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MEMORANDUM

TO: Fort Myers Beach Town Council
FROM: Bill Spikowski
DATE: November 6, 2003
SUBJECT: FUTURE AMENDMENTS TO THE COMPREHENSIVE PLAN
(For council meeting on November 17, 2003)

The Fort Myers Beach Comprehensive Plan became effective at the beginning of 1999. Since then there have been four annual cycles of plan amendments. Two separate amendments were adopted during each of the first three cycles in the years 2000, 2001, and 2002; one amendment is being adopted in the 2003 cycle.

In addition, the town accepted several small-scale amendment applications at the end of August to consider minor map amendments that were requested when the new zoning map was approved. These small-scale amendments have different procedural requirements and will be considered separately from the regular annual amendments.

It is now time to consider next year's potential amendments to the plan. Future amendments are addressed on Page 15-5 of the plan, as follows:

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.

Some potential amendments are discussed below and they should be reviewed at the Town Council meeting on November 17. No additional amendments were suggested by LPA members at their meeting on October 21. Any additional amendments that deserve consideration should be identified at this time or at another council meeting prior to the end of this year.

1. ANNUAL CAPITAL IMPROVEMENTS UPDATE

The last page of the new comprehensive plan describes this annual amendment as follows:

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.

This amendment must occur each year after adoption of the town's budget, which contains the revised capital improvements program. It is fairly simple, replacing existing Table 11-7 in the Capital Improvements Element with the new five-year schedule of capital improvements and discussing any changes in revenue expectations. This is the only amendment that is essential for the upcoming year.

2. PRIVATELY INITIATED AMENDMENTS

Amendments to the comprehensive plan are sometimes requested by petition from private parties (usually filed by landowners for their own property, but sometimes by civic organizations for entire neighborhoods). Although private parties may persuade the town council or LPA to officially sponsor their proposal, they usually are offered an opportunity to pay a fee and get a public hearing on proposals without such sponsorship. The Fort Myers Beach Comprehensive Plan allows such privately initiated amendments to be requested once each year.

Because of the complexity of processing these applications, the town has in past years processed them on the same schedule as town-initiated amendments. The application deadline has been December 31. This same deadline will apply for the coming year.

3. EVALUATION AND APPRAISAL REPORT

Florida's growth management system requires the periodic reevaluation of the entire comprehensive plan. A reports must be prepared by each local government to evaluate its comprehensive plan and to identify changes that are needed; these are called "evaluation and appraisal reports" (EARs).

The town's LDC assigns responsibility for preparing this report to the Local Planning Agency (§ 34-120(10)).

Although most of the state is now on a 7-year schedule for these reports, the state has put Fort Myers Beach on the same cycle as Lee County so that reports for all cities in Lee County will occur at the same time, during the year *after* Lee County completes its report (which is due in February 2004). The official EAR due date that has been assigned for the Fort Myers Beach is April 1, 2005.

An EAR is a two-step process: a formal report the existing plan and identifying what needs to be changed; then an actual cycle of plan amendments to make the changes. The April 2005 deadline is for the EAR report itself; the plan amendments can be done during the following year.

The statutory requirements for an EAR are summarized as follows (the full text is attached):

... The report is intended to serve as a summary audit of the actions that a local government has undertaken and identify changes that it may need to make. The report should be based on the local government's analysis of major issues to further the community's goals consistent with statewide minimum standards. The report is not intended to require a comprehensive rewrite of the elements within the local plan, unless a local government chooses to do so.
[F.S. 163.3191(c)]

The statute refers in many places to "major issues." Each local government chooses what it sees as its "major issues" at the very beginning of the EAR process and is expected to pay particular attention to those issues throughout.

An EAR process typically follows these steps:

1. Identify the town's major issues.
2. Determine how the plan addresses each major issue and what the plan is trying to achieve.
3. Identify actions already undertaken to address each major issue and achieve the plan's objectives.
4. Determine the success or failure of those actions in achieving the objectives.
5. Suggest revised planning strategies and specific plan revisions to better address each issue.
6. After completion of the EAR, formally amend the plan based on the EAR recommendations.

In addition to the town's "major issues," there are a number of specific subjects that must be addressed in every community's EAR. Many of them can be done jointly with Lee County, such as water supply planning, siting of new schools, and an interlocal service delivery report. Some can be based wholly on existing data, such as that produced by the recent U.S. Census.

Other subjects are specific to Fort Myers Beach. For instance, the town committed to DCA to conduct an affordable housing needs assessment during its first EAR. This is normally a requirement during the initial comprehensive plan, but these assessments are based on census data which was not released for the town boundaries until shortly after the town's original plan was completed.

The determination of "major issues" is a critical part of the EAR process. These issues should be quite specific, not general issues like congestion or the environment. Here are some potential issues that come immediately to my mind or have been suggested recently by LPA members:

TRANSPORTATION ELEMENT:

- (a) Does the transportation element need to be extensively revised upon completion of the congestion mitigation study?
- (b) Reexamine the need for Traffic Impact Statements for proposed developments.

CAPITAL IMPROVEMENTS ELEMENT:

- (a) What are the town's alternatives for financing the Estero Boulevard streetscape?

STORMWATER MANAGEMENT ELEMENT:

- (a) Is there still a need for the Stormwater Master Plan as called for in Objective 9-F?
- (b) How could permeable paving be incorporated more fully into public and private improvements to reduce flooding?

UTILITIES ELEMENT:

- (a) Update this element to reflect the town's purchase of the potable water system and its plans for the future.

RECOMMENDATION

The only plan amendment that is mandatory during the coming year is to update the schedule of capital improvements (#1 above). If the Town Council believes that some other portion of the comprehensive plan should be considered for amendment in the coming year, it should vote to file such an application prior to the end of 2003 for consideration during the upcoming plan amendment cycle. If any private petitions are filed by December 31, they will be processed simultaneously.

As to the EAR, no immediate action is required, but LPA members have already begun considering how they might undertake this project.

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163.3191 Evaluation and appraisal of comprehensive plan.--

(1) The planning program shall be a continuous and ongoing process. Each local government shall adopt an evaluation and appraisal report once every 7 years assessing the progress in implementing the local government's comprehensive plan. Furthermore, it is the intent of this section that:

(a) Adopted comprehensive plans be reviewed through such evaluation process to respond to changes in state, regional, and local policies on planning and growth management and changing conditions and trends, to ensure effective intergovernmental coordination, and to identify major issues regarding the community's achievement of its goals.

(b) After completion of the initial evaluation and appraisal report and any supporting plan amendments, each subsequent evaluation and appraisal report must evaluate the comprehensive plan in effect at the time of the initiation of the evaluation and appraisal report process.

(c) Local governments identify the major issues, if applicable, with input from state agencies, regional agencies, adjacent local governments, and the public in the evaluation and appraisal report process. It is also the intent of this section to establish minimum requirements for information to ensure predictability, certainty, and integrity in the growth management process. The report is intended to serve as a summary audit of the actions that a local government has undertaken and identify changes that it may need to make. The report should be based on the local government's analysis of major issues to further the community's goals consistent with statewide minimum standards. The report is not intended to require a comprehensive rewrite of the elements within the local plan, unless a local government chooses to do so.

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(2) The report shall present an evaluation and assessment of the comprehensive plan and shall contain appropriate statements to update the comprehensive plan, including, but not limited to, words, maps, illustrations, or other media, related to:

- (a) Population growth and changes in land area, including annexation, since the adoption of the original plan or the most recent update amendments.
- (b) The extent of vacant and developable land.
- (c) The financial feasibility of implementing the comprehensive plan and of providing needed infrastructure to achieve and maintain adopted level-of-service standards and sustain concurrency management systems through the capital improvements element, as well as the ability to address infrastructure backlogs and meet the demands of growth on public services and facilities.
- (d) The location of existing development in relation to the location of development as anticipated in the original plan, or in the plan as amended by the most recent evaluation and appraisal report update amendments, such as within areas designated for urban growth.
- (e) An identification of the major issues for the jurisdiction and, where pertinent, the potential social, economic, and environmental impacts.
- (f) Relevant changes to the state comprehensive plan, the requirements of this part, the minimum criteria contained in chapter 9J-5, Florida Administrative Code, and the appropriate strategic regional policy plan since the adoption of the original plan or the most recent evaluation and appraisal report update amendments.
- (g) An assessment of whether the plan objectives within each element, as they relate to major issues, have been achieved. The report shall include, as appropriate, an identification as to whether unforeseen or unanticipated changes in circumstances have resulted in problems or opportunities with respect to major issues identified in each element and the social, economic, and environmental impacts of the issue.
- (h) A brief assessment of successes and shortcomings related to each element of the plan.
- (i) The identification of any actions or corrective measures, including whether plan amendments are anticipated to address the major issues identified and analyzed in the report. Such identification shall include, as appropriate, new population projections, new revised planning timeframes, a revised future conditions map or map series, an updated capital improvements element, and any new and revised goals, objectives, and policies for major issues identified within each element. This paragraph shall not require the submittal of the plan amendments with the evaluation and appraisal report.
- (j) A summary of the public participation program and activities undertaken by the local government in preparing the report.
- (k) The coordination of the comprehensive plan with existing public schools and those identified in the

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applicable educational facilities plan adopted pursuant to s. [1013.35](#). The assessment shall address, where relevant, the success or failure of the coordination of the future land use map and associated planned residential development with public schools and their capacities, as well as the joint decisionmaking processes engaged in by the local government and the school board in regard to establishing appropriate population projections and the planning and siting of public school facilities. If the issues are not relevant, the local government shall demonstrate that they are not relevant.

(l) The evaluation must consider the appropriate water management district's regional water supply plan approved pursuant to s. [373.0361](#). The potable water element must be revised to include a work plan, covering at least a 10-year planning period, for building any water supply facilities that are identified in the element as necessary to serve existing and new development and for which the local government is responsible.

(m) If any of the jurisdiction of the local government is located within the coastal high-hazard area, an evaluation of whether any past reduction in land use density impairs the property rights of current residents when redevelopment occurs, including, but not limited to, redevelopment following a natural disaster. The property rights of current residents shall be balanced with public safety considerations. The local government must identify strategies to address redevelopment feasibility and the property rights of affected residents. These strategies may include the authorization of redevelopment up to the actual built density in existence on the property prior to the natural disaster or redevelopment.

(3) Voluntary scoping meetings may be conducted by each local government or several local governments within the same county that agree to meet together. Joint meetings among all local governments in a county are encouraged. All scoping meetings shall be completed at least 1 year prior to the established adoption date of the report. The purpose of the meetings shall be to distribute data and resources available to assist in the preparation of the report, to provide input on major issues in each community that should be addressed in the report, and to advise on the extent of the effort for the components of subsection (2). If scoping meetings are held, the local government shall invite each state and regional reviewing agency, as well as adjacent and other affected local governments. A preliminary list of new data and major issues that have emerged since the adoption of the original plan, or the most recent evaluation and appraisal report-based update amendments, should be developed by state and regional entities and involved local governments for distribution at the scoping meeting. For purposes of this subsection, a "scoping meeting" is a meeting conducted to determine the scope of review of the evaluation and appraisal report by parties to which the report relates.

(4) The local planning agency shall prepare the evaluation and appraisal report and shall make recommendations to the governing body regarding adoption of the proposed report. The local planning agency shall prepare the report in conformity with its public participation procedures adopted as required by s. [163.3181](#). During the preparation of the proposed report and prior to making any recommendation to the governing body, the local planning agency shall hold at least one public hearing, with public notice, on the proposed report. At a minimum, the format and content of the proposed report shall include a table of contents; numbered pages; element headings; section headings within elements; a list of included tables, maps, and figures; a title and sources for all included tables; a preparation date; and the name of the preparer. Where applicable, maps shall include major natural and artificial geographic features; city, county, and state lines; and a legend indicating a north arrow,

map scale, and the date.

(5) Ninety days prior to the scheduled adoption date, the local government may provide a proposed evaluation and appraisal report to the state land planning agency and distribute copies to state and regional commenting agencies as prescribed by rule, adjacent jurisdictions, and interested citizens for review. All review comments, including comments by the state land planning agency, shall be transmitted to the local government and state land planning agency within 30 days after receipt of the proposed report.

²(6) The governing body, after considering the review comments and recommended changes, if any, shall adopt the evaluation and appraisal report by resolution or ordinance at a public hearing with public notice. The governing body shall adopt the report in conformity with its public participation procedures adopted as required by s. [163.3181](#). The local government shall submit to the state land planning agency three copies of the report, a transmittal letter indicating the dates of public hearings, and a copy of the adoption resolution or ordinance. The local government shall provide a copy of the report to the reviewing agencies which provided comments for the proposed report, or to all the reviewing agencies if a proposed report was not provided pursuant to subsection (5), including the adjacent local governments. Within 60 days after receipt, the state land planning agency shall review the adopted report and make a preliminary sufficiency determination that shall be forwarded by the agency to the local government for its consideration. The state land planning agency shall issue a final sufficiency determination within 90 days after receipt of the adopted evaluation and appraisal report.

(7) The intent of the evaluation and appraisal process is the preparation of a plan update that clearly and concisely achieves the purpose of this section. Toward this end, the sufficiency review of the state land planning agency shall concentrate on whether the evaluation and appraisal report sufficiently fulfills the components of subsection (2). If the state land planning agency determines that the report is insufficient, the governing body shall adopt a revision of the report and submit the revised report for review pursuant to subsection (6).

³(8) The state land planning agency may delegate the review of evaluation and appraisal reports, including all state land planning agency duties under subsections (4)-(7), to the appropriate regional planning council. When the review has been delegated to a regional planning council, any local government in the region may elect to have its report reviewed by the regional planning council rather than the state land planning agency. The state land planning agency shall by agreement provide for uniform and adequate review of reports and shall retain oversight for any delegation of review to a regional planning council.

(9) The state land planning agency may establish a phased schedule for adoption of reports. The schedule shall provide each local government at least 7 years from plan adoption or last established adoption date for a report and shall allot approximately one-seventh of the reports to any 1 year. In order to allow the municipalities to use data and analyses gathered by the counties, the state land planning agency shall schedule municipal report adoption dates between 1 year and 18 months later than the report adoption date for the county in which those municipalities are located. A local government may adopt its report no earlier than 90 days prior to the established adoption date. Small

municipalities which were scheduled by chapter 9J-33, Florida Administrative Code, to adopt their evaluation and appraisal report after February 2, 1999, shall be rescheduled to adopt their report together with the other municipalities in their county as provided in this subsection.

(10) The governing body shall amend its comprehensive plan based on the recommendations in the report and shall update the comprehensive plan based on the components of subsection (2), pursuant to the provisions of ss. [163.3184](#), [163.3187](#), and [163.3189](#). Amendments to update a comprehensive plan based on the evaluation and appraisal report shall be adopted within 18 months after the report is determined to be sufficient by the state land planning agency, except the state land planning agency may grant an extension for adoption of a portion of such amendments. The state land planning agency may grant a 6-month extension for the adoption of such amendments if the request is justified by good and sufficient cause as determined by the agency. An additional extension may also be granted if the request will result in greater coordination between transportation and land use, for the purposes of improving Florida's transportation system, as determined by the agency in coordination with the Metropolitan Planning Organization program. The comprehensive plan as amended shall be in compliance as defined in s. [163.3184](#)(1)(b).

(11) The Administration Commission may impose the sanctions provided by s. [163.3184](#)(11) against any local government that fails to adopt and submit a report, or that fails to implement its report through timely and sufficient amendments to its local plan, except for reasons of excusable delay or valid planning reasons agreed to by the state land planning agency or found present by the Administration Commission. Sanctions for untimely or insufficient plan amendments shall be prospective only and shall begin after a final order has been issued by the Administration Commission and a reasonable period of time has been allowed for the local government to comply with an adverse determination by the Administration Commission through adoption of plan amendments that are in compliance. The state land planning agency may initiate, and an affected person may intervene in, such a proceeding by filing a petition with the Division of Administrative Hearings, which shall appoint an administrative law judge and conduct a hearing pursuant to ss. [120.569](#) and [120.57](#)(1) and shall submit a recommended order to the Administration Commission. The affected local government shall be a party to any such proceeding. The commission may implement this subsection by rule.

(12) The state land planning agency shall not adopt rules to implement this section, other than procedural rules.

(13) The state land planning agency shall regularly review the evaluation and appraisal report process and submit a report to the Governor, the Administration Commission, the Speaker of the House of Representatives, the President of the Senate, and the respective community affairs committees of the Senate and the House of Representatives. The first report shall be submitted by December 31, 2004, and subsequent reports shall be submitted every 5 years thereafter. At least 9 months before the due date of each report, the Secretary of Community Affairs shall appoint a technical committee of at least 15 members to assist in the preparation of the report. The membership of the technical committee shall consist of representatives of local governments, regional planning councils, the private sector, and environmental organizations. The report shall assess the effectiveness of the evaluation and appraisal report process.

History.--s. 11, ch. 75-257; s. 10, ch. 85-55; s. 11, ch. 86-191; s. 10, ch. 92-129; s. 13, ch. 93-206; s. 6, ch. 95-322; s. 29, ch. 96-410; s. 5, ch. 96-416; s. 4, ch. 98-146; ss. 6, 14, ch. 98-176; s. 5, ch. 98-258; s. 17, ch. 2000-158; s. 9, ch. 2002-296; s. 905, ch. 2002-387.

¹Note.--As amended and substantially reworded by s. 14, ch. 98-176. Former paragraph (12)(a) was also amended by s. 5, ch. 98-258, without reference to the substantial rewording of the section by s. 14, ch. 98-176. As amended by s. 5, ch. 98-258, only, paragraph (12)(a) reads:

(12)(a) The state land planning agency may enter into a written agreement with a municipality of fewer than 5,000 residents or a county with fewer than 75,000 residents so that such a jurisdiction may focus planning resources on selected issues or elements when updating its plan, if the local government includes such a request in its report and the agency approves the request. Approval of the request does not authorize the local government to repeal or render ineffective any existing portion or element of its local plan.

²Note.--As amended and substantially reworded by s. 14, ch. 98-176. Former subsection (9) was also amended by s. 4, ch. 98-146, without reference to the substantial rewording of the section by s. 14, ch. 98-176; material similar to that found in former subsection (9) is now located in subsection (6), as amended by s. 14, ch. 98-176. As amended by s. 4, ch. 98-146, only, subsection (9), redesignated as subsection (6) to conform to the placement of material by s. 14, ch. 98-176, reads:

(6) The state land planning agency shall conduct a sufficiency review of each report to determine whether it has been submitted in a timely fashion and contains the prescribed components. The agency shall complete the sufficiency determination within 60 days of receipt of the report. The agency shall not conduct a compliance review. However, a local government may request that the department provide substantive comments regarding the report or addendum during the department's sufficiency review to assist the local government in the adoption of its plan amendments based on the evaluation and appraisal report. Comments provided during the sufficiency review are not binding on the local government or the department and will not supplant or limit the department's consistency review of the amendments based on the adopted evaluation and appraisal report. A request for comments must be made in writing by the local government and must be submitted at the same time the adopted report is submitted for sufficiency review.

³Note.--As amended and substantially reworded by s. 14, ch. 98-176. Former subsection (10) was also amended by s. 4, ch. 98-146, without reference to the substantial rewording of the section by s. 14, ch. 98-176; material similar to that found in former subsection (10) is now located in subsection (8), as amended by s. 14, ch. 98-176. As amended by s. 4, ch. 98-146, only, subsection (10), redesignated as subsection (8) to conform to the placement of material by s. 14, ch. 98-176, reads:

(8) The state land planning agency may delegate the review of reports to the appropriate regional planning council. When the review has been delegated to a regional planning council, any local government in the region, except for areas of critical state concern, may elect to have its report reviewed by the council rather than the agency. The agency shall adopt rules for accepting requests for

delegation and for uniform and adequate review of reports. The agency shall retain oversight for any delegation of review to a regional planning council. Any plan amendment recommended by the report shall be reviewed by the agency pursuant to s. [163.3184](#) and be adopted by the local government pursuant to s. [163.3189](#).



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