

MEMORANDUM

TO: Local Planning Agency
FROM: Bill Spikowski
DATE: August 2, 2005
SUBJECT: E.A.R. Workshop on August 9, 2005, 12:00 noon

As backup for our August 9 workshop about the evaluation of the Comprehensive Plan, I am attaching a preliminary draft of the first three sections of the evaluation and appraisal report:

1. INTRODUCTION

- A. Purpose of Evaluation and Appraisal
- B. Brief History of this Comprehensive Plan
- C. Organization of this Report

2. COASTAL HAZARDS

- A. Evaluation of Existing Policies
- B. Additional Analysis

3. BUILDBACK AND CONVERSIONS

- A. Evaluation of Existing Policies
- B. Additional Analysis on Pre-Disaster Buildback
- C. Recommendations on Pre-Disaster Buildback
- D. Additional Analysis on Lodging Issues
- E. Recommendations on Lodging Issues

EVALUATION AND APPRAISAL REPORT TOWN OF FORT MYERS BEACH

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SECTION 1. INTRODUCTION

A. Purpose of Evaluation and Appraisal

The state of Florida's growth management system requires the periodic reevaluation of all comprehensive plans that have been adopted by cities and counties. The periodic reevaluation 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 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."* [F.S. 163.3191(c)]

The town's land development code assigns responsibility for preparing this report to the Local Planning Agency. [§ 34-120(10)] Final adoption of this report is the responsibility of the Town Council. The Florida Department of Community Affairs will make a final determination whether the report provides the information required by state law.

Local governments are generally required to evaluate their plans every seven years. State officials have put Fort Myers Beach on the Lee County cycle so that evaluations for all cities in Lee County are being completed at the same time.

The E/A process has two major components:

- Preparation of a formal E/A report that evaluates the existing plan and identifies what needs to be changed.
- Subsequent amendments to the comprehensive plan using the normal plan amendment process. These amendments will be processed during the year after completion of the E/A report.

B. Brief History of this Comprehensive Plan

In 1995 the residents of Estero Island launched their own municipal government by voting to form the Town of Fort Myers Beach. A flurry of activity began immediately, involving residents, property owners and business people in the enterprise of crafting a small but highly focused town government.

While struggling with normal day-to-day activities, a 2½-year effort was begun to bring into focus new long-range goals for the town. That effort created the Fort Myers Beach Comprehensive Plan. To move toward those long-range goals, the plan established formal policies for the town government and laid the foundation for a new land development code to guide further development and redevelopment. The new plan took effect at the beginning of 1999, replacing Lee County's Comprehensive Plan which had remained in effect until the new plan was adopted.

The Fort Myers Beach Comprehensive Plan is published as a single bound volume. The plan begins with "Envisioning Tomorrow's Fort Myers Beach," an optimistic look at the type of community that the town hopes will evolve. The next twelve chapters contain the twelve main "elements" of the plan, organized by subject area. The Community Design Element was placed first because its concepts inspired many other parts of the plan. The entire volume can be purchased at Town Hall or can be downloaded at no cost from the town's web site at http://www.fmbeach.org/comp_plan/.

Each element of the plan contains a narrative description of current conditions and possible courses of action for the town, followed by formal goals, objectives, and policies adopted by the town as its legally binding Comprehensive Plan. The “adopted” portion of the plan also includes a Future Land Use Map, a Future Transportation Map, a five-year schedule of capital improvements, and all of chapters 1, 2, and 15.¹

The preparation of this report has been the subject of numerous workshops and public meetings:

- Public workshops:* 2005: March 8, April 7
- LPA workshops:* 2004: June 22, September 21, October 19, November 16, December 7
(Local Planning Agency) 2005: January 25, February 8–5–22, March 15, April 12, May 10, June 21, August 9
- LPA public hearings:* 2005:
- TMA workshops:* 2004: September 21
(Traffic Mitigation Agency) 2005: February 9, April 7, May 18, June 22, July 14, August 11,
- Town Council workshops:* 2005:
- Town Council public hearings:* 2005:
[list others here]

C. Organization of this Report

The state establishes certain minimum requirements for E/A reports and also allows local governments to use this process where unanticipated events have made the comprehensive plan’s treatment of certain issues obsolete. This report contains both mandatory and optional components, organized as follows.

i. Major Planning Issues – Sections 2 – 5

Local governments are encouraged to use the E/A process to address whatever issues are of great importance to that community. “*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.*” [F.S. 163.3191(c)]

Sections 2 through 5 address four major issues selected by the town or by DCA. Each is addressed in this fashion:

1. Explain the nature of the major issue.
2. Identify how the plan currently addresses each issue; this is done by reprinting, in italics, the exact wording from the adopted portions of the comprehensive plan.
3. Identify actions already undertaken to address each issue and achieve the plan’s objectives, then determine the success or failure of those actions in achieving the objectives.
4. Provide additional analysis regarding the major issue.
5. Suggest revised planning strategies or specific plan revisions to better address each issue.

¹ Since 1999 there have been five 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; and two small-scale map amendments were adopted in 2004. All other amendment requests were withdrawn or denied. A summary of all proposed and approved amendments is contained on the title page of the plan.

ii. Other Planning Issues – Sections 6 – 9

In addition to the four major issues, the town has identified several other subjects where the plan may have become out-of-date or may not have addressed important issues. These issues are addressed in Sections 6 through 9 of this report.

iii. Special Topics – Section 10

In addition to addressing the town's own issues, there are certain specific subjects that must be addressed in this report. 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.

iv. Community Assessment – Section 11

Section 11 fulfills one other statutory requirements for this report which is to provide a brief community assessment including the following subjects:

- Population growth and changes in land area.
- The location of existing development in relation to the location of development as anticipated in the original plan.
- The extent of vacant and developable land.
- The financial feasibility of implementing the comprehensive plan.
- A brief assessment of successes and shortcomings related to each element of the plan.
- Relevant changes to the state requirements since the plan was adopted.
- A summary of public participation in the planning process.

v. Recommendations – Section 12

The final section of this report summarizes all recommendations made throughout the report.

SECTION 2. COASTAL HAZARDS

ISSUE STATEMENT: The town has been requested by the Florida Department of Community Affairs (DCA) to assess the extent to which its comprehensive plan has been implemented to direct population concentration away from areas of known coastal hazards. DCA has made similar requests of other communities which, like Fort Myers Beach, are located within coastal high hazard areas, in order to ensure that adequate measures are being taken to reduce the exposure of life and property to hurricane hazards.

The entire town is located within what the state considers the “coastal high hazard area.”² Six different policies in the Comprehensive Plan address the state’s coastal high hazard area; each is reprinted below, followed by an evaluation of the success or failure of that policy.

A. Evaluation of Existing Policies

POLICY 4-B-1 OVERBUILDING: *Judicious planning could have avoided the kind of overbuilding found at Fort Myers Beach by limiting construction to match road capacity and the physical environment. Since such planning came too late, the town must deal with today’s congestion plus the impacts of future development that has vested rights to proceed. These conditions have shaped the vision of this plan, as development rights once granted are not easily or lightly reversed; great care has been taken in this plan to balance important public and private rights.*

EVALUATION OF POLICY 4-B-1: Future development on vacant land was summarized in Table 4-6 of the Comprehensive Plan using data through July 1, 1996. Several of those developments were completed before the plan took effect at the beginning of 1999, and several others have had final plans approved or have been physically completed at the time of this writing (August 2005). These include Edison Beach House, Diamondhead Beach Resort, Pink Shell Beach Resort and Spa, GullWing Beach Resort, and the remaining condos at Bay Beach, Sea Grape Bay, and Estero Bayside. These developments have densities that exceed what is allowable under the new Comprehensive Plan but had been approved under earlier regulations. There are still a small number of vacant properties at Fort Myers Beach, some with development orders for new development, but none with high-density vested rights like the projects listed above.

POLICY 4-B-2 MAP ADOPTION: *The Town of Fort Myers Beach hereby adopts a Future Land Use Map (Figure 16) to govern further subdivision and development within its municipal boundary. This map advances the principles of this comprehensive plan by assigning one of eight categories to all land and water, based on its location, condition, and existing uses:*

EVALUATION OF POLICY 4-B-2: The new Future Land Use Map completely replaced the old map that had been inherited from Lee County upon incorporation. Two categories on the new map were explicitly designed to reduce densities (see discussion immediately below). The new map then served as the legal and policy basis for an entirely new zoning map that was adopted in early 2003.

² This designation differs dramatically with the “coastal high hazard area” as defined by the federal government, which applies only the area along the Gulf beaches where severe wave action will occur during hurricanes; that area is also called the “Velocity Zone” or V-zone on the floodplain maps prepared by FEMA. For further discussion, see the narrative section of the Future Land Use Element.

POLICY 4-B-3 “LOW DENSITY”: *designed for existing subdivisions with an established low-density character (primarily single-family homes). For new development, the maximum density is 4 dwelling units per acre, and commercial activities are limited to home occupations as described in the Land Development Code (limited to incidental uses by the dwelling unit’s occupant that do not attract customers or generate additional traffic).*

EVALUATION OF POLICY 4-B-3: This new category reduced densities from 6 to 4 dwelling units per acre on about 26% of the land at Fort Myers Beach. A new zoning district, RS, was created and applied in 2003 to all land in this category. None of this land has been recategorized out of the “Low Density” category or out of the RS zoning district since those assignments were made.

POLICY 4-B-8 “RECREATION”: *applied to public parks, schools, undevelopable portions of Bay Beach, and those parts of Gulf beaches that lie seaward of the 1978 coastal construction control line. Additional accretions of beach, whether by natural causes or through beach renourishment, will automatically be assigned to this category. No new residential development is permitted (although several existing buildings were legally constructed partially seaward of the 1978 control line). The maximum density of residential development here is 1 dwelling units per 20 acres, with all dwelling units to be constructed outside this category. Allowable uses are parks, schools, libraries, bathing beaches, beach access points, and related public facilities. Non-recreational uses (such as the elementary school) now comprise 2.7% of the land in this category; additional school sites and public buildings shall not increase this percentage beyond 6%.*

EVALUATION OF POLICY 4-B-8: This new category has a density cap at 1 dwelling unit per 20 acres. This category included about 19% of the land at Fort Myers Beach. The beachfront seaward of the 1978 coastal construction control line had allowed 6 dwelling units per acre before being recategorized as “Recreation.” (Other parts of this category had few or no development rights, such as the golf course at Bay Beach and the county-owned Matanzas Pass Preserve.) A new zoning district, EC, was created and applied in 2003 to all beachfront land in this category. None of this land has been recategorized out of the “Recreation” category or out of the EC zoning district since those assignments were made.

POLICY 4-C-10 MAP AMENDMENTS: *The intensity and density levels allowed by the Future Land Use Map may be increased through formal amendments to this plan if such increases are clearly in the public interest, not just in the private interest a petitioning landowner. Petitions from landowners will be accepted annually. The Town Council may accept applications more frequently at its sole discretion.*

EVALUATION OF POLICY 4-C-10: Since the new Future Land Use Map took effect in 1999, there have been five formal requests for map amendments. The only requests that have been approved were two small-scale amendments that in 2004 reclassified the Mound House and Newton Beach Park to the “Recreation” category. The town has purchased both properties for public use.

POLICY 4-E-2 COASTAL SETBACKS: *To protect against future storm damage and to maintain healthy beaches, the Town of Fort Myers Beach wishes to see all buildings relocated landward of the 1978 Coastal Construction Control Line. This line has been used on the Future Land Use Map to delineate the edge of land-use categories allowing urban development. Some existing buildings lie partially seaward of this line; when these buildings are reconstructed (either before or after a natural disaster), they shall be rebuilt landward of this line. Exceptions to this rule may be permitted by the town only where it can be scientifically demonstrated that the 1978 line is irrelevant because of more recent changes to the natural shoreline. The town shall seek the opinion of the Florida Department of Environmental Protection in evaluating any requests for exceptions. (Exceptions must also comply with all state laws and regulations regarding coastal construction.)*

EVALUATION OF POLICY 4-E-2: This policy has been implemented in the new land development code through sections 34-3237(1) and 34-3238(2). No exceptions have been allowed. As a result of this policy, several large buildings will shortly be reconstructed landward of the 1978 coastal construction control line, for instance the Captiva building at the Pink Shell and the Howard Johnson and Ramada Inns near Times Square.

POLICY 5-A-5 *Due to the physical constraints of its coastal location, the Town of Fort Myers Beach commits to a future policy of no increase in the net development capacity (island-wide) that would be allowed by the Fort Myers Beach comprehensive plan.*

EVALUATION OF POLICY 5-A-5: This policy has been faithfully maintained since adoption of the new Comprehensive Plan.

B. Additional Analysis

Many of the policies listed above were “self-implementing” – in other words, they had immediate legal effect by virtue of their adoption into the Comprehensive Plan.

Policies in the Comprehensive Plan are also implemented through many other actions by the town. For instance, these policies became the basis for entirely new land development code for the town which was adopted in several stages between the years 2000 and 2003. The final step of the code process was the adoption of a new zoning map for all land in the town; the map is completely consistent with these policies.

These policies are also implemented when the town makes decisions on various land-use matters. For instance, when landowners request their land to be rezoned, or request that their land be redesignated on the town’s Future Land Use Map, the town must evaluate relevant portions of the entire comprehensive plan and the land development code. The code must remain consistent with the comprehensive plan, and no rezonings may be granted or building permits issued unless they comply with the comprehensive plan and the remainder of the code.

The Fort Myers Beach Comprehensive Plan itself reduced allowable density levels and thus directed population away from coastal high hazard areas. No changes have been made to the plan that altered that policy direction. No other actions taken by the town have contradicted that direction and no changes to the comprehensive plan are needed to continue in the same direction.

SECTION 3. BUILDBACK AND CONVERSIONS

ISSUE STATEMENT: After five years' experience, are the Comprehensive Plan's "buildback" provision working properly, or should they be modified or repealed? Should the plan allow conversions from over-density hotel/motels guest units into over-density residential units? If so, would this policy cause a fundamental change in the economy of Fort Myers Beach, displacing the tourist economy and its locally-owned motels, restaurants, and shops in favor of condominiums? Would such a change be good or bad for Fort Myers Beach?

BACKGROUND: 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? 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? Also, federal and state coastal regulations apparently require new beachfront buildings to be elevated so high that the ambience of the pedestrian environment will be degraded by the new buildings; creative ideas are needed for the town to ensure that new beachfront buildings can improve the look and feel of Estero Boulevard while still meeting coastal regulations.

A. Evaluation of Existing Policies

POLICY 4-C-6 MOTEL DENSITIES: *The Land Development Code shall specify equivalency factors between motel rooms and full dwelling units. These factors may vary based on size of motel room and on land-use categories on the Future Land Use Map. They may vary between a low of one motel room and a high of three motel rooms for each dwelling unit. (These factors would apply only where motels are already permitted.) In order to implement the 1999 Old San Carlos Boulevard / Crescent Street Master Plan that encourages mixed-use buildings with second and third floors over shops on Old San Carlos, hotel rooms may be substituted for otherwise allowable office space in that situation and location only without using the equivalency factors that apply everywhere else in the town. This alternate method for capping the number of hotel rooms applies only to properties between Fifth to First Streets that lie within 200 feet east and west of the centerline of Old San Carlos Boulevard. Hotel rooms built under this alternate method must have at least 250 square feet per rentable unit, and under no circumstances shall buildings they are located in exceed four stories (with the ground level counted as the first story).*

EVALUATION OF POLICY 4-C-6: Overly high hotel/motel densities were identified in the Comprehensive Plan as one of the five most critical land-use issues facing the new town. Hotel and motel guests aren't a particular problem with the town's coastal high hazard location because guests quickly evacuate or cancel their trips when storms are approaching. However, oversized hotels are aggravating factors with regards to traffic congestion, especially when they are located beyond walking distance from the town's main tourist attractions and services. Oversized hotels are also out-of-scale with other buildings in the town.

The first three sentences of Policy 4-C-6 were implemented through the following chart that was put into § 34-1803 of the town's new land development code:

<i>Comprehensive Plan land-use category:</i>	<i>Equivalency factors for guest units of various sizes (in square feet):</i>		
	<i>< 450</i>	<i>450 to 750</i>	<i>750 to 1,000</i>
<i>Mixed Residential</i>	2.0	1.5	1.0
<i>Boulevard</i>	2.5	2.0	1.5
<i>Pedestrian Comm.</i>	3.0	2.5	2.0
<i>(all others)</i>	0.0	0.0	0.0

Thus far the only difficulty that this chart has caused is attempts to use it “in reverse” to justify replacing hotels or motels that exceed the town’s density limits with condominiums that would also exceed these limits. That subject is addressed in detail later in this section.

The remainder of Policy 4-C-6 was added to the plan in 2001. A new downtown redevelopment plan called for two- and three-story mixed-use buildings along Old San Carlos Boulevard. Because of the strict density rules at Fort Myers Beach, there were few economically feasible uses for these second and third stories other than office space. This policy was amended to allow upstairs hotel rooms as additional uses. Although no hotel rooms have yet been built, three small inns have been approved along Old San Carlos and are expected to be built over the next several years.

OBJECTIVE 4-D POST-DISASTER REDEVELOPMENT — *Provide for the organized and healthy reconstruction of Fort Myers Beach after a major storm by showcasing successful local examples of floodproofing, by requiring redevelopment activities to meet stricter standards for flood- and wind-resistance, and by improving the current post-disaster buildback policy.*

EVALUATION OF OBJECTIVE 4-D: This objective calls for three separate activities:

- “...showcasing successful local examples of floodproofing”: The town has amended its floodplain regulations to establish dry-floodproofing as the preferred alternative for commercial space in pedestrian areas. The new Snug Harbor and Waffle House restaurants have demonstrated the financial and technical feasibility of this approach to preventing future flood damage to buildings while maintaining the pedestrian orientation of the businesses within.
- “...requiring redevelopment activities to meet stricter standards for flood- and wind-resistance”: The town has eliminated many loopholes from prior enforcement of floodplain regulations under which redevelopment sometimes took place without adequate flood protection of the resulting building. Since 2002 the town has had no control over wind-resistance of new construction; there is now a statewide building code that, by law, supersedes local regulations on most technical aspects of building construction. In fact, local governments are now forbidden from requiring greater wind-resistance than the statewide code. However, the 2004 hurricane season provided ample evidence of the improved wind resistance that the statewide code now provides for new construction.
- “...improving the current post-disaster buildback policy”: See discussion under Policy 4-D-1.

POLICY 4-D-1 POST-DISASTER BUILDBACK POLICY: *Following a natural disaster, land may be redeveloped in accordance with the Future Land Use Map or, at the landowner’s option, in accordance with the following “buildback policy” begun by Lee County in 1989. This policy applies only where development is damaged by fire, hurricane or other natural disaster, and allows the following options:*

- i. *Buildings/development damaged less than 50% of their replacement cost (measured at the time of damage) can be rebuilt to their original condition, subject only to current building and life safety codes; however,*

this threshold is reduced to 20% for buildings previously damaged by flooding of \$1,000 or more under the National Flood Insurance Program.

- ii. *Buildings/development damaged more than 50% of their replacement cost can be rebuilt to their legally documented actual use, density, intensity, size, and style provided the new construction complies with:*
 - a. *federal requirements for elevation above the 100-year flood level;*
 - b. *any building code requirements for floodproofing;*
 - c. *current building and life safety codes;*
 - d. *Coastal Construction Control Line requirements; and*
 - e. *any required zoning or other development regulations (other than density or intensity), except where compliance with such regulations would preclude reconstruction otherwise intended by this policy.*
- iii. *Redevelopment of damaged property is not allowed for a more intense use or at a density higher than the original lawful density except where such higher density is permitted under this plan and the town's land development regulations. To further implement this policy, the town may establish blanket reductions in non-vital development regulations (e.g. buffering, open space, side setbacks, etc.) to minimize the need for individual variances or compliance determinations prior to reconstruction. The Land Development Code may also establish procedures to document actual uses, densities, and intensities, and compliance with regulations in effect at the time of construction, through such means as photographs, diagrams, plans, affidavits, permits, appraisals, tax records, etc..*

EVALUATION OF POLICY 4-D-1: In 1984 Lee County's comprehensive plan lowered density levels in all coastal areas to 6 dwelling units per acre. This cap was well below the typical built densities at Fort Myers Beach, which averaged about 17 dwelling units per acre density for multifamily buildings and about 38 rooms per acre for motels. Lee County decided in 1989 that this policy should be softened for existing buildings which exceeded 6 units per acre and which were later destroyed in a natural disaster; the county adopted a new "buildback" policy that allowed such buildings to be rebuilt to their original density and size after a disaster. Policy 4-D-1 in the Fort Myers Beach Comprehensive Plan maintained Lee County's approach, naming it the "post-disaster buildback policy" (to differentiate it from a new "pre-disaster buildback policy," as discussed under Policy 4-E-1).

These new policies anticipated the concerns that the Florida Legislature put into state statutes in 1998:

"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." [F.S. 163.3191(2)(m)]

These new policies already address the concerns of the legislature; no further changes to the Comprehensive Plan are needed.

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

EVALUATION OF OBJECTIVE 4-E: This objective calls for three separate activities:

- "... easing regulations that impede the strengthening of existing buildings": This concept was implemented through changes to the floodplain regulations in the land development code. However, after a review of these changes by FEMA personnel in 2004, a number of

these changes had to be rolled back to avoid risking the loss of the town's participation in the National Flood Insurance Program.

- "...encouraging the relocation of vulnerable structures and facilities": Incentives are provided through Policy 4-E-1 to relocate structures that are seaward of the original coastal construction control line.
- "...allowing the upgrading or replacement of grandfathered structures without first awaiting their destruction in a storm": See discussion under Policy 4-E-1.

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

EVALUATION OF POLICY 4-E-1: This policy is an extension of the *post-disaster* buildback policy (4-D-1). Rather than waiting for natural disasters to eliminate buildings that don't meet current floodplain and coastal setback standards, this policy allows these buildings to be replaced in a deliberate fashion over the course of many years. The extensive delays in rebuilding after Hurricanes Charley, Frances, Jeanne, and Ivan struck Florida in 2004 have underscored the desirability of replacing substandard buildings over an extended period rather than trying to replace a glut of damaged or destroyed buildings in the immediate aftermath of a hurricane.

This policy, however, has become controversial at Fort Myers Beach due to some ambiguity about its intent. That subject is addressed in detail later in this section.

POLICY 5-C-7 *Continue to inventory buildings that are repeatedly damaged by flood waters to identify those that have recorded one or more National Flood Insurance Program (NFIP) flood losses of \$1,000 or more since 1978. Require that such buildings be brought into compliance with current regulatory standards for new construction if they are damaged again by flooding.*

EVALUATION OF POLICY 5-C-7: This policy was an attempt to speed up the replacement of buildings that were particularly subject to flooding. A single flood loss of \$1,000 or more since 1978 would force a building to be replaced when the next flood damage occurred, regardless of how minor the damage. This is in contrast to the standard rule that a building need not be replaced unless flood damage exceeded 50% of the building's value. (Language similar to Policy 5-C-7 is also contained in Policy 4-D-1-i.)

This strict policy is encouraged by the Federal Emergency Management Agency and is rewarded by credits that can reduce flood insurance premiums for all other property owners in the same community. However, the cost to an affected building owner is extremely high, often requiring the demolition of their homes. Figure 6 of the Coastal Management Element mapped the structures that would be affected as of 1993; that map does not include later flood damage from Tropical Storm Gabrielle in 2001 or Hurricane Charley in 2004.

The town council considered implementing this policy when adopting the new land development code but decided that the extreme costs to individuals outweighed the small potential benefits to all. The corresponding code language was repealed from the code in 2004. A somewhat less restrictive repetitive loss provision was put into the code in its

place, requiring that structures damaged repeatedly by flooding during any ten-year period would have to be replaced if flood damage cumulatively exceeded 25% of the building's value.

Policy 5-C-7 (and the similar language in Policy 4-D-1) no longer reflect the current policy of the town. This language should be eliminated from the Comprehensive Plan.

B. Additional Analysis on Pre-Disaster Buildback

One of the important innovations of the Comprehensive Plan was the “pre-disaster buildback policy.” Before 1999, owners of over-density buildings were allowed to rebuild their existing square-footage only if their buildings were destroyed by a natural disaster. A goal of the new plan was to allow the upgrading or replacement of these “grandfathered” structures without awaiting their destruction by natural causes (see Objective 4-E). Policy 4-E-1 was also added to the plan in 1999:

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

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

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

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

The current evaluation of the Fort Myers Beach Comprehensive Plan allows the town a chance to reconsider its pre-disaster buildback policy. The current interpretations of the policy have been

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

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

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

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

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

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

restrictions to continue under those restrictions while other owners who already have over-density buildings are granted additional rights.

Members of the public who attended the April 7, 2005, workshop were requested to give their opinion on how the town should treat the rebuilding of “over-density” buildings. Five choices were set forth with a request to select one choice. This was not a scientific survey or poll but does give some idea of community sentiment on this and other difficult questions. The written responses that evening were as follows:

<i>Density Limitations for Buildback of Older Building: Should the Town...</i>	
<i>19</i>	<i>Encourage</i> rebuilding of over-density buildings (older buildings that exceed today's density limits) by allowing their replacements to be larger than the existing buildings?
<i>30</i>	<i>Allow</i> rebuilding of over-density buildings but do not allow them to become larger?
<i>12</i>	<i>Discourage</i> rebuilding of over-density buildings by requiring density and/or size to be reduced?
<i>11</i>	<i>Forbid</i> rebuilding of over-density buildings; all new buildings would have to meet the town's current density rules?
<i>1</i>	[no answer provided]

C. Recommendations on Pre-Disaster Buildback

In order to maintain the original intention of *pre*-disaster buildback, Policy 4-E-1 should be amended for clarity. This amendment could either refer more explicitly to its intention to provide the same rights as for *post*-disaster buildback, or it could simply state that the physical size or interior square footage of a building may not be increased during the *pre*-disaster buildback process. In addition, Policy 5-C-7 and similar language in Policy 4-D-1-i. should be repealed.

D. Additional Analysis on Lodging Issues

The Comprehensive Plan examined prior regulatory treatments of hotels and motels and then established the basis for more appropriate development regulations for the town's future.

Prior Lee County regulations had alternated between quite strict and quite lenient regulations for timeshare buildings, hotels, and motels, while distinguishing hotels and motels from residential dwelling units by the existence or absence of full kitchens.

For many years Lee County set the number of hotel and motel rooms as either a multiplier of the number of permitted dwelling units or at fixed rates not connected to residential density. For example, just prior to incorporation the county approved construction of the Diamondhead Resort because it complied with a 50-room-per-acre rule for convention hotels. The city of Sanibel uses multipliers that result in *fewer* motel rooms than the number of dwelling units that are allowed; as a result, developers simply do not build hotels or motels on Sanibel. (Further background discussion of these issues can be found on pages 4-19 through 4-20 of the Future Land Use Element.)

To set the town's new policy, the 1999 Comprehensive Plan added Policy 4-C-6:

POLICY 4-C-6: MOTEL DENSITIES: *The Land Development Code shall specify equivalency factors between motel rooms and full dwelling units. These factors may vary based on size of motel room and on land-use categories on the Future Land Use Map. They may vary between a low of one motel room and a high of three motel rooms for each dwelling unit. (These factors would apply only where motels are already permitted.)*

The Comprehensive Plan discusses motel rooms and residential dwelling units but it never clearly defines motel rooms or determines where the regulatory line should occur in the continuum between motel rooms and dwelling units.

To implement Policy 4-C-6, the new land development code defines “hotel/motel,” “resort,” “timeshare,” and then defines a new term “guest unit” to distinguish these transient units from residential dwelling units, as follows:

Hotel/motel means a building, or group of buildings on the same premises and under single control, which are kept, used, maintained or advertised as, or held out to the public to be, a place where sleeping accommodations are supplied for pay to transient guests for periods of one day or longer. See division 19 of article IV of this chapter.

Resort means a mixed-use facility that accommodates transient guests or vacationers. Resorts contain at least 50 units, which may include a combination of dwelling units, guest units and timeshare units, and provide food service, outdoor recreational activities, and/or conference facilities for their guests.

Timeshare unit means any dwelling unit, guest unit, or living unit for which a timesharing plan, as defined in F.S. ch. 721, has been established and documented. See § 34-632 for determining density of timeshare units that include “lock-off accommodations.”

Guest unit means a room or group of rooms in a hotel/motel or bed-and-breakfast inn that are designed to be used as temporary accommodations for one or more people traveling together. All guest units provide for sleeping and sanitation, although sanitation may be provided through shared bathrooms.

The number of guest units that may be constructed was then established as a multiplier of the number of permitted dwelling units (the table of multipliers from § 34-1803 of the land development code is reprinted earlier in this section in the evaluation of Policy 4-C-6).

Policy 4-C-6 and its implementation through the land development code have been successful in clarifying the rules for new hotels and motels and ensuring that new transient units get the maximum multiplier only if they are smaller than 450 square feet, with the multiplier dropping when the units are between 450 and 750 square feet, dropping again between 750 and 1,000 square feet, then offering no multiplier at all when the units exceed 1,000 square feet.

This method of implementation seemingly avoids the need to regulate whether a “guest unit” has no kitchen, a kitchenette, or even a full kitchen, since the multiplier is related mainly to physical size (and secondarily to location on the Future Land Use Map).

However, the issue of what exactly is a “guest unit” versus a “dwelling unit” is still relevant. First, the multipliers are only applicable to guest units; small apartments, for instance, are not allowed to use these multipliers. Second, the land development code designates all types of short-term rental units as “lodging” uses, including bed-and-breakfast inns, hotels, motels, resorts, and even weekly or monthly rentals of residential dwelling units. (All lodging uses and all residential uses are allowed in the Downtown, Commercial Resort, and Santini zoning districts; some lodging uses are allowed in several other zoning districts.)

Although the town restricts where lodging uses may be constructed, it gives them special consideration by allowing certain multipliers to the residential density cap. As long as this special consideration is being extended, the regulations need to be clearer about what type of units qualify for that consideration; this is a larger issue than the size of individual units.

Consider the variety of residential and lodging uses that characterize communities like Fort Myers Beach:

- A condominium building where owners rent their dwelling units for 30-day periods.
- Timeshare buildings where the individual units are no different than a residential condominium but are occupied by their owners for 7-day periods or are rented to the public for 3-day periods.
- A resort that rents full-size condominium units for stays of 3 days or more.
- A hotel or resort where the individual guest units or dwelling units are purchased by individuals condominium-style, but the units are actually rented to the public by the resort operator on a daily basis.
- A hotel which sells some or all of its guest units as timeshares.

Where should the line be drawn between the buildings that qualify for multipliers (while being restricted by location)?

This distinction can be implemented on a regulatory basis if there is a clear public policy supporting the distinction. Here are some of the policy issues to be considered:

- **LENGTH OF STAY:** The town now regulates short-term rentals in residential areas by *minimum* length of stay. However, there are questions about the *maximum* length of stay in lodging establishments, even in commercial districts. It may be intuitive that hotels and motels are for stays of limited duration, but what are the implications of someone purchasing a motel room that is being sold off as a condominium and then discovering that the unit does not meet building code and other requirements such as density for permanent habitation? What are the implications of a condo hotel that is built with density multipliers but which one day becomes permanent residences (in the absence of enforceable maximum length-of-stay requirements)?
- **BUILDBACK AND CONVERSIONS:** These policy issues are sometimes complicated further when an existing over-density building is being completely replaced (“buildback”) or when an existing building is being converted from one use to another without being demolished and reconstructed to all current building codes (“conversion.”) The Comprehensive Plan and land development code are quite clear about the regulations for “buildback” of the same use, but not as clear about buildback for a different use: for instance, should the equivalency factors in § 34-1803 be usable “in reverse” to convert an over-density hotel or motel into fewer but greatly expanded dwelling units? New code provisions adopted in June 2005 are clear as to when existing multifamily buildings may be converted into individual saleable units, but the code doesn’t clearly address conversions of existing buildings from a lodging use to a residential use or determine when an existing hotel/motel may be converted into individual saleable units.
- **KITCHENS:** Partial or even full kitchens are very common in lodging establishments at Fort Myers Beach, and the boundary between partial or full kitchens is not well defined. Is there any justification in maintaining any limitations on kitchens in guest units, or are they unnecessary regulations?

- CONFORMANCE WITH STATE LAW: The state of Florida regulates the broader lodging industry under different chapters of state law:
 - Chapter 509 which regulates public lodging establishments such as hotels and motels.
 - Chapter 475 which regulates rentals by real estate brokers.
 - Chapter 721 which regulates timeshares.
 The town does not currently regulate uses differently based on these patterns of state law, but these distinctions may have potential for addressing some of the town’s complex situations (for instance, the rental of full-size dwelling units in a resort setting).

Members of the public who attended the April 7, 2005, workshop were requested to give their opinion on possible town policies regarding “over-density” motels. Four choices were set forth with a request to select one choice. The written responses that evening were as follows:

<i>Density Limitations for Buildback of Older Building: Should the Town...</i>	
19	<i>Encourage</i> tear-down of over-density motels (older motels that exceed today's density limits) by allowing their replacement condo building to be larger than the current motel buildings?
33	<i>Allow</i> tear-down of over-density motels, but do not allow replacement condo buildings to be any larger?
16	<i>Discourage</i> tear-down of over-density motels by requiring density and/or size of new building to be reduced, or to meet the town's current density rules?
5	[no answer provided]

E. Recommendations on Lodging Issues

In recent years property values have been escalating at previously unforeseen rates. The health of the lodging industry is very cyclical and thus it is often difficult to obtain construction financing. In addition, the future of the lodging industry at Fort Myers Beach is now being eclipsed by real estate investors and condominium buyers whose optimism for continuing increases in underlying property values are driving the real estate market continually upward. While the town hesitates to encourage new hotels and motels in face of extreme traffic congestion, the loss of an active and healthy lodging industry would change the character of Fort Myers Beach forever.

The town’s options to respond to this situation are fairly limited. Perhaps the most effective option is simply to ensure that town policies and regulations do not inadvertently contribute to the displacement of existing hotels and motels.

To this end, the pre-disaster buildback policy should be tightened as recommended above to ensure that large condominium buildings cannot be substituted for existing hotels and motels in the guise of buildback. (New condominiums or other residential buildings could still replace older hotels or motels, but the new structures would have to meet today’s more restrictive density cap.)

The Comprehensive Plan should also be amended to establish as town policy the desirability of retaining a wide variety of lodging establishments and to clarify that Policy 4-C-6 applies to all guest units, not just motel rooms.

Further, the town's land development code could be amended to clarify many lodging issues. For instance:

- It could be clarified that guest units may be placed in three different types of establishments:
 - resorts (50 or more guest units or dwelling units)
 - hotels/motels (10 or more guest units)
 - bed-and-breakfast inns (9 or fewer guest units)
- Guest units in resorts and hotels/motels may take advantage of the multipliers in § 34-1803 provided they are located in accordance with the restrictions on lodging uses in Tables 34-1 and 34-2 of the code. These multipliers would not be available for use “in reverse” to tear down a hotel/motel and convert it into an over-density residential building using buildback regulations. § 34-1807 of the code would be modified to address only the conversion of an existing building to or from a hotel/motel.
- Restrictions on kitchen facilities in guest units could be lifted.
- The definition of resorts and hotels/motels could be expanded to require licensing by the state as a hotel or motel, paying tourist and sales taxes on all rentals, limiting stays to a fixed period (perhaps 60 days), disallowing all permanent residency; and requiring a front desk that is staffed during regular business hours to arrange transient rentals.
- The code could be clarified to clearly allow new and replacement lodging establishments to be financed as “condo hotels” provided they are operated either as resorts, hotels, or motels under the new and expanded definitions.
- The code now defines timeshare units as a special type of dwelling unit or guest unit. However, Table 34-1 lists timeshare buildings as being allowable anywhere that multifamily buildings are allowed. This definition could be misread to allow hotels in residential districts provided they are owned as timeshares, which was clearly not the intent. This contradiction should be clarified in the code.
- A new § 34-636 of the code now determines when the owner of an existing two-family or multifamily building may parcelize or subdivide that building into individual units. This section of the code should be expanded to address parcelization or subdivision of existing resorts and hotels/motels.