

## PRE-DISASTER BUILDBACK

An important innovation of the 1999 Fort Myers Beach Comprehensive Plan was the “pre-disaster buildback policy.” Before 1999, owners of over-density buildings were allowed to rebuild their existing square-footage only if their buildings were destroyed by a natural disaster. A goal of the new plan was to allow the upgrading or replacement of these “grandfathered” structures without awaiting their destruction by natural causes.<sup>1</sup> Policy 4-E-1 was added to the plan in 1999:

POLICY 4-E-1: PRE-DISASTER BUILDBACK POLICY: Owners of existing developments that exceed the current density or height limits may also be permitted to replace it at up to the existing lawful density and intensity prior to a natural disaster. Landowners may request this option through the planned development rezoning process, which requires a public hearing and notification of adjacent property owners. The town will approve, modify, or deny such a request based on the conformance of the specific proposal with this comprehensive plan, including its land use and design policies, pedestrian orientation, and natural resource criteria.

Policy 4-E-1 does not define the word “intensity,” nor does it go into detail about intensity as did the older “post-disaster buildback policy,” which said that grandfathered buildings “...can be rebuilt to their legally documented actual use, density, intensity, size, and style....”<sup>2</sup> During the past two years there has been extensive public discussion as to whether Policy 4-E-1 necessarily limits the reconstruction of over-density buildings to their current physical size.

Perhaps the most authoritative reference in the planning field defines “intensity of use” as follows: “The number of dwelling units per acre for residential development and floor area ratio (FAR) for nonresidential development, such as commercial, office, and industrial.” This definition is followed by this comment: “FAR may also be used for residential development or for mixed-use development. In residential projects, FAR may be useful in relating the size of the building to the lot area.”<sup>3</sup> In the buildback context, the lot area doesn’t change, so this definition would measure intensity by the physical size of the building for nonresidential development and sometimes would also measure intensity the same way same for residential or mixed-use development.

The town can of course use definitions of its own choosing. The Land Development Code now interprets the pre-disaster buildback policy in a manner similar to this reference book and in the same manner as the post-disaster buildback policy by not allowing over-density buildings to be further enlarged during the pre-disaster buildback process. The actual code language for the square footage for *pre*-disaster buildback is identical as for *post*-disaster buildback.

The current evaluation of the Comprehensive Plan allows the town a chance to reconsider its pre-disaster buildback policy. The current interpretations of the policy have been challenged as being

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<sup>1</sup> OBJECTIVE 4-E: “HAZARD MITIGATION: Mitigate the potential effects of hurricanes by easing regulations that impede the strengthening of existing buildings, by encouraging the relocation of vulnerable structures and facilities, and by allowing the upgrading or replacement of grandfathered structures without first awaiting their destruction in a storm.”

<sup>2</sup> POLICY 4-D-1-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:

- federal requirements for elevation above the 100-year flood level;
- any building code requirements for floodproofing;
- current building and life safety codes;
- Coastal Construction Control Line requirements; and
- 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.”

<sup>3</sup> *The New Illustrated Book of Development Definitions* by Harvey S. Moskowitz and Carl G. Lindbloom, published in 1993.

unduly restrictive because of the “no enlargement” rule. If over-density buildings were allowed to be enlarged during the buildback process, it would be a considerable incentive for property owners to demolish existing buildings to take advantage of this size increase. The new buildings would meet most of the current codes, even if the existing buildings did not. In some cases, the new buildings would be designed for and marketed to seasonal residents instead of year-round residents or tourists, which might even decrease impacts on public services such as roads/water/sewer and private services such as restaurants.

Most public discussion on this subject has centered around the vagueness of the term “intensity” in Policy 4-E-1. Property owners have argued that their over-density buildings should be allowed to be demolished and enlarged, sometimes several times over, provided there are some measures of intensity which would be held constant or reduced.

However, the policy issues are much broader than what the drafters of Policy 4-E-1 meant by the term “intensity.” For instance:

- **GEOGRAPHICAL EFFECTS:** Discussions of intensity have centered mostly on water and sewer impacts and on road impacts. Although water and sewer impacts would be same regardless of where a building is located, road impacts could differ greatly. For instance, a hotel that is isolated from commercial and recreational services would generate many more vehicular trips than the identical hotel within walking distance of those same services. In addition, some types of commercial development primarily serves those who are already on the island, actually reducing travel demand by eliminating some off-island vehicular trips.
- **SEASONAL EFFECTS:** Traffic congestion is extreme throughout the winter (and also during holidays, weekends, and special events). Replacing motels with housing for seasonal residents may reduce total yearly vehicular trips, but seasonal residents tend to use their dwelling during the periods of greatest congestion; their absence during non-peak periods does not aid in reducing actual congestion.
- **ECONOMIC EFFECTS:** The economy of Fort Myers Beach is based on tourism. Although tourism is sometimes overwhelming to permanent residents, tourism also provides benefits to residents, including investment opportunities, employment, recreational opportunities, and choices for dining and entertainment that are far beyond what would be available if they were serving the resident population alone. Many residents have chosen to make Fort Myers Beach their home for these very reasons. Eliminating hotels, motels, and condominiums or timeshares that are available for short stays could have effects on the local economy far greater than reductions in intensity as measured by, say, water or sewer consumption.

These policies issues don't suggest that the town needs to change course on pre-disaster buildback. In fact, the original reason for the present course was to give property owners the same rights to rebuild at leisure that they would have after a natural disaster — granting *greater* rights to rebuild had never been considered for either *pre*-disaster or *post*-disaster buildback, for the simple reason that owners of over-density buildings already had greater rights than all other property owners at Fort Myers Beach. Past over-building caused today's current strong development restrictions, which fall most heavily on owners of vacant or lightly-developed properties such as single-family homes. If Fort Myers Beach were able to accommodate additional development, it would hardly be fair for property owners who are burdened by today's restrictions to continue under those restrictions while other owners who already have over-density buildings are granted additional rights.