SPIKOWSKI PLANNING ASSOCIATES

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

telephone: (941) 334-8866
fax: (941) 334-8878

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

MEMORANDUM

TO: Fort Myers Beach Town Council
FROM: Bill Spikowski
DATE: June 7, 2002
SUBJECT: COMPREHENSIVE PLAN AMENDMENTS
Application 2002-2-TEXT: Reconsider plan amendment 2000-2-TEXT, which had tightened the plan's Chapter 15 provisions guaranteeing perpetual development rights on most substandard platted lots.

This amendment, which was initiated by the Town of Fort Myers Beach, is to reconsider a year 2000 amendment to the comprehensive plan, which made the changes shown in Attachment A.

RECOMMENDATION: Leave Chapter 15 unchanged, or adopt Option 7 below. At public hearings on April 16 and May 21, 2002, the Local Planning Agency discussed this amendment at length and concluded by recommending Option 8 by a vote of 6 to 1 (with Jane Plummer dissenting and Jessica Titus and Hank Zuba absent). Minutes of these hearings are included as Attachments F and G.

DISCUSSION: Late in 1999 the Town Council began discussing how the town treats small lots that were "platted" or otherwise subdivided many years ago. The platting process is a way to formally define lot lines in new subdivisions; plat maps are recorded with the county clerk at the time a parcel of land is subdivided.

As a general rule, all but the very smallest platted lots have been permitted to have one single-family home built upon them. That provision was part of Lee County's 1984 comprehensive plan, and was carried forward unchanged into the new Fort Myers Beach comprehensive plan, which became effective at the beginning of 1999. That section is sometimes known as the "single-family

residence provision" or the "minimum use provision," and is found in Chapter 15 (see Attachment B). That section of the plan not only protects lots that were legally platted, but also any lot whose legal description was recorded in any form in the Official Record books of the county clerk, for instance as an attachment to a deed.

Two particular variations were examined when this issue arose over two years ago. The first was where adjoining platted lots are *vacant* and may (or may not) be owned by separate entities. Under those circumstances, should the town recognize each individual lot as buildable, or can the town require consolidation or recombination of lots so that each building site meets current standards? Under 1999 regulations, the answer was that each vacant lot is allowed one home, provided it meets the very minimal standards in Chapter 15, regardless of whether it was owned in common with adjoining lots. In the year 2000 amendment, the Local Planning Agency recommended not changing this part of the rule because a change would interfere with reasonable expectations of vacant lot owners that each lot was a completely separate entity and thus was buildable. The Town Council agreed with this reasoning and did not change this provision of the comprehensive plan.

The second variation was where a home was built across two or three platted lots and the home is later demolished. Can a new home now be built on each platted lot? Under 1999 regulations, the answer was yes. Neither Lee County nor the town had ever required individual lots to be legally consolidated when a house is built across a lot line; and the regulations had never distinguished between substandard lots that had never been built upon and substandard lots that had previously been combined to support a single house. This provision was changed in the year 2000 amendment as shown in Attachment A.

Since that time a number of applications have been denied to owners of adjoining lots who wished to increase their density by demolishing or moving a house that spanned a lot line. Two such owners appealed these decisions but were denied by the Town Council. These denials were all but mandatory because comprehensive plan rules cannot be altered by variance or by appeal (they can either be upheld or the rule can be changed through this formal plan amendment process). Following the appeal hearings last August, members of the Town Council asked for an opportunity to reconsider the year 2000 amendment and consider alternatives to it. (One of the owners who lost an appeal has taken legal action against the town, which is pending at this time.)

Originally it was not clear how many lots or combinations of lots might be affected by this rule. Recent research shows that there are about 476 multi-lot parcels within the town. These parcels were evaluated first to determine how many were in subdivisions whose lots are substandard in size (and thus might take advantage of the protection that Chapter 15 gives to substandard lots). This subtotal was then reduced by the number of existing structures on these lots, resulting in an estimate of up to 230 additional dwelling units if the year 2000 amendments were repealed entirely.

These 230 additional dwelling units would be the *maximum* number of new houses that could be built if all substandard multi-lot parcels were redivided and a house placed on each lot. This total

includes many situations where adjoining lot-and-a-half parcels could be combined and end up to three houses on three lots, rather than the existing two houses on three lots; this situation would account for 137 of the 230 additional dwelling units. The remaining 93 dwelling units would come from the situation where a single house straddles two full lots. Attachment C explains this research further.

OPTIONS: At this time there are at least eight different options that the town may consider:

Option 1: One option is to simply repeal the year 2000 amendment and revert the comprehensive plan to the language it contained upon initial adoption. This option would eliminate hardships on individual property owners, but it could allow up to 230 additional dwelling units at Fort Myers Beach.

Option 2: Another option is to provide language in the plan that would allow variances under certain conditions. No variances can be granted to rules clearly set forth in a comprehensive plan, but there is no reason why variances couldn't be considered if the comprehensive plan explicitly anticipated and authorized such variances. If this option were chosen, the plan should specify what criteria must be met in order for a variance to be granted; if no specific criteria are elaborated, the standard variance criteria in the land development code would probably apply, requiring the following findings in order to grant a variance:

a. That there are exceptional or extraordinary conditions or circumstances that are inherent to the property in question;
b. That the exceptional or extraordinary conditions or circumstances are not the result of actions of the applicant taken after the adoption of the ordinance (any action taken by an applicant pursuant to lawfully adopted regulations preceding the adoption of the ordinance from which this chapter is derived will not be considered self-created);
c. That the variance granted is the minimum variance that will relieve the applicant of an unreasonable burden caused by the application of the regulation in question to his property;
d. That the granting of the variance will not be injurious to the neighborhood or otherwise detrimental to the public welfare; and
e. That the condition or situation of the specific piece of property, or the intended use of the property, for which the variance is sought is not of so general or recurrent a nature as to make it more reasonable and practical to amend the ordinance.

If the Town Council chooses this option, it should identify what types of situations might qualify for variances.

Option 3: A third option is to redefine "substandard lot" for the purposes of this provision only. As currently written, any lots smaller than 7,500 square feet are considered to be "substandard." This number could be lowered, for instance to 7,000 square feet, thus making any multi-lot parcels whose individual lots are 7,000 square feet or larger eligible to tear down an existing home and replace it with a new home on each original lot.

Option 4: A fourth option is to add entirely new requirements that are customized to situations that are sometimes found at Fort Myers Beach. For instance, here are two instances where it would rarely be good public policy to encourage the demolition of existing homes to allow new homes to be constructed:

- Lots without conventional frontage on a street (for instance, "flag lots" that are reached only by a long narrow driveway running between other lots).
- Lots that contain part of their required 7,500 square feet seaward of the old coastal construction line, where no part of a house can be built.

These situations could be defined in the comprehensive plan as cases where the *strictest* application of the year 2000 policy would be applied. Note that this approach is in some ways the exact opposite of a variance provision. For variances, the lots *must* have "exceptional or extraordinary conditions or circumstances that are inherent to the property," whereas for this approach, specififed unique circumstances would *disallow* special treatment rather than encouraging or authorizing it.

Option 5: In addition to the first four options which were initially presented to the Local Planning Agency, four additional options have been developed during the public hearing process. A fifth option would be to keep the current language in the comprehensive plan but provide a relief period for any property owner who lost rights in the year 2000. These owners would be given a fixed period, perhaps through the year 2004, to remove an existing home that straddles a lot line and replace it with two homes. If not exercised within a fixed period, the right to build two homes would expire.

Option 6: At that same meeting, Beverly Grady suggested what we are now calling the sixth option (see her letter in Attachment H for more detail). This option would modify the current rule to provide relief only to property owners who own two or more full adjoining lots; under this option, those who own 1½ lots could not purchase the adjoining 1½ lots, remove two houses, and build three new houses. This option would allow up to 93 additional homes to be built, but would not allow the 137 *additional* homes that might be allowed if the year 2000 rule were repealed entirely.

Option 7: Summarizing discussion at the April 16 public hearing, I formulated what we are now calling "Option 7," which would combine parts of options 4, 5, and 6. This option would disallow relief under specified circumstances (like Option 4), provide a fixed time period for relief (like Option 5), and limit relief to owners of two full lots (like Option 6).

Relief would be limited to those who owned two full lots with conventional street frontage in November 2000, and would be further limited to those same owners who move or remove the existing home by November 2004 and then build a home or homes on the individual lots by November 2006.

The specifics could be modified further, but Option 7 would be worded as shown on Attachment D (the underlined text was added in the year 2000, and the double underlined text would implement Option 7).

Option 8: At the continuance of the LPA hearing on May 21, LPA members reached a consensus on a variation of Option 7 that we are now calling Option 8. This option would disallow relief under specified circumstances (like Option 4) and would limit relief to owners of two full lots (like Option 6), but the time periods for relief would be much less restrictive than Options 5 or 7.

Relief would be provided to the same owners who qualify for relief in Option 7, but those owners would have an extra year, until November 2005, to more or remove the existing house; after that, these owners would be free to build a home on one or both lots, or to sell either lot, with no further restrictions beyond normal zoning standards.

Again, the specifics could be modified further, but Option 8 would be worded as shown on Attachment E (the underlined text was added in the year 2000, and I have drafted the double underlined text to implement Option 8, as recommended by the LPA).

NEXT STEPS: At the June 17 public hearing, the Town Council can choose either not to amend this part of the comprehensive plan at all, or can make a tentative decision to amend the plan using one of the options listed above (or some other concept). The record of any tentative decision to amend will be sent to the Florida Department of Community Affairs and other reviewing agencies. A final decision on whether to adopt an amendment would be made by ordinance after the summer break.

Attachment A: Text amendment from 2000-2-TEXT (exactly as adopted on 11-21-00)
Attachment B: Chapter 15 of the existing Fort Myers Beach Comprehensive Plan
Attachment C: Summary of research into potential impact of this policy (memo from Dan Folke dated April 15, 2002)
Attachment D: Option 7, showing amendment from 2000-2-TEXT with single underlining and proposed wording for Option 7 with double underlining (dated May 9, 2002).
Attachment E: Option 8 (LPA recommendation), showing amendment from 2000-2-TEXT with single underlining and proposed wording for Option 8 with double underlining (dated June 7, 2002).
Attachment F: Local Planning Agency minutes from April 16, 2002
Attachment G: Local Planning Agency minutes from May 21, 2002 (draft copy)
Attachment H: Letter from Beverly Grady dated May 21, 2002

ATTACHMENT A

E. ***Single-Family Residence Provision.*** Notwithstanding any other provision of this plan, any entity owning property or entering or participating in a contract for purchase agreement of property, which property is not in compliance with the density requirements of this plan, shall be allowed to construct one single-family residence on said property, provided that:

1. ***Date Created:***

a. the lot shall have been created and recorded in the official Plat Books of Lee County prior to the effective date of the Lee County Comprehensive Plan (December 21, 1984), and the configuration of said lot has not been altered; OR

b. a legal description of the lot was lawfully recorded in the Official Record books of the Clerk of Circuit Court prior to December 21, 1984; OR

c. the lot was lawfully created after December 21, 1984, and the lot area was created in compliance with the Lee County or Fort Myers Beach Comprehensive Plan, whichever controlled at the time, as either plan ~~it~~ existed at ~~that~~ the time the lot was created.

2. ***Minimum Lot Requirements:*** In addition to meeting the requirements set forth above, the lot shall have:

a. a minimum of 4,000 square feet in area if it was created prior to June 27, 1962; OR

b. a width of not less than 50 feet and an area of not less than 5,000 square feet if part of a subdivision recorded in the official Plat Books of Lee County after June 27, 1962, and prior to December 21, 1984; OR

c. a minimum of 7,500 square feet in area if it was created on or after June 27, 1962, and prior to December 21, 1984, if not part of a subdivision recorded in the official Plat Books of Lee County; OR

d. been in conformance with the zoning regulations in effect at the time the lot or parcel was recorded if it was created after December 21, 1984; OR

e. been approved as part of a Planned Unit Development or Planned Development.

3. ***Ownership.*** In addition to meeting the requirements set forth above, prior to November 21, 2000, the lot shall have been vacant or shall have been improved with one structure located wholly on this lot. If a structure had been placed on two or more adjoining lots at any time prior to November 21, 2000, the individual lots shall not qualify for this single-family residence provision.

4. ~~**3.**~~ ***Construction Regulations.*** Once a property owner establishes the right to build a single-family residence through these procedures, the following policies shall prevail:

a. The residence shall comply with all applicable health, safety, and welfare regulations, as those regulations exist at the time a building permit is requested.

b. Lots containing wetlands shall be subject to special provisions of the Land Development Code.

c. If two or more contiguous lots qualify, property owners are encouraged to reapportion lots if the result would be lots that come closer to meeting the standards for the lots' zoning district, as long as no property becomes non-conforming or increases in its non-conformity and as long as the density will not increase.

d. Nothing herein shall be interpreted as prohibiting the combining of qualifying lots with other contiguous property providing the density will not increase.

e. Two or more contiguous qualifying lots that are located in a zoning district which permits duplexes may be combined to support a single duplex in lieu of two single-family residences.

5. ~~**4.**~~ ***Transferability.*** These rights shall run with the land and be available to any subsequent owner if the property which qualifies for the single-family provision is transferred in its entirety.

PROCEDURES AND MONITORING

EFFECT AND LEGAL STATUS OF THIS PLAN

Upon adoption of this plan, all development and all actions taken in regard to development orders shall be consistent with this plan. All land development regulations enacted or amended after its effective date shall be consistent with this plan. Land development regulations in existence as of the effective date of this plan which are inconsistent with this plan shall be amended to conform to its goals, objectives, and policies (see implementation section below).

The terms "consistent with" and "in conformity with" shall mean that all development actions or orders will tend to further the goals, objectives, and policies of the plan and will not specifically inhibit or obstruct the attainment of articulated policies. Where goals, objectives, or policies of particular elements appear to be in conflict, such conflicts shall be resolved upon an analysis of the entire plan as it may apply to the particular area at issue.

The density limits and land-use restrictions in the Future Land Use Element described above for each category are legally binding immediately upon adoption of this comprehensive plan. During the preparation of the new Land Development Code that will fully implement this plan, conflicts may arise between this plan and previous regulations and zoning districts. Until those conflicts are resolved through amendments to the code, the more restrictive regulations shall control land development activities. If the more restrictive regulation causes a result that is contrary to the intent of this plan, a landowner may seek an administrative interpretation of this plan during the first year after its adoption, as described below.

The impact of this plan upon ongoing development may involve a balancing of the public needs as reflected in this plan and the expectations of those persons in the process of developing property in a manner inconsistent with its goals, objectives, and policies. Moreover, Section 163.3202(2)(g), *Florida Statutes*, restricts the ability of the town to grant development permits despite an otherwise satisfactory balancing of such needs and expectations. There will be a transition period during which such development rights will have to be balanced with public needs. In instances where development has been determined to be consistent with previous plans, as amended, and a development order has been issued, such development will be deemed consistent to the extent it cannot reasonably comply with the standards established in this plan, as outlined below:

A. A formal development order, not otherwise vested, shall be deemed consistent with this plan for a period of three years from the date of issuance of the development order, only as to:
   1. terms specifically approved in writing; or
   2. accompanying plans expressly approved as to matters requested to be in said plans and requested to be approved as part of the development order process.

   To be deemed consistent, such development orders shall also meet all applicable public health, safety, and welfare standards.

B. In addition to such formal development orders, the following categories of approvals, projects, and developments shall be deemed to be consistent with this plan, subject to the applicable conditions as set forth below:
   1. a development or project that has a building permit issued by the Town of Fort Myers Beach that is valid on the effective date of this plan and has not expired;
   2. a site plan approved by court order or stipulated settlement which is the result of litigation in which the Town of Fort Myers Beach was a party, or in which Lee County was a party prior to incorporation;

ATTACHMENT B

3. an approved, platted subdivision pursuant to Part I of Chapter 177, *Florida Statutes*;
4. "planned development" zoning approvals which have not been vacated due to inactivity by the developer;
5. "planned development" zoning approvals granted by the Town Council since incorporation; and
6. for ongoing commercial operations, an addition or interior remodeling, limited to 25% of the existing floor area or 1,500 square feet, whichever is less (this is a one-time addition).

The following general conditions shall apply to these six categories:

- the activity must comply with all applicable public health, safety, and welfare standards and regulations;
- these categories shall be deemed consistent only insofar as those items specifically approved; and
- the activity shall not be deemed consistent if there has been a substantial deviation from the approval granted.

Notwithstanding anything in this section to the contrary, an approval or development order, which would otherwise be deemed consistent, shall not be deemed consistent upon a showing by the town of a peril to the public health, safety, or general welfare of the residents of Lee County or the Town of Fort Myers Beach, which peril was unknown at the time of approval. Moreover, notwithstanding the fact that an approval or development order is deemed consistent, no development order or permit, as defined in Section 163.3164, *Florida Statutes*, shall be issued which results in a reduction in the levels of service below the minimum acceptable levels established in this plan, as required by Section 163.3202(2)(g), *Florida Statutes*.

In other circumstances where development expectations may conflict with this plan but judicially defined principles of equitable estoppel may override the otherwise valid limitations imposed by this plan, such expectations may be recognized by the Town of Fort Myers Beach, acting by resolution of its Town Council, on a case-by-case basis.

Nothing in this plan shall limit or modify the rights of any person to complete any development that has been authorized as a development of regional impact pursuant to Chapter 380, *Florida Statutes*.

IMPLEMENTATION SCHEDULE

Many parts of this comprehensive plan will be implemented through major changes to the Land Development Code, which by state law must conform with this plan within one year (163.3202, *Florida Statutes*).

The new Land Development Code may have the effect of rezoning many or all properties for various reasons, such as:

- to conform the zoning district of specific properties to the requirements of this plan; or
- to combine several similar zoning districts into a single new district to simplify the Land Development Code.

Landowners whose property is proposed for rezoning will receive notice in accordance with state law.

Some provisions of the plan are self-implementing; they guide actions on a day-to-day basis without the need for further implementing legislation. Other provisions indicate that detailed regulations may be needed to implement a general policy statement. When such a policy makes reference to a specific year of completion, the town's intent is to have such regulations in place by the end of that year. Finally, some objectives and policies indicate the town intends to complete programs or plans by a specific year; this should be interpreted as intending completion of the task by the end of the designated year.

ADMINISTRATIVE INTERPRETATIONS

Persons or entities whose interests are directly affected by this plan have the right to an administrative interpretation of the plan as it affects their specific interest. Such an interpretation, under the procedures and standards set forth below, shall thereafter be binding upon the Town of Fort Myers Beach. Such administrative interpretations are intended to expedite and reduce disputes over plan interpretations, resolve certain map or boundary disputes, avoid unnecessary litigation, ensure consistency in plan interpretation, and provide predictability in interpreting the plan. All such administrative interpretations, once rendered, are subject to challenge under the provisions of Section 163.3215, *Florida Statutes*.

A. *Subject Matter of Administrative Interpretations*. Administrative interpretations shall be provided only as to the following matters:
   1. Whether an area has been (or should have been) designated "Wetlands" on the basis of a clear factual error. A field check shall be made prior to the issuance of such an interpretation.
   2. Clarification of Future Land Use Map boundaries as to a specific parcel of property.
   3. Conflicts between pre-existing land development regulations and this comprehensive plan during the first year after its adoption (until those conflicts are resolved through amendments to the Land Development Code).
   4. Single-family residence provision as defined in subsection E. below.

B. *Procedures for Administrative Interpretations*.
   1. Anyone seeking an administrative interpretation shall submit an application to the Town Clerk with requested information, and shall have the burden of demonstrating compliance with the standards set forth below.
   2. The Local Planning Agency's attorney shall review each application and request additional information or conduct research as necessary. The Local Planing Agency's attorney may issue a written administrative interpretation or may, at the attorney's sole discretion, refer the request to the Local Planning Agency which will then make the administrative interpretation.

C. *Standards for Administrative Interpretations*. Administrative interpretations of this plan shall be determined under the following standards:
   1. Interpretations which would be confiscatory, arbitrary, capricious, unreasonable, or which would deny all economically viable use of property shall be avoided;
   2. Interpretations should be consistent with background data, other policies, and objectives of the plan as a whole; and
   3. Interpretations should, to the extent practical, be consistent with comparable prior interpretations.

D. *Appeals of Administrative Interpretations*. The following procedures shall apply in appealing administrative interpretations:
   1. An administrative interpretation may be appealed to the Town Council by filing a written request within fifteen days after the administrative interpretation has issued in writing. In reviewing such an appeal, the Town Council shall consider only information submitted in the administrative interpretation process and shall review only whether the proper standards set forth in this plan have been applied to the facts presented. No additional evidence shall be considered by the Town Council.
   2. The Council shall conduct such appellate review at a public meeting to be held within thirty days after the date of the written request for appeal. The Council may adopt the administrative interpretation being appealed, or may overrule it, with a written decisions to be rendered by the Town Clerk in writing within thirty days after the date of the hearing.

3. Where appropriate and necessary, administrative interpretations shall be incorporated into this plan during the next amendment cycle.

E. <u>*Single-Family Residence Provision*</u>. Notwithstanding any other provision of this plan, any entity owning property or entering or participating in a contract for purchase agreement of property, which property is not in compliance with the density requirements of this plan, shall be allowed to construct one single-family residence on said property, provided that:
   1. *Date Created:*
      a. the lot shall have been created and recorded in the official Plat Books of Lee County prior to the effective date of the Lee County Comprehensive Plan (December 21, 1984), and the configuration of said lot has not been altered; OR
      b. a legal description of the lot was lawfully recorded in the Official Record books of the Clerk of Circuit Court prior to December 21, 1984; OR
      c. the lot was lawfully created after December 21, 1984, and the lot area was created in compliance with the Lee County or Fort Myers Beach Comprehensive Plan, whichever controlled at the time, as either plan existed at the time the lot was created.
   2. *Minimum Lot Requirements:* In addition to meeting the requirements set forth above, the lot shall have:
      a. a minimum of 4,000 square feet in area if it was created prior to June 27, 1962; OR
      b. a width of not less than 50 feet and an area of not less than 5,000 square feet if part of a subdivision recorded in the official Plat Books of Lee County after June 27, 1962, and prior to December 21, 1984; OR
      c. a minimum of 7,500 square feet in area if it was created on or after June 27, 1962, and prior to December 21, 1984, if not part of a subdivision recorded in the official Plat Books of Lee County; OR
      d. been in conformance with the zoning regulations in effect at the time the lot or parcel was recorded if it was created after December 21, 1984; OR
      e. been approved as part of a Planned Unit Development or Planned Development.
   3. *Ownership*. In addition to meeting the requirements set forth above, prior to November 21, 2000, the lot shall have been vacant or shall have been improved with one structure located wholly on this lot. If a structure had been placed on two or more adjoining lots at any time prior to November 21, 2000, the individual lots shall not qualify for this single-family residence provision.
   4. *Construction Regulations*. Once a property owner establishes the right to build a single-family residence through these procedures, the following policies shall prevail:
      a. The residence shall comply with all applicable health, safety, and welfare regulations, as those regulations exist at the time a building permit is requested.
      b. Lots containing wetlands shall be subject to special provisions of the Land Development Code.
      c. If two or more contiguous lots qualify, property owners are encouraged to reapportion lots if the result would be lots that come closer to meeting the standards for the lots' zoning district, as long as no property becomes non-conforming or increases in its non-conformity and as long as the density will not increase.
      d. Nothing herein shall be interpreted as prohibiting the combining of qualifying lots with other contiguous property providing the density will not increase.
      e. Two or more contiguous qualifying lots that are located in a zoning district which permits duplexes may be combined to support a single duplex in lieu of two single-family residences.
   5. *Transferability*. These rights shall run with the land and be available to any subsequent owner if the property which qualifies for the single-family provision is transferred in its entirety.

LEGISLATIVE INTERPRETATIONS

In order to apply the plan consistently and fairly, it will be necessary from time to time to interpret provisions in the plan in a manner which insures that the legislative intent of the Town Council which adopted the plan be understood and applied by subsequent councils, town employees, private property owners, and all other persons whose rights or work are affected by the plan. When the plan is interpreted, it should be done in accordance with generally accepted rules of statutory construction, based upon sound legal advice, and compiled in writing in a document which can be a companion to the plan itself.

A. *Requests.* Requests for interpretations may be made by any Town Council member, the Town Manger, the Local Planning Agency, or any applicant for a type of development regulated by this plan.

B. *Local Planning Agency*. Upon receiving a request and written recommendations from the Town Manager, the Local Planning Agency shall review the same and forward them to the Town Council with its comments and recommendations.

C. *Town Council.* Upon receiving the recommendations of the Local Planning Agency, the Town Council shall render a final decision as to the correct interpretation to be applied. This interpretation shall be that which is adopted by absolute majority of the Town Council, and, upon being reduced to a board resolution drafted in response to the board majority, it shall be signed by the Mayor and recorded in the town's official records. The Town Clerk shall be responsible for maintaining copies of all such resolutions in a single document which shall be appropriately indexed and provided to all persons upon request. The document shall be updated regularly and the latest version thereof furnished to all persons requesting copies of the plan itself.

D. *Legal Effect of Legislative Interpretations.* Any provision of the plan specifically construed in accordance with the foregoing procedures may not be re-interpreted or modified except by a formal amendment of the plan itself. Once formally adopted in accordance with these procedures, the annotation shall have the force of local law and all persons shall be placed on constructive notice of it. Any development orders issued in reliance on legislative interpretations of this plan are subject to challenge under the provisions of Section 163.3215, *Florida Statutes*.

AMENDMENT PROCEDURES

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.

Sections of this plan may be renumbered or relettered, and typographical errors which do not affect the intent, may be authorized by the Town Manager without need of a public hearing, by filing a corrected copy of same with the Town Clerk.

MONITORING, EVALUATING, AND UPDATING

Any comprehensive plan needs to be updated regularly. Conditions change; knowledge is gained about the effects of the plan; and new opportunities and problems arise. The Town Council will initiate amendments or additions to this plan as needed, in addition to the following regularly scheduled updates.

Annual Capital Improvements Update

The Capital Improvements Element shall be updated annually following the adoption of the town's budget. This update, at a minimum, shall review expected revenues and include a new financially feasible five-year schedule of capital improvements to replace the existing schedule.

Scheduled Evaluation and Appraisal

State law requires a periodic evaluation and appraisal of all adopted comprehensive plans. The Local Planning Agency shall complete a formal evaluation and appraisal process in the year 2005, unless the Town Council chooses an earlier schedule or if state regulations change. The Local Planning Agency's report shall address the following (in addition to any other requirements set out in 163.3191 *FS* and Rule 9J-5.0053 *FAC*):

A. *Citizen participation in the planning process*. The town shall update procedures to encourage public participation in the planning process, specifically including the following:
   1. Procedures to assure that real property owners are put on notice, through newspaper advertisements or other methods adopted by the town, of official actions that may affect the use of their property.
   2. Notices to keep the general public informed.
   3. Opportunities for the public to provide written comments.
   4. Assurances that required public hearings are held.
   5. Consideration of and response to public comments.

B. *Updating appropriate baseline data and forecasts* and preparing measurable objectives to be accomplished in the next five-year period of the plan and for the long-term period.

C. *Accomplishments in the seven years since adoption*, describing the degree to which the goals, objectives, and policies have been successfully reached and the extent to which unanticipated problems and opportunities have occurred, including major social and economic problems of development and deterioration.

D. *Obstacles or problems* which resulted in underachievement of goals, objectives, or policies. Proposals for modifying or eventually achieving the goals, objectives, and policies shall be formulated.

E. *Effect of changes to other plans* and regulations such as the state and regional comprehensive plans and regulations governing local comprehensive plans.

F. *New or modified goals, objectives, policies, or actions* needed to correct discovered problems. Along with failure to meet stated objectives, the evaluation will recommend new goals, objectives, or policies that will either correct past problems in achievement, or modify the general direction or aim.

G. *A means of ensuring continuous monitoring* and evaluation of the plan during the next five-year period.

ATTACHMENT C

Memo

(Attachment C)

To: Fort Myers Beach Local Planning Agency

From: Dan Folke, Community Development Coordinator

Date: April 15, 2002

Re: Comprehensive Plan Amendment 2002-2-TEXT: Development Rights on Substandard Lots

---

Bill Spikowski prepared a memorandum dated April 4, 2002 which provides four options regarding the right to build an additional single family residence on substandard parcels. Page 2 of Bill's memo indicates reversal of the rule in question could result in an additional 230 dwelling units. The purpose of this memo is to explain how the research was done and provide some additional explanation of the results.

The Lee County Property Appraiser's office, prepared an aerial photograph which identified all of the parcels in the Town of Fort Myers Beach which are comprised of more than one platted lot. 476 multi-lot parcels were identified on this aerial photograph. From this map, staff identified the parcels which included lots of record, which on their own would require a minimum use determination in order to build a single family residence. A lot requires a minimum use determination if it does not meet the minimum lot size required by the future land use category it sits in. For example, lots in the Mixed Residential future land use category must be a minimum of 7260 square feet (6 dwelling units/acre).

Once these parcels were identified, staff counted the number of existing units on these parcels, then the number of platted lots of record and took the difference of the two. The result is the number of additional dwelling units which could be constructed if the rule in question was not in place. As previously stated, the result of this exercise shows an additional 230 dwelling units could be constructed.

Several assumptions were made in order to arrive at this figure.

ATTACHMENT C

- Existing structures are single family homes
- Parcels which are publicly owned, such as the pool and Bay Oaks, were not included.
- Parcels which are currently developed with large condominiums, hotel/motels were not included.
- Multiple parcels which consist of one complete lot and part of a lot (1 ½) may be assembled and reconfigured back to the original lots of record.

An important distinction can be made about the 230 additional dwelling units. There are two scenarios which may lead to additional dwelling units. The first is when a parcel consists of two or more, whole, platted lots of record with an existing structure. In this situation the entire parcel is under single ownership and a reverse of the rule would clearly allow for one additional dwelling unit, as long as the parcel qualified in all other regards to the single family provision.

The second scenario is the one described in the fourth assumption listed above. Many of the streets in Fort Myers Beach have been developed where the parcels are comprised of one whole lot and a portion of an adjacent lot. In this scenario a property owner would have to assemble (purchase) several of these parcels and then reconfigure them back to the original lots of record. For example, if two adjacent parcels consist of 1 ½ lots, an individual could purchase the two parcels and then recombine them into 3 lots of record.

Based on follow up research, 93 of the 230 units would be created by the first scenario. That means that the remaining 137 dwelling units would require the acquisition of multiple parcels.

ATTACHMENT D (Option 7, page 1 of 2)

E. ***Single-Family Residence Provision.*** Notwithstanding any other provision of this plan, any entity owning property or entering or participating in a contract for purchase agreement of property, which property is not in compliance with the density requirements of this plan, shall be allowed to construct one single-family residence on said property, provided that:

1. ***Date Created:***

a. the lot shall have been created and recorded in the official Plat Books of Lee County prior to the effective date of the Lee County Comprehensive Plan (December 21, 1984), and the configuration of said lot has not been altered; OR

b. a legal description of the lot was lawfully recorded in the Official Record books of the Clerk of Circuit Court prior to December 21, 1984; OR

c. the lot was lawfully created after December 21, 1984, and the lot area was created in compliance with the Lee County or Fort Myers Beach Comprehensive Plan, whichever controlled at the time, as either plan ~~it~~ existed at ~~that~~ the time the lot was created.

2. ***Minimum Lot Requirements:*** In addition to meeting the requirements set forth above, the lot shall have:

a. a minimum of 4,000 square feet in area if it was created prior to June 27, 1962; OR

b. a width of not less than 50 feet and an area of not less than 5,000 square feet if part of a subdivision recorded in the official Plat Books of Lee County after June 27, 1962, and prior to December 21, 1984; OR

c. a minimum of 7,500 square feet in area if it was created on or after June 27, 1962, and prior to December 21, 1984, if not part of a subdivision recorded in the official Plat Books of Lee County; OR

d. been in conformance with the zoning regulations in effect at the time the lot or parcel was recorded if it was created after December 21, 1984; OR

e. been approved as part of a Planned Unit Development or Planned Development.

3. ***Ownership.*** In addition to meeting the requirements set forth above, prior to November 21, 2000, the lot shall have been vacant or shall have been improved with one structure located wholly on this lot. If a structure had been placed on two or more adjoining lots at any time prior to November 21, 2000, the individual lots shall not qualify for this single-family residence provision. However, the town will provide temporary relief from this ownership rule to any person or entity that owned adjoining lots on November 21, 2000, if the lots meet all of the following criteria:

- the lots must be full platted lots and not merely parts of platted lots;
- each lot must have at least 40 feet of frontage on an existing public street;
- the lots cannot contain any part of their minimum required lot area (see E.2 above) in the "Recreation" or "Wetlands" category on the Future Land Use Map; and
- the structure that spanned the platted lot line must have been removed or moved onto its own lot in conformance with all LDC requirements by November 21, 2004.

If all of these circumstances are met, the owner of the lots on November 21, 2000, shall qualify for the right to place a single-family residence on each lot, but this right shall expire if the lots are sold to another party or if this right is not exercised by November 21, 2006.

4. ~~3.~~ ***Construction Regulations.*** Once a property owner establishes the right to build a single-family residence through these procedures, the following policies shall prevail:
   a. The residence shall comply with all applicable health, safety, and welfare regulations, as those regulations exist at the time a building permit is requested.
   b. Lots containing wetlands shall be subject to special provisions of the Land Development Code.
   c. If two or more contiguous lots qualify, property owners are encouraged to reapportion lots if the result would be lots that come closer to meeting the standards for the lots' zoning district, as long as no property becomes non-conforming or increases in its non-conformity and as long as the density will not increase.
   d. Nothing herein shall be interpreted as prohibiting the combining of qualifying lots with other contiguous property providing the density will not increase.
   e. Two or more contiguous qualifying lots that are located in a zoning district which permits duplexes may be combined to support a single duplex in lieu of two single-family residences.
5. ~~4.~~ ***Transferability.*** These rights shall run with the land and be available to any subsequent owner if the property which qualifies for the single-family provision is transferred in its entirety, except as provided in E.3 above.

ATTACHMENT E (Option 8, page 1 of 2)

E. ***Single-Family Residence Provision.*** Notwithstanding any other provision of this plan, any entity owning property or entering or participating in a contract for purchase agreement of property, which property is not in compliance with the density requirements of this plan, shall be allowed to construct one single-family residence on said property, provided that:

1. ***Date Created:***

a. the lot shall have been created and recorded in the official Plat Books of Lee County prior to the effective date of the Lee County Comprehensive Plan (December 21, 1984), and the configuration of said lot has not been altered; OR

b. a legal description of the lot was lawfully recorded in the Official Record books of the Clerk of Circuit Court prior to December 21, 1984; OR

c. the lot was lawfully created after December 21, 1984, and the lot area was created in compliance with the Lee County or Fort Myers Beach Comprehensive Plan, whichever controlled at the time, as either plan ~~it~~ existed at ~~that~~ the time the lot was created.

2. ***Minimum Lot Requirements:*** In addition to meeting the requirements set forth above, the lot shall have:

a. a minimum of 4,000 square feet in area if it was created prior to June 27, 1962; OR

b. a width of not less than 50 feet and an area of not less than 5,000 square feet if part of a subdivision recorded in the official Plat Books of Lee County after June 27, 1962, and prior to December 21, 1984; OR

c. a minimum of 7,500 square feet in area if it was created on or after June 27, 1962, and prior to December 21, 1984, if not part of a subdivision recorded in the official Plat Books of Lee County; OR

d. been in conformance with the zoning regulations in effect at the time the lot or parcel was recorded if it was created after December 21, 1984; OR

e. been approved as part of a Planned Unit Development or Planned Development.

3. ***Ownership.*** In addition to meeting the requirements set forth above, prior to November 21, 2000, the lot shall have been vacant or shall have been improved with one structure located wholly on this lot. If a structure had been placed on two or more adjoining lots at any time prior to November 21, 2000, the individual lots shall not qualify for this single-family residence provision. However, the town will provide relief from this ownership rule to any person or entity that owned adjoining lots on November 21, 2000, if the lots meet all of the following criteria:

- the lots must be full platted lots and not merely parts of platted lots;
- each lot must have at least 40 feet of frontage on an existing public street;
- the lots cannot contain any part of their minimum required lot area (see E.2 above) in the "Recreation" or "Wetlands" category on the Future Land Use Map; and
- the structure that spanned the platted lot line must have been removed or moved onto its own lot in conformance with all LDC requirements by November 21, 2005.

If all of these circumstances are met, the owner of the lots on November 21, 2000, shall qualify for the right to place a single-family residence on each lot, and this right shall be available to any subsequent owner if the property which qualifies for the single-family provision is transferred in its entirety.

ATTACHMENT E (Option 8, page 2 of 2)

4. ~~3.~~ ***Construction Regulations.*** Once a property owner establishes the right to build a single-family residence through these procedures, the following policies shall prevail:
   a. The residence shall comply with all applicable health, safety, and welfare regulations, as those regulations exist at the time a building permit is requested.
   b. Lots containing wetlands shall be subject to special provisions of the Land Development Code.
   c. If two or more contiguous lots qualify, property owners are encouraged to reapportion lots if the result would be lots that come closer to meeting the standards for the lots' zoning district, as long as no property becomes non-conforming or increases in its non-conformity and as long as the density will not increase.
   d. Nothing herein shall be interpreted as prohibiting the combining of qualifying lots with other contiguous property providing the density will not increase.
   e. Two or more contiguous qualifying lots that are located in a zoning district which permits duplexes may be combined to support a single duplex in lieu of two single-family residences.
5. ~~4.~~ ***Transferability.*** These rights shall run with the land and be available to any subsequent owner if the property which qualifies for the single-family provision is transferred in its entirety, except as provided in E.3 above.

ATTACHMENT F

FORT MYERS BEACH
LOCAL PLANNING AGENCY MEETING
APRIL 16, 2002
Town Hall - Council Chambers
2523 Estero Boulevard
FORT MYERS BEACH, FLORIDA

I. CALL TO ORDER

The meeting of the LPA was opened by Chairman Betty Simpson on Tuesday, April16, 2002, at 12:00 p.m..

Members present at the meeting: Anita Cereceda, Nancy Mulholland, Jane Plummer, Betty Simpson, Harold Huber, Jodi Hester and Chairman Roxie Smith.

Excused absence from meeting: Hank Zuba and Jessica Titus

Staff present at meeting: Town Manager Marsha Segal-George, Deputy Town Manager John Gucciardo, Dan Folke and Bill Spikowski.

II. INVOCATION AND PLEDGE OF ALLEGIANCE

Invocation was made by Chairman Betty Simpson. All assembled and recited the Pledge of Allegiance.

III. PUBLIC COMMENT ON AGENDA ITEMS

None.

IV. PUBLIC HEARING ON 3 COMPREHENSIVE PLAN AMENDMENTS: 1. Application 2002 TEXT- annual updating of the 5-year schedule of capital improvements; 2) Application 2002-2-TEXT - Reconsider plan amendment 2002-2- TEXT, which had tightened the plan's Chapter 15 provisions guaranteeing perpetual development rights on most substandard lots; 3) Application 2002-3-TEXT- Revise the Recreation Element to establish policies regarding public acquisition of beachfront land.

Bill Spikowski, Planning Consultant for the Town, came forward. He expressed that they are required by state law to put the Town's 5-year schedule of capital improvements into the Comprehensive Plan. It was formulated the previous summer during the budget process. This is a routine amendment and is ratifying what was done last September.

MOTION: Made by Roxie Smith and seconded by Anita Cereceda to recommend to the Town Council adoption of Application 2002-1-TEXT - annual updating of the 5 -year schedule of capital improvements. **Motion passes unanimously.**

Discussion: Town Manager Segal-George expressed that in August the new CIP will be brought to the LPA.

Bill Spikowski spoke regarding Application 2002-2-TEXT. Several who were on the LPA two years ago are familiar with this item. He explained that they are reexamining the same amendment from two years ago. At that time Mayor Dan Hughes had proposed that the Town greatly tighten the restrictions that let substandard lots remain buildable, even though they did not meet current regulations. The original 1999 Comprehensive Plan was very lenient, because it was basically the same language adopted by the County in the mid-1980's. Since this time a number of property owners have had their development applications turned down as a result of this amendment. When the Town Council heard these on appeal, they felt it would make sense to look at this issue again. This is the reason it is before the LPA today. He is not recommending that the LPA make any change.

He reviewed the options with the LPA. Option one would be to repeal the change, which would go back to the more lenient regulation. Option two was discussed by Town Council and would keep the rule where it is, but specifically authorize some level of variances or appeals to be considered. This sounds good, but to try and determine what the rules would be is the difficult part. He included in his memo the standard variance criteria. He does not find these to be very applicable in this case. He did try to come up with some ideas of variance criteria that would make sense, but he came up dry. Possibly, the LPA might

have some ideas today. Option three would keep the rules basically the way they are, but change the numerical criteria. The current plan declares as substandard any lot less than 7,500 square feet. This is the standard lot size that has been required to develop new lots in the county for the last 20 to 25 years. There is nothing magic about 7,500 square foot lots. This number could be changed. Option four pertains to what kind of criterion might make sense. This is the opposite of the variance rule. It would be looking at all the possible lots this rule applies to, and decide which ones they would not give breaks too.

Today the LPA will need to take public input and decide if they would like to recommend a change to the Council. He expressed that he has received a number of phone inquiries on this item.

Harold Huber commented that every lot owner has the option of bringing up comments now, but he sees no reason to make a change. Each person has the right to bring in and ask for a hearing.

Bill Spikowski replied that they do not have this right. The criterion in the rule is specific. On investigation you either meet them or do not. Two people who did not meet the criteria then appealed the decision. The Town Council did have to admit that the rule did apply to these people. Some sympathy existed, but the Council was unable to let them go on the basis that the rule did not make sense. One case is actually pending litigation as a result of this.

Dan Folke prepared a memorandum to explain the process he went through. The big question was how many properties would be effected? The property appraiser's office printed out an aerial photograph and identified parcels which were comprised of multiple lots. This list identified 476 parcels that are made up of multiple lots. He went through the map and identified the parcels that would require the minimum use determination. The parcels he eliminated immediately were Bay Oaks and the pool. These were made up of 30 or 40 original lots. The likely hood of this public land becoming private residence is not likely. He also eliminated parcels where large condominiums existed. He went to the street, which would need the MUD, and he counted the number of existing structures on these parcels. He then counted the number or original platted lots. The math was completed and the information which comes out would be the number of additional units that could potentially be built, if the minimum use determination was issued. They come up with the possibility of 230 additional dwelling units. This is an estimate. One assumption he made was that each structure he identified is a single family home. The final assumption is that multiple parcels, which consist of a lot and a ½, could be purchased by someone, assembled and reconfigured back to the original plats. Two types of situations exist where the rule would effect what could be done.

Dan went on to comment that you could have one parcel that is comprised of two whole platted lots. An existing structure sits in the middle of this parcel. The rule does not allow them to move the structure or remove it. The second type of situation involves the purchase of multiple parcels and to reconfigure them back. He feels that it is important to distinguish these two scenarios. Of the 230 units, 93 of them would result from the first scenario. The remaining 137 units would result from someone purchasing multiple parcels and reconfiguring back to the original lot lines.

At this point Chairman Simpson asked for public input.

Brian Cross who lives at 5230 Estero Blvd. came forward. He thanked the LPA for the opportunity to speak today. He commended the Council for amending the plan to stop the development of substandard lots. He expressed that this strikes at the very issue no one wants, which is density. He would like to LPA to remember the rights of the property owners that are adjacent to these substandard lots. These changes effect his property and could potentially create a much worse situation in the future. He urges the LPA to stand fast and retain the existing Comprehensive Plan requirements regarding substandard lots.

Beverly Grady came forward and indicated that there are many Fort Myers Beach property owners who own contiguous property. They have a right to a dwelling unit on each of those platted lots, except in one instance. This instance would be the change made by Council with ordinance 00-15, if a structure crossed a lot line they then lost a dwelling unit as of this date in November 2000. These would be the 93 property owners that Dan Folke mentioned in his memo. Today if you own two lots and they are vacant you get two dwelling units. Today if you have two lots with a dwelling on one and the other is vacant you have two units. If both have two exiting units on it, you can build back with two units. She commented on Dan's memo and indicated that he divided it into what exists today and what could be. The 93 are families or property owners who had two or more whole lots and by this change lost a unit. If they were put back to where they were in November 2000 they would get back their 93 units. She feels that the amendment should be tailored to only recognize those who had and owned a platted lot and have this apply to those people only who had their rights taken away.

Diane Easterbrook provided a handout to the LPA. She is present today to ask the LPA for the return of something that has been taken from them. Since 1991, she and her husband David have lived at 123 Bayview Ave.. For the first six years they rented with the first option to buy. In 1997, they purchased the property. It was not purchased for just the small cottage, but mainly for the land it sits on. They knew that the land was platted and recorded as two legal building lots. The plan was to move the cottage to one of the lots, improve the cottage and live in it until they could afford to build their dream home on the second

lot. Her neighbors can attest to their intentions. When they finally were able to carry out their plan, they discovered that three months earlier the Town had changed the law without warning or notice to them or others. Their land was down zoned. Imagine how they felt. She expressed that their lots are not substandard and they highly resent this terminology. She explained that they have received many sympathetic and outraged responses from neighbors and friends. Realistically, she does not believe that correcting this problem will create a substantial increase in the number of homes on the beach. They are respectfully asking the LPA to choose Option one. The thought of having to beg for a variance to accomplish what they could formally do by right appalls them. To adopt other than Option one would be discriminatory. She thanked the LPA for their time and patience.

Jerome (Jerry) Burner of 120 Bayview came forward. He reported that 23 years ago they bought two lots with the specific intent of developing them individually. His neighbors, Mark and Diane Easterbrook, bought their property with a specific intent of splitting it when they could afford to do this. He knows that they are no longer allowed to do this. He feels that they should go to Option one. He does not feel that this will add to the density of this island that much, considering all the high rises going up. He wished they would reconsider and go for Option one or repeal it totally.

Jane Plummer was shocked with the taking away of property rights. A purchase of property is one of the largest purchases a person makes. They do not do this without consideration. She does not feel that this is fair. She is very much in favor of returning this to Option one, because the majority of lots platted in 1925 up to 1960 are 50 x 100 or less.

Roxie Smith agrees with Jane to some extent that something inadvertently has been done, which perhaps infringes on one's property rights. She favors Option two. This still gives control to a degree yet it perhaps removes the unfairness of taking away peoples property rights. She personally owns homes on 50 foot lots. She would have a problem with leaving the standard of 7,500 square feet. She feels that they need to reduce this standard.

Town Manager Segal-George explained that the Comprehensive Plan and Land Development Code effects property rights. One of the major pieces of the Comprehensive Plan was the removal of property rights attached to the sand for the whole island. She feels that the LPA in their discussion needs to start from the understanding of what the Comprehensive Plan and Land Development Code does with regard to peoples property. Statutory rules exist with regard to how notice, comprehensive planning and comprehensive plan changes and amendments were made.

Jodi Hester understands that the property rights are effected, but the majority of people who have a single family home over two lots are not going to tear it down and separate. She would like to see anyone who currently owned property in November 2000, and wanted to take the option to separate have this opportunity until a date specific (year 2004). It will then come into play where they keep the same thing that was passed in November of 2000.

Bill Spikowski asked Jodi what she would ask someone to do by the year 2004? Tear the house down? Jodi replied that they would have to follow thru with their plan in order to get it done. Bill Spikowski will call this Option five. This option would allow a grace period.

Anita Cereceda is not comfortable with any of the options provided by Bill Spikowski. She expressed that this started with Dan Hughes when she was on the Council. She agrees with the Town Manager and expressed that this is what comprehensive planning is. The goal of the Comprehensive Plan was to control density where they could. She explained that she believed the heart of Dan Hughes' concern was speculative development. She does not feel it is fair to tell the Easterbrook's they cannot have what they had in the past without giving them some opportunity to conform. She likes Option five and would like to see Bill Spikowski create some language to allow this.

Harold Huber expressed that they would only be worrying about those property owners who owned the property on November 21, 2000. He wanted to be sure that this is part of the language.

Nancy Mulholland feels that Jodi came up with a very good idea and she is in agreement.

Jane Plummer commented that the Historical Society is trying to keep some of the 50 foot lot cottages. She feels that part of this island is the cottage style house and not the trophy houses. She is unsure of the Easterbrook's time frame, but each person has their own time frame for their plans. She is not in agreement with Option five and does not feel it is fair for the LPA to give a time frame. If a person is financially not able to go through with their plans they will lose their rights.

Anita questioned if the date was eliminated and everyone who owned property on November 21,2000 was exempt, would this be acceptable? Anita could go along with this.

Jodi disagrees very strongly with the unlimited time.

Harold is in agreement with the intention of the LPA. He feels the time frame is a little short and should be 2005.

Anita clarified the intent of Jane Plummer. When the property changes ownership it will not go to the new owner. This option will not run with the land.

Jane replied that she does not feel there should be any time limit. If any limit will be imposed, it should at least stay with the property owner that owns it at this time. If they purchased two lots, it should remain two lots. She feels it is unfair to take-away property rights.

Town Manager Segal-George suggested that Bill Spikowski put some language together and another session will be scheduled. Bill replied that this discussion has been very helpful. He feels that some of the options in #4 make sense, but the concept of option five be added and combined. He commented that this would be better than the variance approach. Discussion was held regarding the time to bring this back to the LPA.

Town Manager Segal-George suggested May 14TH. Anita indicated that she would be away on this date. She would like the LPA to figure a day this could be heard, so that she could be present. These matters are important to her.

Town Manager Segal-George will make arrangements to have this item on the May 21st agenda.

Jane Plummer asked Bill what he is planning on writing for this new condition? Bill replied that he is suggesting a combination of Option four and five. The people who owned in November 2000 would have some time to move or rebuild. The lots which have eroded or do not have house frontage would not be treated the same way.

Jane asked about the lot and one half's that are not built on? Dan Folke replied that they could only do one before the rule change and they can only do one today, unless you assemble other parcels.

Jodi thanked Mr. Cross for coming up. She would like to see him come forward again to make the same comments. She expressed that this has effected him and others on the island, and should also be considered.

MOTION: Made by Harold Huber and seconded by Jodi Hester to continue this matter until May 21, 2002 at noon. **Motion passes unanimously.**

Bill Spikowski went on to comment that the Town is trying to acquire the Newton Estate. The most likely funding source is the Florida Communities Trust. One of their charges in using this public money is that they want to help local communities implement their Comprehensive Plan. Purchasing the Newton property is completely consistent with the current plan. The scoring matrix that Florida Communities Trust uses gives extra points for a project that helps implement the plan. The Newton property was not available when the plan was created. He expressed that his language makes it more explicit. This adds two new policies and amends four existing policies. He feels through this change it will greatly help their chance of obtaining funding to purchase this property.

Roxie Smith complemented Bill Spikowski on his narrative.

Chairman Simpson questioned if anyone from the public wished to address the LPA. None was heard.

MOTION: Made by Jane Plummer and seconded by Nancy Mulholland to recommend to the Town Council the revision of the Recreation Elements to establish policies regarding public acquisition of beachfront land. **Motion passes unanimously.**

V. LPA MEMBER ITEMS

Anita Cereceda - Appreciated the LPA's assistance in changing the date for the Comprehensive Plan Amendments, so she could attend.

Roxie Smith - Asked the result of the sign ordinance? Town Manager Segal-George replied that the Council is giving the LPA six months to make recommended changes to the sign ordinance with regard to A-frame signs, offsite signs and second story businesses. The sandwich signs must conform with the definition and only one per business. The signs must be brought in at night and the business owner must submit a sign permit at no cost. She expressed that this will put a lot of work on Town Staff. Offsite signs will be used very sparingly with permission from the property owner. The signs need to be professionally done. She received permission with flexibility for the second floor businesses to try and come up with options. Ginny Ross will take digital pictures as each permit comes in. It was unanimously approved. She will be liberal with the sandwich signs, but will not be for the offsite signs.

Jane Plummer - Asked if the LPA will be vacationing for part of the summer? Town Manager Segal-George replied that Council will have three meetings in June. They are taking off all of July. Councils' first meeting back will be August 26th. In the past the LPA is taken down at the same time. The LPA is usually brought back in August. She suggested bringing them back on August 20th. The LPA would be down the whole month of July. She is unsure about June at this time.

The LPA decided on August 27th as the start back date.

Harold Huber - Will be gone from May 15th until August 3rd. He will be present at the May 14th meeting.

Betty Simpson - Will miss the May 14th meeting. She will be back for the meeting of May 21th.

Asked about Seafarer's? Town Manager Segal-George replied that the Developers Agreement was approved. The Master Concept Plan was approved and amended. This was approved 3 to 2. Bill replied that the three buildings on Estero Blvd. are approved. The hotel building on Crescent is shown on the Master Concept Plan, but he does not have enough parking for it. If he wants to build that building he must come in for a parking deviation. The zoning resolution was approved 3 to 2, but on the Developers Agreement it was unanimous. He is also giving substantial right-of-way donations in the Developers Agreement.

Anita commented on the hearing and indicated that she was angry. As people approached the podium they were interrupted and questioned about their residency. There are only two places which require residency, which is the Council and LPA. Everywhere else they have welcomed expert testimony from outside the county and have included as many people that have wanted to participate. She expressed that there is hatefulness regarding the ability to care about the community, if you do not live on the south end of the island. This upset many people including herself.

VI. PUBLIC COMMENT

Diane Easterbrook came forward and expressed that their needs to be unlimited time for those landowners. A time limit is a hardship. She explained when they bought their home in 1997 within one year David was in a car accident. The next year he was in school full-time, and it took them until January 2001 because of these happenings. These events were unplanned. This time limit is difficult for a family to accomplish. She expressed if this is limited to only the present owner when the property owner sells you are still down zoning their lots and taking away the value. This homeowner will still bare the burden. It is not a perfect world and things do happen to people.

Brian Cross came forward and expressed that the LPA should keep in mind all situations are not created equally. His situation is different from the Easterbrook's. He really appreciates their consideration.

Jane Plummer commented on the time frame. She feels the LPA should look at how time frames work and the relevance of A-frame signs with regard to tearing down houses and rebuilding them.

VI. ADJOURN

The meeting was adjourned at 1:45 p.m..

Respectfully Submitted,

Shannon Miller
Transcribing Secretary

ATTACHMENT G

FORT MYERS BEACH
LOCAL PLANNING AGENCY MEETING
MAY 21, 2002
Town Hall - Council Chambers
2523 Estero Boulevard
FORT MYERS BEACH, FLORIDA

I. CALL TO ORDER

The meeting of the LPA was opened by Chairman Roxie Smith on Tuesday, May 21, 2002, at 12:00 p.m..

Members present at the meeting: Harold Huber, Jodi Hester, Nancy Mulholland, Anita Cereceda, Betty Simpson, Jane Plummer and Chairman Roxie Smith.

Excused absence from meeting: Hank Zuba and Jessica Titus

Staff present at meeting: Town Manager Marsha Segal-George, Deputy Town Manager John Gucciardo, Dan Folke and Bill Spikowski.

II. – V. DELETED FROM THIS DOCUMENT

VI. Public Hearing- Comprehensive Plan amendments - Application 2002-2 TEXT: Reconsider plan amendment 2000-2 TEXT, which had tightened the plan's Chapter 15 provisions guaranteeing perpetual development rights on most substandard platted lots.

Bill Spikowski expressed that last month three Comprehensive Plan Amendment hearings were heard. Action on two took place and the third was continued until today. In the previous memo he had suggested four different ways the Town may respond to this request. During the hearing two additional options were suggested and he has written these up and combined 4, 5 and 6. He expressed that the double lined language would implement option 7. This would give people who have two complete platted lots the ability and time period to be exempted from this rule, if it is accomplished during a certain time period, and by the original owners at the time. It disallows certain situations where you would not want any relief to be provided.

Harold Huber asked Bill Spikowski if he felt comfortable with what has been presented here? Bill Spikowski replied that he began by throwing out all of the options he could think of. None of the first four seemed right or provided a great improvement. He recommended the LPA leave things the way they are. At the end of the LPA meeting option 7 was suggested and this sounded sensible to him. If the LPA chooses to go forward with option 7 he will join along and recommend it to the Town Council. It sounds like a sensible amount of relief for people most directly affected, but does not leave the door open to problems they have tried to correct in the year 2000. He considers this favorable language, unless a flaw is found in today's discussion.

Jane Plummer feels strongly about taking away property rights. She feels the 93 people who bought property felt they purchased individual lots that were buildable. She has difficulty supporting this and feels it is very unfair.

Bill Spikowski pointed out that since 1962 the County rules have always required any new lots to be 7,500 square feet. The lots that were created after 1962 were created illegally. The County has closed their eyes on this matter.

Anita Cereceda feels that you must draw the line somewhere and sometime. In the creation of the Comprehensive Land Use Plan that is established by this Town density was eliminated. You are in effect taking away "rights." The Town would not have incorporated if change wasn't the goal of the Town. If the goal of the Town is to take control of potential future density and future use of areas within the community a decision must be made. She agrees with option 7. It takes care of the people who have complained.

Harold Huber felt that relief was being granted by option 7. Bill Spikowski replied that this does provide relief, but it is limited in time period. By the year 2004 you must move the home and by 2006 you must build the house.

Jane Plummer does not feel that two years is relief.

Bill Spikowski feels if the LPA does not like the number it can be changed, but a date should be specified.

Nancy Mulholland feels the time frame is a little short, but she is unsure what a reasonable time would be.

Brian Cross who lives at 5230 Estero Blvd. came forward. He thanked the LPA for allowing him to speak. He feels what is being considered is a great critical importance to the Town of Fort Myers Beach. A line must be drawn somewhere and the Town must start to carry out their vision. The vision of the Town is to maintain the island quality of living arrangement here that seems to be going away everywhere else. In their deliberations and vote today he asked them to think of the rights of the property owners who live around substandard lots. All lots are not created equal. His situation is much different from the Easterbrook's. He shares a common driveway and parking is a problem. A change in the Comprehensive Plan will create a very tight living environment for them. He feels that this will interfere with their deeded beach access across this particular lot. Homes too close together create a hazard. He urges the LPA to maintain the integrity of the Comprehensive Plan. He feels provision 7 seems like a reasonable compromise.

Diane Easterbrook came forward. She was not planning to speak, but came to hear what the LPA would be considering. She was hoping that the people who had this right prior to November 2001 would be able to build without a time limit. Residential areas need to be given a break. She expressed that this is a big deal and time is a factor. A nicer home will be built with more time. This is a hardship. Thanks to the LPA if they are considering giving their land back. Please don't be so stingy with the time limit.

Anita Cereceda wanted to know Diane's idea of a reasonable time? Diane feels they should start at 10 years. She was hoping that this would be grandfathered in and this pressure would be taken away. She would like to know if the second house on the second lot would have to be built within the time limit being discussed?

Bill Spikowski responded that the way this is drafted now there would be two separate time limits. The first home must be moved onto one lot or torn down by the end of the year 2004. The second house would need to be built two years later by November 21, 2006. If it is not complete by this time, you would give up this right.

Diane Easterbrook commented that there is no way they would be able to have their second house built after spending all the money to move the other home and have it fixed up.

Jodi Hester questioned Bill if the Easterbrooks decided to not built on the second lot and sell it would option 7 still apply to the new owner? Bill Spikowski replied that this applies to only the present owner. If they sold the second lot, it could not be built on. Jodi does not like this part. For a person to build two homes before they could sell, the one is not correct.

Anita suggested putting a time limit on separating the lots. This will allow for accurate inventory of the lots in question.

Town Manager Segal-George commented that the LPA started with a Comp Plan change that prohibited all of this. The question before the LPA and going before the Council is if the LPA will provide relief for these people and make a change or not. The intent was never to create an inventory. Dan did the research to determine how many people would be effected.

Harold Huber does not feel that everyone would want to move their house and built on the other lot. Many would just like to move their home and sell the other lot. He would like to see the language removed that the original owner is the only one who can build the second home. The dates can be changed from 2004 to 2005 and 2006 to 2010. He would like some additional discussion on his suggestion.

Jodi Hester would like to add after 2010 - "although the sale of one of the two lots by the original owner is allowed."

Jane Plummer questioned what will happen to the lot after 2010? Bill Spikowski replied if the house has not been built on by 2010, even by another owner, the right to build goes away. The problem becomes if the lot is sold and the person does not build on it the person will have something they cannot use. This is potential legal trouble to the Town.

Town Manager Segal-George feels if this change is made the second date must be removed. She recapped that the discussion of the LPA is to allow the owner until November 21, 2005 to take your home and move it onto the other lot. The other lot can be sold and developed.

Jane Plummer does not feel the three-year time period is enough time. She went back to Diane Easterbrook's example of a 10-year time limit. She expressed that the 9-11 situation affected her. She is unable to make improvements to her home and is unaware when she will be able to follow thru with her plans. Many circumstances change and the time limit is too strict.

Harold Huber feels that the compromise is that the second date is removed.

MOTION: Made by Harold Huber and seconded by Nancy Mulholland to recommend to the Town Council option 8 with the following changes: the date from 2004 to 2005, eliminate the second date and the rule that the second house would have to be built by the original owner will disappear.

VOTE: Motion passes 6 to 1. Jane Plummer dissenting.

****Chairman Roxie Smith called for 5 minute break****

VII. – IX. DELETED FROM THIS DOCUMENT

X. ADJOURN

The meeting was adjourned at 3:15 p.m..

Respectfully Submitted,

Shannon Miller
Transcribing Secretary

ATTACHMENT H

ROETZEL & ANDRESS
A LEGAL PROFESSIONAL ASSOCIATION

2320 First Street
Suite 1000
Fort Myers, FL 33901-2904
941.338.4207 Direct
941.337.3850 Main
941.337.0970 Fax
bgrady@ralaw.com

May 21, 2002

Town of Fort Myers
Local Planning Agency
P.O. Box 3077
Fort Myers Beach, FL 33932

Re: May 21, 2002 LPA Hearing
Application 2002 -2-TEXT

TO THE LOCAL PLANNING AGENCY

The real issue is fairness. Under the amendment that was adopted on November 21,2000 and the proposed language in Attachment 1 for discussion at the LPA 5/21/02 hearing, it continues to treat same sized lots in the same subdivision differently. Upon what basis does the Town treat the same sized lots in the same subdivision differently. Only if a portion of a structure at any time crossed over a lot line (on or before 11/21/00) did a property owner lose a unit base on the Town's amendment in 2000. The crossing of a lot line is not a legitimate planning basis to take a unit from 93 property owners in the Town. Each of those owners had a property right that was taken away Remember that based on ownership on 11/20/00 there were 93 property owners who had the ability for 1 additional dwelling unit on a lot of record (just like other property owners who had same sized lots with no structure on it). That dwelling unit was taken from 93 property owners in the Town.

There is a very simple solution to return that right to **only** the 93 property owners and to preclude owners who did not have that right from future acquisitions to gain additional density now. The Council's direction was to relook at the effect of the Plan amendment and consider returning those rights.

Please consider the following language:

Delete proposed language for E.3 and language adopted as of 11/20/02 for E.3 and replace with

3.OWNERSHIP . To qualify for a minimum use determination, each lot shall have been owned in that configuration on November 21,2000 and no property acquired after that date may be used to support a minimum use determination.

ATTACHMENT H

Result:

- ξ All property owners who owned a lot or lots as of November 21,2000 are treated equally (the same).
- ξ Today property owners who own 1,2 or 3 lots that are vacant (and meet the other existing requirements) have and have always had the right to a dwelling unit on each lot.
- ξ Today property owners who own 1,2 or 3 lots (and meet the other existing requirements) and have a dwelling unit wholly located on a lot have and have always had the right to a dwelling unit on the vacant lot(s).

- ξ This proposed language in the bold type permits the 93 property owners who had a unit taken away by the prior comprehensive plan to get that unit back **if that property owner meets all other existing requirements of the minimum use determination.**

- ξ This protects owners who already had the property right and stops future acquisition to add units to the Town

This is simple. It returns the ability to request a minimum use determination to the 93 owners.

Very truly yours,

Beverly Grady
Signed electronically to expedite

Beverly Grady
For the Firm

BG/umr