

**RESOLUTION OF THE LOCAL PLANNING AGENCY OF THE
TOWN OF FORT MYERS BEACH, FLORIDA
RESOLUTION NUMBER 2007-10**

WHEREAS, the existence of the Local Planning Agency (LPA) is mandated by Florida Statutes Section 163.3174; and

WHEREAS, the LPA is statutorily responsible under Chapter 163, Florida Statutes, and the Town of Fort Myers Land Development Code (LDC) Section 34-120 for the review of proposed land development regulations, land development codes, or amendments thereto, and for making recommendations to the Town Council with regard thereto; and

WHEREAS, Section 15-4 of the Town of Fort Myers Beach Comprehensive Plan (Plan) provides that the Local Planning Agency shall review requests for legislative interpretations of the Plan as initiated by Town Council, the Town Manager, or others and forward them to Town Council with its comments and recommendations; and

WHEREAS, following proper notice as required by law, at its regularly scheduled meeting of March 13, 2007, the LPA reviewed a request from the Town Manager for a legislative interpretation of Plan Objective 5-D (Beaches and Dunes) with regard to seawall removal prior to property redevelopment; and

WHEREAS, the LPA continued this agenda item to its regularly scheduled meeting of March 20, 2007 to allow each LPA member to consider his or her comments with regard to this Legislative Interpretation; and

WHEREAS, at its meeting of March 20, 2007, the LPA made the determinations set forth below and requested individual LPA members to provide comments for attachment to this Resolution.

NOW THEREFORE BE IT RESOLVED, AS FOLLOWS:

1. Except as provided in paragraph two below, the LPA hereby recommends that the Policies under Objective 5-D should **not** be interpreted to require that all existing seawalls on properties on the Gulf beach shoreline be removed contemporaneously with new development or redevelopment.

2. The LPA takes no formal action on Plan Policy 5-D-1-7 and is providing individual interpretations from LPA members with regard to this Policy. Such individual LPA member comments are attached to this Resolution and are hereby incorporated by reference.

The foregoing Resolution was adopted by the LPA upon a motion by Randy Brown and second by Bob Raymond. Upon being put to a vote, the result was as follows:

Thomas Babcock nay
Randy Brown aye
Rochelle Kay nay

Larry Kiker absent
Alan Mandel aye
Bob Raymond aye
Bob Simon aye

DULY PASSED AND ADOPTED THIS 20th day of March, 2007.

Local Planning Agency of the Town of Fort Myers Beach

By: Thomas Babcock
Thomas Babcock, LPA Chair

Approved as to Legal Sufficiency

ATTEST: Michelle D. Mayher
Michelle D. Mayher, Town Clerk

By: Anne Dalton
Anne Dalton, LPA Attorney



Town of Fort Myers Beach

Memorandum

To: Local Planning Agency
Through: Gary Parker, Town Manager
From: Gerald Murphy, AICP, CFM, Director,
Department of Community Development
CC: Anne Dalton, LPA Attorney
Date: February 28, 2007
Re: Legislative Interpretation of the Fort Myer Beach Comprehensive Plan
Objective 5-D (Beaches and Dunes) with regard to seawall removal
prior to property redevelopment

Background and Plan Philosophy: The Coastal Management Element of the Town of Fort Myers Beach Comprehensive Plan ("Plan") outlines the Town's policies regarding shoreline protection measures along the beach. As set forth on pages 5-17 and 5-18 of the Plan, use of hardened structures such as seawalls should be the "absolute last resort" in shoreline protection measures for two reasons. First, such use may damage the shore-line in other locations. Second, they interfere with the public's access to the beach.

Plan Objective 5-D states:

BEACHES AND DUNES – Conserve and enhance the shoreline of Estero Island by increasing the amount of dunes, renourishing beaches to counter natural erosion, and **reducing negative man-made impacts on beaches and dunes.** [Emphasis supplied].

The Plan requires beach renourishment, re-creation of sand dunes, establishment and protection of native dune plants, and limitations on vehicles as steps to accomplish shoreline protection. In addition, buildings and other structures should be located or moved as far away from the shoreline and dune area as possible. These priorities are set out in Plan Policy 5-D-1, subsections (i) through (iii).

Issue: Must seawalls (and other hardened structures) be removed from Gulf-front properties as part of the condition of redevelopment of such properties?

Plan Provisions to be Interpreted: As stated above, Plan **Policy 5-D-1** provides the Town policies on shoreline protection measures.

Subsection iv. of this Policy states:

Buildings and other structures should be located as far away from the shoreline and dune system as possible since the beach is a constantly changing environment. Beachfront development shall be protected from coastal erosion, wave action, and storms **by vegetation, setbacks, and/or beach renourishment rather than by seawalls and other hardened structures which tend to hasten beach erosion, interfere with public access, and block sea turtle nesting.** [Emphasis supplied].

Subsection vi of this Policy states:

Where buildings are threatened by erosion that cannot be reversed by major beach renourishment, the town's priorities are (1) to allow the structure to be moved away from the beach; (2) to allow emergency renourishment (including the use of trucked in sand); and (3) to allow rip-rap only when the previous priorities are not possible. **Existing seawalls on the beach may be maintained or removed but not rebuilt.** [Emphasis supplied].

Subsection vii of this Policy states in pertinent part:

The absolute last resort for shoreline protection is the use of hardened structures. **New beachfront buildings requiring seawalls for protection from coastal erosion shall not be permitted.** [Emphasis supplied].

Staff Analysis: There is no specific policy that addresses whether an existing seawall must be removed when a beachfront property is redeveloped. However, the Policies under Comprehensive Plan **Objective 5-D** could be read together as setting a policy of enhancing the island's shoreline by requiring removal of such hardened structures prior to or in conjunction with the redevelopment of beachfront properties.

One aspect of **Objective 5-D** is to "conserve and enhance the shoreline of Estero Island by. . . reducing negative man-made impacts on beaches and dunes. Seawalls are one example of such negative man-made impacts, and required removal in conjunction with demolition and redevelopment of beachfront properties furthers the

accomplishment of this objective by reducing their impacts at a reasonable time in the property's development history and in a more economically feasible manner, given the mobilization otherwise brought on-site by the developer.

The fact that seawalls and other hardened structures constitute negative man-made impacts that the Town seeks to reduce is reinforced by subsections iv., vi., and vii. of **Policy 5-D-1**.

Subsection iv. is prospective, addressing future development. It states that seawalls and other hardened structures tend to have a negative effect on other aspects of the shoreline that the Town values. They "tend to hasten beach erosion" [c.f., **Objective 6-E**], "interfere with public access" [c.f. **Objective 5-E**], and "block sea turtle nesting" [c.f., **Objective 6-C, Policy 6-C-5**]. As set forth above, Subsection vi. states that "[b]eachfront development shall be protected from coastal erosion, wave action, and storms" not by seawalls and other hardened structures, but rather by "vegetation, setbacks, and/or beach renourishment. . . ."

Subsection vi. is also prospective, but addresses itself to existing buildings that may be threatened by the changing conditions of the barrier island shoreline. It states that even when an existing building is threatened by erosion that cannot be reversed by major beach renourishment, existing seawalls on the beach may only be maintained or removed, but not rebuilt. The priorities after renourishment are (1) removal of the structure from the beach, (2) emergency beach renourishment, and (3) rip-rap as a last resort. Subsection vii. concludes that the "absolute last resort for shore line protection is the use of hardened structures"

It further states that "[n]ew beachfront buildings requiring seawalls for protection from coast erosion shall not be permitted." The plain language of this provision provides a clear prohibition of issuance of permits for any new beachfront buildings that require seawalls for protection from coastal erosion. It is clear that this language could operate to require the removal of existing seawalls where the other buildings and structures on the property have been destroyed, demolished, or removed prior to redevelopment, and should be so interpreted as there is no better time to achieve such compliance.

Conclusion

To further the Comprehensive Plan's objective of conserving and enhancing the shoreline by reducing negative man-made impacts on beaches and dunes, staff suggests the Policies that implement **Objective 5-D** operate to require the removal of existing seawalls from beachfront property prior to such property's redevelopment. In the aftermath of Hurricane Charley, it was demonstrated on several shoreline properties that while a seawall may have survived it did little, if anything, to protect the associated building. To allow these structures that "tend to hasten beach erosion, interfere with public access, and block sea turtle nesting," to remain

hardening the shoreline when their associated beachfront properties are otherwise being redeveloped is contrary to the Comprehensive Plan's Objective 5-D. To allow these prohibited structures to remain in a pre-disaster, post-disaster or other redevelopment scenario only operates to perpetuate inequities among similarly situated property owners which forward-looking planning—such as that promoted by the Town's Comprehensive Plan—seeks to balance over time.

Local Planning Agency (LPA): This interpretation request is scheduled before the LPA for March 13, 2007.

Jerry Murphy

From: gabe4v@aol.com
Sent: Thursday, March 15, 2007 3:49 PM
To: Jerry Murphy
Subject: Position on vote of March 10, 2007

-----Original Message-----

From: gabe4v@aol.com
To: adalton@daltonlegal.com
Cc: Gerry@fortmyersbeachfl.gov
Sent: Thu, 15 Mar 2007 1:06 PM
Subject: Position on vote of March 10, 2007

1 - The Comprehensive Plan is the Constitution of the town of Fort Myers Beach.

2- 5-D-1

vi. states that Existing Sea Walls on the Beach may be maintained or removed but NOT rebuilt.
vii. states that New Beach Front Building's requiring Sea Walls for protection from coastal erosion shall Not be permitted.

ipso facto the former and latter clauses, unless amended, state

- a. Existing sea walls Cannot be rebuilt.
- b. New Beach Front structures Cannot be permitted if Sea Walls are required.

3. However at this time, I am not aware of compliance with 5-D i-iv.

This needs to be addressed to complete adherence to the Comprehensive Plan

Thank You,
Rochelle Kay

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March

Rational for interpretation of plan objective 5-D:

Policy 5-D-vi offers 3 alternatives but also states " Existing seawalls on the beach may be maintained or removed but not rebuilt".

Policy 5-D-vii states " The absolute last resort for shoreline protection is the use of hardened structures. New beach front buildings requiring seawalls for protection from coastal erosion shall not be permitted".

Yes objective 5-D could be read as requiring removal of such hardened structures in conjunction with the redevelopment of beachfront properties but it could also be read, as if the seawall is not damaged, it may be maintained and does not have to be removed .

Yes it would be very good if, as the plan states, the use of vegetation, setbacks, and/or beach renourishment rather than seawalls and other hardened structures would be great, some areas of the beach would take so much renourishment that it will never happen. How do you do renourishment when the land is 4 or 5 feet higher than the beach?

Section vii states that new beachfront buildings requiring seawalls for protection from coastal erosion shall not be permitted.

I fully agree with that statement, but I interpret the combination of vi and vii in combination as stating if the present seawall is in good condition, it is not considered because it does not have to be re-built. Should it need to be re-designed, fall into disrepair, or be taken out by a storm, it can no longer remain and a new arrangement must be made.

I believe we must make changes to Policy 5-D to take into consideration parts of the island that have very small beaches and very high seawall at this time. If we made them take down these seawalls in re-construction, it would have an adverse effect on the neighboring properties.

Major renourishment, dunes, vegetation is the way to go but the cost and the will to accomplish that, may not be there!

Thank You

Bob Raymond

> Anne,

>

> I based my vote on my reading of the Comprehensive Plan to permit existing
> seawalls to remain in place and be repaired as needed. I also interpreted
> the plan to permit an existing seawall to be used as part of redevelopment
> of a property. A new project on a site not having a seawall, according to
> the plan, may or may not be permitted to have a seawall.

>

> I recommend that the Comprehensive Plan be reviewed because their are
> terms not defined that are contradictory. For example, a hardened surface
> may be used, but not a seawall. What is a hardened surface; is it a
> seawall?

>

> In addition, there was no input from staff or any other source indicating
> what is wrong about seawalls.

>

> The input from an engineer, qualified in the field, albeit hired by a
> special interest, indicated that renourishment was the best alternative if
> conducted in certain ways. He indicated dunes and vegetation also required
> a plan over an extensive area to be effective. Seawalls were indicated as
> effective.

>

> Given that the Town nor the County has not implemented any plans for beach
> renourishment, dunes, and/or vegetation, nor proposed a financial plan to
> maintain these improvements, it may be necessary to permit seawalls and
> the repair to seawalls which are more economical to build and maintain.
> Seawalls also provide property protection against storms whereas, no
> improvement will prevent damage from a major hurricane.

>

> Regarding turtles, if an aberrant turtle comes out of the Gulf, across the
> beach, through the mangroves, across the lagoon, and up the grass and
> beach to a seawall, it should be stopped so that it does not cross Estero
> Blvd and probably be killed in traffic. Given where seawalls are located
> now, there appears to be sufficient space for turtle nesting.

>

> Alan

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