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MEMORANDUM

TO: Fort Myers Beach Town Council and Local Planning Agency
FROM: Bill Spikowski
DATE: October 14, 2002
SUBJECT: **NEW LAND DEVELOPMENT CODE, Zoning Chapter (Chapter 34)**

On October 22 at 6:00 P.M. we will conduct another workshop session on Chapter 34, the zoning chapter of the land development code. The backup material for this workshop is attached, which includes the latest drafts of all five Articles of Chapter 34, as revised through October 14. The draft "Interim Zoning Map" dated June 17, 2002 is also a part of this Chapter; it has not changed since the June draft.

Also attached is a new title page for the entire LDC and a copy of the latest revision to Chapter 14, which reflects the amendments you made last month. Please insert all of these documents into your LDC binder. This material is enormously complex, but please bring any initial questions or comments you may have on this material to the October 22 workshop.

Chapter 34 is divided into five articles:

- **Article I** defines the terms and phrases that are used throughout Chapter 34.
- **Article II** contains all zoning procedures.
- **Article III** combines the various allowable land uses into groups of compatible uses with similar impacts, then assigns these groups to the new zoning districts. Article III also includes specific property development regulations for each zoning district and adopts the new zoning map by reference.
- **Article IV** contains supplemental zoning regulations (mainly those that apply regardless of which zoning district a parcel has been assigned).
- **Article V** regulates nonconforming buildings, nonconforming uses, and nonconforming lots.

This is the first complete draft of Chapter 34. It may undergo substantial revisions before being deemed ready for adoption, but all portions have now been drafted and are being circulated.

The purposes of the October 22 workshop are to answer any questions about this draft, to let Town Council members identify any portions of this draft that they may be uncomfortable with, and to determine whether this draft is ready to go to public hearings or whether it needs further revisions, review, or public explanations.

The following summary explains in more detail how Chapter 34 is organized.

ARTICLE I

Article I contains the definitions of terms and phrases that are used throughout Chapter 34.

Many definitions are unchanged, and many others have been eliminated because the terms are no longer used in this code.

New definitions are provided for each of the land uses that are described in Article III. The previous system contained hundreds of superfluous definitions (for instance, dozens of types of retail stores), in addition to a second system of “use groups” that were defined elsewhere in the code. These two methods of categorizing land uses are now being combined into a single greatly simplified system, with all the new terms defined in § 34-2 (see discussion further below).

ARTICLE II

Article II contains all zoning procedures.

DIVISION 1 describes the restrictions on communications between the public and LPA and Town Council members concerning “quasi-judicial” hearings, such as rezonings, variances, and special exceptions.

DIVISION 2 describes each type of zoning action that can be taken by the Town Council. It also establishes criteria for approving or denying requests for these actions.

DIVISION 3 describes the Local Planning Agency. Much of this material has previously been adopted by Ordinances 96-02 and 96-25 but is now being relocated here.

DIVISION 4 describes the application procedures for anyone seeking a zoning action on their property.

DIVISION 5 describes the procedures for continuances and deferrals of public hearings.

DIVISION 6 contains miscellaneous provisions, including provisions for “administrative setback variances” in certain specific situations.

ARTICLE III

DIVISION 1 – Mapping of Zoning Districts

This division adopts a new “interim zoning map” and describes in detail how the final zoning map will be prepared and updated.

Today’s “official zoning map” for the town consists of 18 large sheets, each two feet by three feet. In addition to identifying the current zoning district for each parcel, these sheets contain thousands of marginal notes with the complete history of all zoning actions since 1962.

The new LDC will consolidate many former zoning districts into new districts, and will create a number of entirely new districts. It would be too cumbersome to print and circulate the complete official zoning map with the new zoning districts also indicated to all the people who are interested in the new LDC, so § 34-613 proposes the transition to take place in two steps. Along with adopting the major revisions to Chapter 34, the adopting ordinance would contain as an exhibit a new zoning map showing the entire town on a single sheet. This map will only show the new zoning districts (plus some non-regulatory information such as building outlines, 3-D depictions of tall buildings, and the “Platted Overlay” from the Future Land Use Map).

This new map will be called the “interim zoning map” and will override the existing “official zoning map” only as to zoning districts. Previous approvals of variances, special exceptions, special permits, and other zoning actions that did not change zoning district boundaries will remain in effect, even though they cannot be shown on the interim zoning map due to its scale. Within a year after approval of the amending ordinance, the town will approve, by resolution, a *new* official zoning map of the town that reflects the new zoning districts. Many errors on the existing maps can be corrected at that time, and obsolete zoning approvals can be deleted.

DIVISION 2 – Allowable Land Uses in Each Zoning District

Zoning ordinances typically use one of the following approaches to assign allowable land uses to individual zoning districts:

- Each zoning district can be described on a separate page which contains either a complete list of all the land uses that are permitted in that district or a list of uses that are permitted in addition to the uses described on previous pages for a less-intense zoning district; or
- A matrix or table can be provided that lists the zoning districts across one side and potential land uses across another, with symbols showing which uses are allowed in which districts.

For many years Lee County used the first method, which is easier to understand from the perspective of a person who simply wants to know what they (or their neighbor) can do in a single zoning district. A major drawback to this method is that it makes the code quite lengthy; another drawback is that when there are more than just a few zoning districts, it is difficult to understand the entire regulatory program for the town without studying each and every district. For instance, someone wishing to open a restaurant must study the entire code to learn where one may be built.

About 15 years ago Lee County switched to a matrix system, with separate matrices for residential districts, commercial districts, industrial districts, etc. This shortened the code substantially, although it became more intimidating to inexperienced users who must first understand a series of concepts and abbreviations before being able to answer even the simplest questions about “what’s allowed where.” These matrices still take up about 35 pages in the current code, even with extremely small type and many abbreviations.

Regardless of which system a community uses to show which uses are allowed in which zoning districts, an LDC must also define or describe the individual uses in some manner. In the current code, Lee County has melded three distinct ways of defining the terms used to describe allowable uses. The existing code contains about 135 individual land uses that are defined in Article I of Chapter 34. Some other land uses are self-explanatory (for instance, barber shops). However, there is also a third group of land uses that are included by reference to about 140 specific “use activity groups” which are described in detail in the existing code using the old SIC (Standard Industrial Classification) system for defining businesses. These use groups alone take up about 20 more pages in the current code.

The use activity groups in the current code were originally intended to replace the individually defined uses that have been in the code since the early 1960s. However, the current code just combines the systems, and they often overlap each other, with results that are impossible to anticipate but likely to surprise. For instance, a defined use that is explicitly *not* allowed in a zoning district may be found buried in one of the use activity groups that *is* allowed. In short, although the current code’s combination of systems for defining land uses have the advantage of familiarity to staff members and local consultants, they have few other virtues. (In fact, Lee County planners have reached the same conclusion and intend to eliminate their use activity groups in the coming year.)

The new LDC eliminates all of the existing use activity groups, and instead defines about 85 land uses in the revised definitions section (§ 34-2) of Article I. It then describes a new system for defining and assigning land uses to districts. This system begins with Table 34-1 (see page 78 and 79), which combines the 85 land uses defined in Article I into six major groups:

- Residential
- Lodging
- Office
- Retail
- Marine
- Civic

Table 34-1 also breaks each major category into three sub-groups of varying intensities, called “restricted,” “limited,” and “open.” Table 34-2 then assigns various combinations of these 18 sub-groups to each zoning district (see page 80).

This code contains a simple guide that describes the different ways that this portion of the code can be used; see § 34-622 (e) and (f) on see page 77.

This is perhaps the most important part of Chapter 34. Please look carefully at Tables 34-1 and 34-2. For instance, my preliminary proposal on restricting the location of short-term rentals from certain single-family neighborhoods is shown in the center column of page 78. This proposal is described further in the attached memorandum to the LPA from last October. (Since that time,

the LPA has been evaluating a behavioral approach to problems with short-term rentals, and I have done no further work refining my original proposal, pending discussion of this issue by the Town Council.)

There is one further complication to any system of assigning land uses to zoning districts: the same land use might be allowed in a zoning district only under certain circumstances. The existing and new code use a nearly identical system for making these distinctions:

- Permitted “by right” (**P**) – a use that can be added at any time, without discretionary approvals and without any special conditions applying only to that specific parcel of land.
- Permitted “by special exception” (**SE**) -- a use that requires specific approval by the Town Council, depending on whether or not it meets criteria listed in the code.
- Permitted if the use is “existing only” (**EO**) -- a use whose buildings can be completely replaced if the use exists today, but is otherwise prohibited. (This differs from a non-conforming use, which may continue but cannot begin again once it is abandoned for nine months.)
- Permitted only through a “temporary permit” (**TP**) -- for short-term uses such as carnivals and some other uses including seasonal parking lots.
- Permitted through “administrative approval” (**AA**) -- a use that can be approved by “the director” if the use is determined to comply with specified criteria.
- Permitted only as an “**accessory use**” -- a use that is allowed when it is incidental to a principal use of property (such as a private garage or dock on a single-family lot, or a parking lot for a store on the same property).

This new system would be a clean break from the existing code. It would create a learning curve for those who administer the code and for those who apply for permits under it, and there would probably be some glitches that we would discover in the first few years of its use. On the plus side: past interpretations that Lee County has made about its code would no longer apply to the town; the code would be dramatically shortened; and, once learned, the new system would make the town’s regulatory system more understandable by grouping uses with similar impacts together, rather than treating each district as an amalgam of hopefully compatible individual uses.

DIVISION 3 – Explanation of Property Development Regulations

This division describes the most important property development regulations that will apply to all three types of zoning districts:

- Building heights
- Density
- Intensity and floor area ratios
- Minimum lot sizes
- Minimum setbacks

These descriptions are scattered throughout the entire existing code, making it difficult to understand the basic parameters that regulate land use.

DIVISION 4 – Conventional Zoning Districts

This article contains three types of zoning districts. “Conventional” zoning districts are the simplest type and are described first, in division 4. Common examples from the current LDC are the RS-1 (single-family) zone and the C-1 (commercial & mixed-use zone). Conventional zoning districts contain a pre-defined list of permitted uses and specific dimensional regulations such as setbacks and lot sizes that apply to every parcel in that zoning district. In conventional districts, site plans cannot be required as part of the zoning process, and special conditions cannot be imposed by the Town Council (except on variances and special exceptions).

This division describes eleven different conventional zoning districts. These districts will be applied to most land in the town, mainly to mature neighborhoods where major land uses changes are not expected or desired. Where the comprehensive plan calls for a specific type of redevelopment, “redevelopment” zoning districts will be used instead of conventional zoning district (see division 5 below). The property development regulations for the conventional zoning districts are found in Table 34-3 (see page 88).

The new zoning districts have been assigned generally as follows:

- ***RS – Residential Single-family***, similar to the existing RS-1 district. This district would be used throughout the “Low-Density” category in the comprehensive plan and in some parts of “Mixed Residential”; it would replace the existing RS-1, RS-2, and RSA zoning districts. The major difference among the old districts was minimum lot sizes, which affect new development greatly but are of little effect once initial platting has taken place.
- ***RC – Residential Conservation***, similar to the existing TFC-2 and TF-1 districts. This district would be used primarily in “Mixed Residential” for land that has already been subdivided into small lots (often smaller than 7,500 square feet) but which isn’t restricted solely to single-family homes.
- ***RM – Residential Multifamily***, similar to the existing RM-2 district. This district would be used primarily in “Mixed Residential” and also in “Boulevard” for existing condominiums and apartments.
- ***CR – Commercial Resort***, similar to the existing CT district. This district would be used in “Mixed Residential” and also in “Boulevard” for existing motels and timeshare resorts (including those currently zoned RM-2).
- ***CM – Commercial Marina***, similar to the existing CM district, for Moss and Mid-Island Marinas.
- ***CO – Commercial Office***, similar to the existing CS district – used occasionally for transitions between commercial and strictly residential districts.
- ***SANTOS*** – This new district implements the recommendations of the 1999 Santos/Palermo study.
- ***IN – Institutional*** (for the elementary school, churches, civic buildings, and government buildings, but not parks).
- ***CF – Community Facilities***, incorporating the existing CF-2 and CF-3 districts, for use on public parks and the Matanzas Pass Preserve.
- ***BB – Bay Beach*** (to implement the terms of the final settlement between Stardial and the town for the Bay Beach community).

- **EC – Environmentally Critical** has been applied to Gulf beaches seaward of the 1978 coastal construction control line, to mirror the Future Land Use Map which designates the beaches in the “Recreation” category. The EC district is also applied to wetlands.

DIVISION 5 – Redevelopment Zoning Districts

The redevelopment zoning districts are the second major type of zoning district and will contain the most significant changes from today’s zoning. Each redevelopment district will implement a specific part of the comprehensive plan.

The most important redevelopment district is “Downtown,” but there are three others as well.

- **DOWNTOWN** – This district will replace the core area overlay district.
- **SANTINI** – Santini Marina Plaza/Fishtale Marina area, as defined by the “Pedestrian Commercial” boundary. This mixed-used district is written to implement the redevelopment concepts in the Comprehensive Plan.
- **VILLAGE** – Red Coconut/Gulf View Trailer Park. The new VILLAGE zoning district would clarify and simplify the existing RV and mobile home regulations and would implement the “pre-approved redevelopment option” that is described in the Comprehensive Plan.
- **CB – Commercial Boulevard.** Most of today’s retail, restaurant, and entertainment uses are on land zoned C-1. Within the “Pedestrian Commercial” boundaries, entirely new commercial districts are being created (Downtown, Santini); but outside those boundaries, existing stores and restaurants would be assigned the new CB zoning district. New or expanded commercial activities in this new district would require rezoning to CPD, in accordance with Comprehensive Plan Policies 4-B-5 and 4-C-3-iv; but the new district provides all the regulations that would apply to enlarging and replacing buildings for existing commercial uses.

DIVISION 6 – Planned Development Zoning Districts

Planned development zoning districts are the last major type of zoning district. They require specific approval by the Town Council of a “master concept plan” for each site.

“Planned development” districts are customized to the particular constraints and opportunities on a specific site. An adopted PD zoning resolution includes the binding site plan, special conditions, and a specific list of permitted uses that apply only to that property.

The new code would retain the CPD and RPD zoning districts with only minor changes. (Existing MPD and PUD zoning would be converted to CPD and would no longer be available for new approvals.)

- **RPD – Residential Planned Development**, incorporating the existing RPD zoning districts.
- **CPD – Commercial Planned Development**, incorporating many existing CPD zoning districts and also available for future use in specialized situations, including all new commercial uses in the “Boulevard” land use category. CPD zoning would now be available for mixed-use development as well as strictly commercial development (as in the current code).

Presently the town requires most new commercial development to be rezoned to CPD before receiving a development order. This was an interim step while the comprehensive plan and LDC were being prepared. Under the new code, the mandatory CPD requirement would be eliminated. Landowners who are willing to follow all the rules in the LDC can proceed directly through the development order process. Landowners who wish to develop in a different manner or who wish to obtain deviations from the LDC can still proceed through the planned development process as they do today.

An important issue that must be decided soon is the treatment of existing CPD zones. In most cases, it probably makes sense for the existing CPD zonings to remain in effect. In other cases, either the CPD zoning has been made obsolete by the new Comprehensive Plan or would be less desirable to a landowner (and to the town) than one of the new zoning districts; in such cases, the “interim zoning map” can simply indicate the elimination of the CPD. Examples might include the various CPDs within the land that will become the new Santini zoning district; and some of the CPDs that otherwise would now be going into the new Downtown zoning district.

The June 17 draft of the interim zoning map indicates all *existing* CPDs with a blue border. When the underlying zone on the new map is something other than CPD, this simply means that the best course of action is unclear, and may remain so until landowners have reviewed all details of the new code.

DIVISION 7 – Commercial Design Standards

The commercial design standards were formally adopted into this article on June 24 and are thus shown on pages 115–124 of this draft without underlining. Some revisions are included, especially to indicate how these design standards relate to the new zoning districts (for instance, see § 34-992(a) on page 115).

DIVISION 8 – Residential Design Standards

The residential design standards proposed in Division 8 are not as comprehensive as the commercial design standards in Division 7. However, the yards and fronts of private homes, combined with the streets themselves, create some of the most important public spaces in the town – its quiet residential neighborhoods – and these proposed standards would thus affect only the fronts of new homes.

This draft follows the concepts discussed at our LDC workshop last month. It is limited to several key design factors that can make an enormous difference in the character of these neighborhoods, which, although they are nearly “built-out,” will continue to evolve as homes are improved (or demolished and completely rebuilt):

- ***Put a porch, balcony, or stoop on the front of each house*** – A traditional feature of homes has always been to have a porch, balcony, or stoop on the street side of the house. A majority of new homes being built today no longer contain any of these features. Especially in a community where many houses are oriented toward canals, bays, or the Gulf of Mexico, the original “front” of the house that faces the street is often neglected. This draft of the LDC requires the use of at least one of these features on the street side of

each new or substantially rebuilt house.

- ***Oversized houses can dwarf neighborhoods*** – New homes should be expected to be larger than most existing homes, but there is a point beyond which houses can become completely out of scale with existing neighborhoods. This draft of the LDC contains some basic limitations on house size to minimize the impacts that most other beachfront communities have begun to experience in recent years.
- ***Don't let garage doors dominate the fronts of houses*** – Probably the most unfriendly feature of many new house designs is the dominance of garage doors on the front (public) side. These designs can make streets feel like alleys. The typical family now owns more cars than ever, and this will only worsen the problem as homes are rebuilt. Because new homes must be elevated due to floodplain regulations, the most common solution at Fort Myers Beach is to put parking on the ground level below the living area. If access to this parking is from the side, or if a side driveway leads to a rear garage (attached or detached), all parking is hidden from the street and it has virtually no impact on the surrounding neighborhood. More commonly, however, access to the parking is directly from the front, an arrangement that can be perfectly suitable or that can result in garage-dominated building fronts, based on a few basic design decisions that are usually given little thought. The illustrations on page 126 of this draft show how some subtle design changes on the front wall of houses can change the character of the public space of neighborhoods.

ARTICLE IV

Article IV contains the “supplemental regulations” that apply in addition to the specific regulations for each zoning district. Some important divisions are noted below:

DIVISION 11 contains entirely new regulations for commercial antennas for cellular telephone providers. This draft strongly encourages new antennas to be located on top of existing tall buildings rather than on new freestanding towers.

DIVISION 17 contains completely revised fence and wall regulations.

DIVISION 18 contains revised regulations for home occupations and two new categories of mixed uses: live/work units, and work/live units.

DIVISION 19 contains completely revised regulations for hotels, motels, and bed & breakfast inns.

DIVISION 26 contains major revisions to the off-site parking regulations. These regulations are now tailored to Fort Myers Beach and no longer require as much on-site parking as the previous rules, which had been written for suburban locations where there was little or no pedestrian traffic or public transit.

DIVISION 38-A contains proposed restrictions on tattoo parlors and body-piercing salons, with three separate options presented beginning on page 193.

ARTICLE V

Article V is highly technical, yet of tremendous importance to the town. Much of the land development code controls new buildings and new land uses, but this article is about buildings, land uses, and lots that already exist.

The initial task in revising this article was simply to make the changes mandated by the Fort Myers Beach Comprehensive Plan, most importantly adding the detailed regulations for the new “pre-disaster buildback” concept and updating the rules for minimum use determinations.

However, this article has been amended by Lee County so many times through the years that its original pattern of organization is no longer visible (that is at least part of the reason that this is one of the least understood parts of the entire code). Also, the existing article contains contradictory provisions and is not cross-referenced to other important parts of the code. The two most common nonconformities at Fort Myers Beach are buildings that are over current densities and building space that is below the floodplain; neither were mentioned specifically in this article.

DIVISION 1

Division 1 describes its basic concepts of Article V:

- The three types of nonconformities are distinguished, and the reader is directed to the regulations that will apply to each type.
- The basic difference between “nonconforming” and “illegal” is described (nonconformities are granted varying amounts of protection, while illegalities must be eliminated).
- The concept of nonconformities are now to be extended throughout the entire code, not just to chapter 34. For instance, marine structures that do not meet current regulations in chapter 26 would now be considered as nonconforming, not merely illegal.
- Some other sections of the LDC describe an amortization procedure where nonconformities must be phased out over a specific time period. That concept is now described here, because it essentially negates the protections otherwise granted to nonconformities.

DIVISION 2 – Nonconforming Buildings

Division 2 contains all the regulations for ***nonconforming buildings***. In most cases these buildings contain land uses that are fully legal, and are on lots that are fully legal; only the building itself fails to comply with one or more current regulations.

Nonconforming buildings are divided into two groups to distinguish between those that pose fewer problems and therefore have fewer restrictions (e.g., nonconforming due to setback problems) and those that should be subject to the stricter 50% rule (e.g., nonconforming due to floodplain problems; over-density; etc.). The distinction is in 34-3234, with subsection (a) being the first group and (b) being the second group.

The biggest nonconforming issues at Fort Myers Beach are floodplain violations and buildings that are over-density. The actual rules for floodplain nonconformities are still in chapter 6 as expected by FEMA, but they are now clearly cross-referenced. The FEMA definition for the 50% rule (also in chapter 6) will now be used for all nonconforming buildings in the second group. Buildings that exceed current densities are declared as nonconforming *buildings* now rather than nonconforming *uses*, rather than their ambiguous status in the current article.

The “pre-disaster buildback” concept and process is now detailed in 34-3237. The basic regulations are contained in the comprehensive plan, but this language contains the details as they evolved through the Pink Shell MPD case. The similar “post-disaster buildback” process is now detailed in 34-3238.

DIVISION 3 – Nonconforming Uses

Division 3 contains the regulations for ***nonconforming uses***. Here, the building itself is probably legal, and the lot is fully legal, but the *use* of the building or lot is no longer legal under current regulations. Of all the nonconformities, these regulations are the most restrictive, since the purpose is, over time, to eliminate all nonconforming uses.

DIVISION 4 – Nonconforming Lots

Division 4 contains the regulations for ***nonconforming lots*** (usually vacant lots). These rules are fairly lenient, reflecting the reality that lot-size regulations have changed frequently through the years, and only with great difficulty can most existing lots be reconfigured.

There had previously been two different definitions of the term “lot of record” – one here, and another at the beginning of chapter 34. Both have been eliminated because this term was the source of much confusion, as was the occasional use of the term “substandard lot.”

The concept and process for “minimum use determinations” is now spelled out in 34-3274.

This division formerly contained extremely confusing regulations regarding existing mobile home parks. In the new code these are not needed; the only two mobile home parks, Red Coconut and Gulfview Colony, are in a separate zoning district and the relevant rules have been moved there.

ATTACHMENTS: LDC Table of Contents
Chapter 14, as amended by Ordinance 02-29 on September 26, 2002
Articles I, II, III, IV & V of Chapter 34, dated October 14, 2002
Memorandum on “Short Term Rentals,” dated October 10, 2001