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MEMORANDUM

TO: Fort Myers Beach Local Planning Agency
FROM: Bill Spikowski
DATE: June 16, 2004
SUBJECT: **PERIODIC REEVALUATION OF THE COMPREHENSIVE PLAN**

The Fort Myers Beach Comprehensive Plan is the result of an intensive 2½-year effort that began shortly after incorporation of the town and ended with the new plan taking effect at the beginning of 1999.

Since that time there have been four annual cycles of plan amendments. Two separate amendments were adopted during each of the first three cycles (2000, 2001, and 2002); one amendment was adopted in the 2003 cycle. For 2004, the only amendments being considered are the four “small-scale” amendments that the LPA considered on March 16 and April 20.

In addition to considering individual amendments that are proposed by the town or by private parties, Florida’s growth management system requires the periodic reevaluation of the entire comprehensive plan. That process is now about to begin for Fort Myers Beach.

1. EVALUATION AND APPRAISAL PROCESS GENERALLY

The periodic reevaluation of the entire comprehensive plan is known as the Evaluation/Appraisal (E/A) process. This process begins with the preparation of an E/A report (often known as an EAR) by each local government. The purpose of this report is to identify changes that will be needed to keep the plan current and also to meet several new state planning requirements.

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

Although most local governments are required to evaluate their plans every 7 years, the state has put Fort Myers Beach on the Lee County cycle so that reports for all cities in Lee County will occur at the same time, 12 to 18 months *after* the county is scheduled to complete its report for the unincorporated area. (The county report was due in February 2004 but is currently about 9 months behind schedule.)

The E/A process has two major components:

1. Preparation of a formal E/A report that evaluates the existing plan and identifies what needs to be changed.
2. Subsequent amendments to the comprehensive plan (using the normal plan amendment process).

An official E/A due date of April 1, 2005 has been assigned by the state for Fort Myers Beach. This deadline is for the E/A report itself; the plan will be amended during the following year.

The statutory requirements for the E/A report are summarized as follows:

... 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), copy attached]

2. SUBSTANCE OF THE FORT MYERS BEACH E/A REPORT

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

In addition to addressing the town's major issues, there are certain specific subjects that must be addressed. For instance, the content of the current plan must be compared with the latest state requirements to ensure that the plan remains legally up to date. Some of the new requirements can be met jointly with Lee County while others are specific to Fort Myers Beach.

Here is a summary of new requirements:

- **WATER SUPPLY:** Ten-year water supply plans are now required. Lee County, which supplies all potable water to Fort Myers Beach, has already prepared such a plan. However, state and regional officials still expect Fort Myers Beach to include in its Utilities Element a work plan identifying water supply facilities within the town that are needed to serve existing and new development and which reflect projected changes in water demand. This work plan must be detailed for the first five years; it can be more general for the second five years.
- **SCHOOLS:** School siting criteria have been required in all comprehensive plans as of October 1, 1999. Although the Fort Myers Beach plan was approved about a year earlier, it contains school siting criteria that may meet all of these requirements (see

Page IV-36, Policy 4-B-14, and numerous other references to schools in the Future Land Use Element).

- **INTERLOCAL SERVICES:** Counties and cities must now prepare an “interlocal service delivery report” regarding education, water, sewer, drainage, solid waste, public safety, parks, and transportation. This report must catalog all existing agreements and identify any deficits or duplication in providing these services. After completion of this report, the Intergovernmental Coordination Element of the comprehensive plan must be amended to incorporate the report’s findings.
- **AFFORDABLE HOUSING:** In 1998 the town committed to DCA to conduct an affordable housing needs assessment during its first E/A process. This assessment is normally a requirement during the initial comprehensive plan, but it must be based on census data which was not released for the town boundaries until after the town’s original comprehensive plan was completed.

3. PREPARING THE E/A REPORT

The Department of Community Affairs has suggested a formal step-by-step process for preparing E/A reports in a flowchart that are attached to this memorandum. Their process would work as follows:

- Identify a preliminary list of major issues during an initial workshop to (for Fort Myers Beach, on June 22).
- *OPTIONAL STEP:* Conduct a staff-level meeting (“scoping meeting”) to present the town’s preliminary list of major issues and receive feedback from adjacent local governments and state/regional agencies.
- *OPTIONAL STEP:* Obtain written confirmation from DCA concurring with the list of issues on which the E/A report will focus.
- Collect and analyze data on the major issues and on other compulsory aspects of the E/A report.
- Prepare a complete draft of the E/A report.
- Hold at least one public hearing before the LPA on the proposed report; then revise as necessary.
- *OPTIONAL STEP:* Transmit the proposed report to DCA for formal review and comments.
- Hold a final public hearing before the town council to adopt the final E/A report before the April 1, 2005, deadline. (If this deadline is missed, other amendments to the comprehensive may not be made.)
- After DCA determines the report to be legally sufficient (which may take up to 90 days), begin amending the comprehensive plan accordingly. These amendments must be completed within 18 months of DCA’s acceptance of the report.

In addition to meeting the mandatory new requirements for comprehensive plans, local governments are encouraged to use the E/A process to address whatever issues are of great importance to that community or areas where there have been unanticipated changes that make the comprehensive plan’s treatment of certain issues obsolete. In preparing an E/A report, major issues are typically addressed in the following fashion:

- Identify the major issues as determined by the local community.
- Assess how the plan currently addresses each major issue and what the plan is trying to achieve.
- Identify actions already undertaken to address each major issue and achieve the plan's objectives.
- Determine the success or failure of those actions in achieving the objectives.
- Suggest revised planning strategies and specific plan revisions to better address each issue.

We are now at step #1, beginning to identify the major issues.

4. POTENTIAL MAJOR ISSUES FOR THE FORT MYERS BEACH E/A REPORT

The selection of major issues is perhaps the most important part of the E/A process. These issues should be quite specific, not general issues like congestion or the environment. Here is a potential list of major issues for the LPA to consider:

COMMUNITY DESIGN: Should the Comprehensive Plan continue to advocate a system of pedestrian paths parallel to but separate from Estero Boulevard?

DISCUSSION: The Community Resources Advisory Board attempted to implement the "Hidden Path" concept over the past two years (see page 3-14 and Goal 2 and its related objectives and policies). However, this project met with considerable community resistance. It is not clear whether there is permanent resistance to the "Hidden Path" concept or whether the resistance is to the apparent prioritization of this project over sidewalk and bike path improvements within the Estero Boulevard right-of-way.

FUTURE LAND USE: Should the Comprehensive Plan's buildback provisions be modified? Should the plan allow conversions from over-density hotel/motels guest units into over-density residential units?

DISCUSSION: The plan established a new concept for "pre-disaster" buildback of existing buildings that exceed the post-1984 density limits. Many questions have arisen from the town's initial experience implementing this policy. For instance, should over-density buildings be allowed to expand further during the rebuilding process? And what happens when motels are proposed for conversion into dwelling units – should the new dwelling units be required to meet current density limits (which have been in place since 1984) or should they be allowed to disregard those limits?

RELATED SUB-ISSUE: Should the town be concerned generally about the recent trend of converting motels and other tourist-serving uses into dwelling units?

TRANSPORTATION: Does the Transportation Element need to be extensively revised? Should some of the alternatives that were analyzed in that element but not selected be reconsidered at this time?

DISCUSSION: Since the completion of the Transportation Element in late 1998, the town has moved forward on several transportation initiatives, including an intensive Congestion Mitigation Study that began in 2002. Although that study is not yet complete, it became controversial in part due to the serious consideration that was given to placing tolls on the bridges. Also, its

advocacy of new traffic signals and other roadway improvements near Times Square differs in several respects from the principles set forth in several other studies: the Transportation Element itself, the Old San Carlos/Crescent Master Plan, and the Estero Boulevard Streetscape Master Plan.

RELATED SUB-ISSUE: What kind of traffic impact statements should developers submit with rezoning applications?

UTILITIES: The water supply portion of the Utilities Element needs to be updated to reflect the town's purchase of the potable water system from Lee County and to incorporate the ten-year work plan for improvements to the potable water supply system.

STORMWATER MANAGEMENT: Is there still a need for a Stormwater Master Plan?

DISCUSSION: Objective 9-F of this element called for a town-wide Stormwater Master Plan to be conducted by the year 2000. This plan would determine the nature of potential improvements to the existing stormwater drainage system, to improve drainage and also to reduce the level of contaminants running off into tidal waters. It would also evaluate permanent funding sources to carry out such improvements. Instead of conducting this plan, the town has begun to construct specific improvements to fix some of the worst drainage problems while experimenting with various methods of reducing contaminants. This alternate program has been successful and provides a reasonable alternative to the Stormwater Master Plan as originally proposed.

RELATED SUB-ISSUE: How could permeable paving be incorporated more fully into public and private improvements to reduce flooding and improve water quality?

CAPITAL IMPROVEMENTS: What alternatives are available to the town for financing Estero Boulevard streetscape improvements?

DISCUSSION: The Estero Boulevard Streetscape Master Plan projected a total cost of \$20-\$30 million to carry out all of its proposed improvements to Estero Boulevard (including placing power lines underground). This figure is well beyond the ability of the town to finance at current levels of taxation. One option had been to place tolls on the bridges and use a large portion of the toll revenues for pedestrian and transit improvements within the town, many of which are detailed in the streetscape plan. Unless the community's resistance to tolling abates, either another revenue source will have to be found or the streetscape improvements will have to be scaled back or abandoned.

RECOMMENDATIONS

After discussing these issues and any others the LPA may wish to suggest, LPA members should be prepared to accept, modify, or replace this list of major issues, as well as make any other suggestions as to the conduct of the upcoming E/A process.

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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.

(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 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](#).

