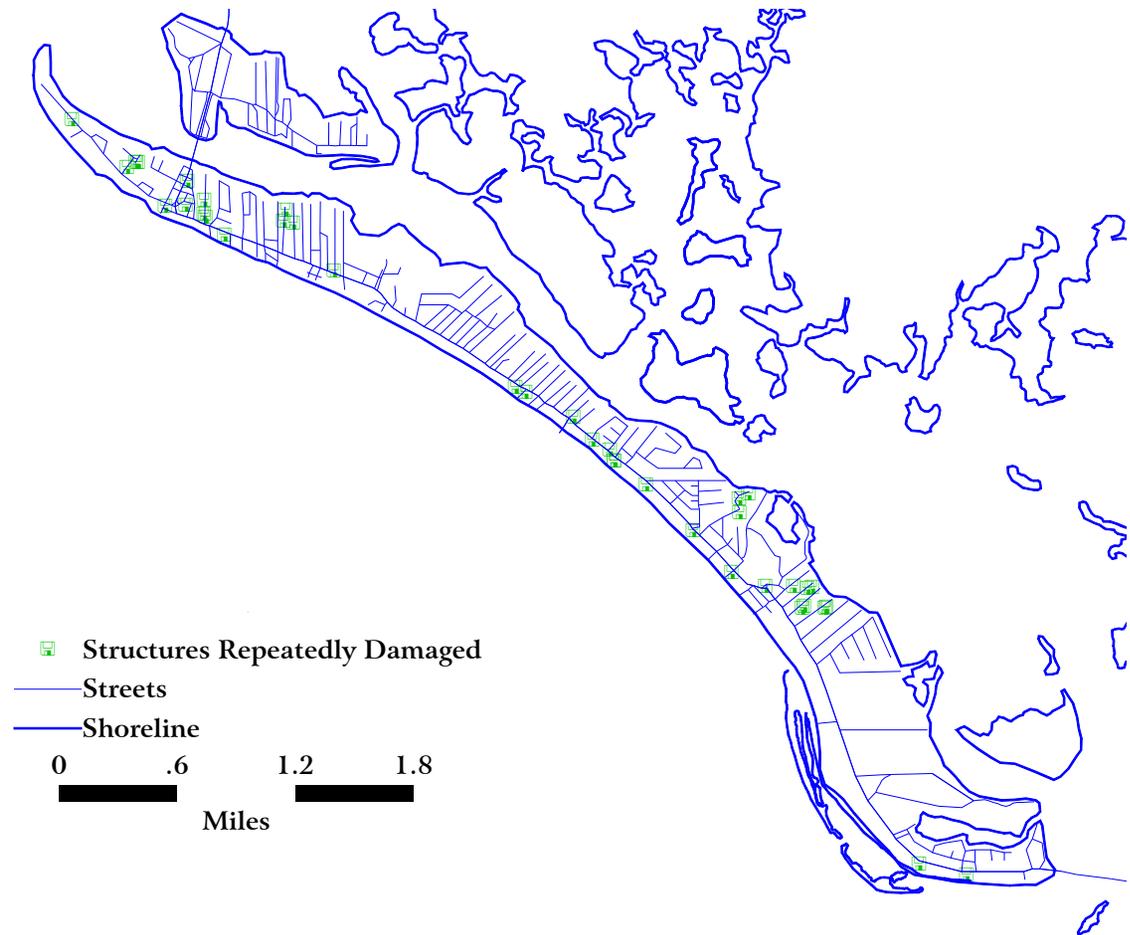


Figure 6, Repeated Flood Damage

- iii. Roads should be designed to manage minimum levels of flooding and be located where least susceptible to storm damage.

POLICY 5-C-7 Continue to inventory buildings that are repeatedly damaged by flood waters to identify those that have recorded one or more National Flood Insurance Program (NFIP) flood losses of \$1,000 or more since 1978. ~~Require that such buildings be brought into compliance with current regulatory standards for new construction if they are damaged again by flooding.~~

OBJECTIVE 5-D BEACHES AND DUNES — Conserve and enhance the shoreline of Estero Island by increasing the amount of dunes, renourishing beaches to counter natural erosion, and reducing negative man-made impacts on beaches and dunes.

POLICY 5-D-1 The town's policies on shoreline protection measures shall be as follows (see also Objective 5 and related policies in the Conservation Element of this plan):

- i. Beach renourishment will be necessary along much of the Gulf beach. The long-term recreational and economic benefits will offset the cost. The town shall work closely with Lee County, which has agreed to take the lead role in carrying out this important activity. All practical measures shall be taken to ensure that beach renourishment improves sea turtle nesting habitat rather than interfering with it. Public access to existing and renourished beaches is an important

- priority of the town of Fort Myers Beach.
- ii. Sand dunes should be protected and re-created wherever they have been removed. Native dune plants should be protected and non-native exotics removed. Dune walkovers should be constructed where they do not exist and existing structures should be maintained.
- iii. The use of vehicles on any part of the beach should be severely limited in accordance with Conservation Policy 6-E-4(iv).
- iv. Buildings and other structures should be located as far away from the shoreline and dune system as possible since the beach is a constantly changing environment. Beachfront development shall be protected from coastal erosion, wave action, and storms by vegetation, setbacks, and/or beach renourishment rather than by seawalls or other hardened structures which tend to hasten beach erosion, interfere with public access, and block sea turtle nesting.
- v. Development (other than minor structures) shall not be allowed seaward of the 1978 Coastal Construction Control Line. Development seaward of the 1991 Coastal Construction Control Line may be permitted provided it complies with this comprehensive plan and all state and local permitting requirements.
- vi. Where buildings are threatened by erosion that cannot be reversed by major beach renourishment, the town's priorities are (1) to allow the structure to be