

**FORT MYERS BEACH TOWN COUNCIL
LOCAL PLANNING AGENCY JOINT WORKSHOP
NOVEMBER 27, 2001
Town Hall - Council Chambers
2523 Estero Boulevard
FORT MYERS BEACH, FLORIDA**

I. CALL TO ORDER

The workshop of the Council/LPA was opened by Mayor Daniel Hughes on Tuesday, November 27, 2001, at 5:30 p.m.

Council Members and LPA members present at the meeting: Mayor Daniel Hughes, Vice Mayor Terry Cain, Councilman Bill Van Duzer, Councilman Howard Rynearson, Councilman Bill Thomas, Dave Smith, Jennifer Kaestner, Linda Beasley, Betty Simpson, Jodi Hester, Harold Huber, Jane Plummer and Chairman Roxie Smith.

Staff present at meeting: Town Manager Marsha Segal-George, Deputy Town Manager John Gucciardo and Bill Spikowski

II. PLEDGE OF ALLEGIANCE

All assembled and recited the Pledge of Allegiance.

III. PUBLIC COMMENT

** Mayor Hughes announced that there was a misconception regarding one of the items on this evening's agenda dealing with short-term rentals in single-family residential districts. This is not within the scope of any of the provisions of the amendment to the Fort Myers Beach Land Development Code, which is the subject of this joint workshop.

No one came forward for public comment.

IV. JOINT WORKSHOP ON PROPOSED AMENDMENTS TO THE FORT MYERS BEACH LAND DEVELOPMENT CODE:

CHAPTER 1: GENERAL PROVISIONS

CHAPTER 2: IMPACT FEES

CHAPTER 6: FLOODPLAIN REGULATIONS

CHAPTER 14: ENVIRONMENT AND NATURAL RESOURCES

CHAPTER 22: HISTORIC PRESERVATION

CHAPTER 26: MARINE FACILITIES

Bill Spikowski, Planning Consultant to the Town, came forward and indicated that in the years since they have adopted the Comprehensive plan, under the direction of the LPA, they have redrafted the entire Land Development Code with multiple goals to update to comply with the new Comprehensive Plan. This will shorten it and provide illustrations to make it more understandable, and also customize it for use of Fort Myers Beach. He expressed that approximately 1/4 of the Code has already been adopted. The LPA re-did the sign ordinance. A few months ago they combined the Parasailing and Jetski's. About 11/2 years ago they did two complete major chapters of the Code.

Tonight they will discuss minor amendments to Chapter 2 and Chapter 6.

An ordinance has been prepared for review this evening that will adopt approximately ½ of what remains. The other half has mostly been drafted. The LPA is still working on this. The chapters being discussed this evening are ready and he believes that they are ready to go for public hearings. The LPA has worked very hard on this, and the Town Council has not seen it in its complete format. They are looking for Council's input to see if they believe it is ready to go. He expressed if Council is comfortable at the end of the evening they would like direction to go ahead and set formal public hearing to adopt this portion of the code. This would require one formal public hearing before the LPA that could be at their December 11, 2001 meeting. Two hearings would take place before the Town Council in January and this section would then be adopted. The first part of the ordinance is described in Section 3. It is Chapter 1 of the ordinance and is the introduction, which is the least important part of what is being done this evening. It does include definitions that are used throughout the entire code. The changes are relatively minor. Many of the changes throughout Chapter 1 are changes which Lee County has made to their code since 1996.

Mayor Hughes referred to page 1 of the ordinance and discussed the description of every article and section. He did some research and this is not required by law. He feels that this is absurd, nobody reads it and it does not accomplish anything. The law provides that the heading of the ordinance needs to describe sufficiently the scope of the ordinance. He would like to eliminate all of the section caption headings. Bill Spikowski commented that he would list the title of each chapter that they are repealing, but not list the individual section headings.

Bill Spikowski indicated that page 5 of the ordinance discusses the substance, which is listed as Section 3. This adopts the new Chapter 1 of the code. Includes definitions and a number of procedural changes that have been adopted by Lee County. A new reference to the Fort Myers Beach Comprehensive has been included. This was taken directly from the ordinance that was adopted in late 1990. He expressed that the County has been eliminating the use of the term "Shall" in the ordinance and replacing it with "Will". He is unsure of the reasoning. He has not been systematically changing this code, because it is a lot of work for no gain.

Bill discussed Chapter 2 and indicated that it was revised about 18 months ago. The only section to be discussed is Article 4, which is the Impact Fee portions. The Town has now adopted the same impact fees as the County. The most important change would be to accept to the County's recent study and methodology, and be charging the same park impact fees as the County does. The other difference would be the school impact fees. He feels that this should be contained in Chapter 2 of the code to be included in the table. Fort Myers Beach does not collect it and does not get the money. This will be collected by the County on their behalf and sent directly to the School Board.

Mayor Hughes asked for clarification on the impact fees, which Bill Spikowski provided. He mentioned an article in the News-Press regarding Collier County's impact fees for water and sewer. Bill Spikowski replied that they do not call them impact fees, but call them service charges. They are paid directly to the utility. They do have them but they are a charge from the enterprise fund.

Bill mentioned that they are continuing to collect transportation impact fees even

though they have no plans for major road expansion. When this chapter was adopted 1 1/2 years ago the language was changed for what the transportation impact fees could be used for. They can be used for more general transportation issues, such as sidewalks and capital improvements for mass transit. This change has already been made. It comes to Fort Myers Beach from the County. This is to be used for new construction only.

Bill went on to discuss Chapter 6. When this was amended 1 1/2 years ago they inadvertently left out one phase. This stated if someone has an older building that did not meet flood regulations, if improved by less than 50% of its value you would not need to elevate the entire building. The County ordinance previously had a phase that stated that this is computed cumulatively for any improvements made over a five-year period. He reorganized this section and this phrase was dropped out and is now being placed back in. He wanted to make it very clear in this section that they are talking about the value of the building and not the value of the land. The value of the building as it exists before the improvements and not after. He indicated that this language still needs a little bit more work. It is a technical matter, but it is very important so everyone is treated fairly.

Mayor Hughes questioned that he is not clear on the phrase "value attributed to the location". Bill Spikowski replied that this is the part that needs work. FEMA states that the value of the building is the same as what it costs to build less depreciation regardless of the community. This is what he has written, but he is becoming less convinced that this is completely fair. He is consulting with a couple of appraisers for more information.

Jane Plummer expressed that the land is very important. She does not feel the land should be taken out without the location meaning something.

Roxie Smith indicated that as she understands it they are simply appraising the value of the building itself. It does make a difference if it is on the Gulf of Mexico or back, as far as adding to it or repairing a structure that has been damaged. She feels that it makes a very great difference and is unfair to judge the ones landlocked on Delmar by the same measure as the Gulf of Mexico. Bill Spikowski replied that he felt where they needed to end up would be that the income capitalization approach is acceptable and you must back out the cost of the vacant lot.

Mayor Hughes does not agree. He asked that they keep in mind this is a rebuilding of 50% of the value of the structure itself.

Councilman Van Duzer commented that a difference must exist. There are areas on the beachfront where the structure will cost more just because of what is required to build it. He went on to discuss the definition of substantial damage. He mentioned that it is being tied to 25% or a ten-year period. He does not understand this. Bill Spikowski replied that this is 25% twice and is equivalent to the 50%. He indicated that this is an important definition and is optional. This saves everyone on their flood insurance if the Town does it, but is not mandatory. The rest of the information contains mandatory requirements.

Councilman Van Duzer would like it to be reasonable, fair and just for people that have properties. A lot of property on Fort Myers Beach is built on the ground. He feels that FEMA will accept the substantial damage, but tell them to take out the drywall, plaster, paneling, wall covering, etc. The substantial damage needs to be re-written to

make it fair and equitable to those who have property and pay the insurance premium.

Jodi Hester asked since they are being more restrictive to get the discount on the insurance what type of discount will they get? Deputy Town Manager Gucciardo replied that they are rated at 7 and this means that they receive a 15% reduction in the insurance premium. Depending on the type of accumulation of additional points they receive they can keep going down the scale. The City of Sanibel gets a 30% reduction. He expressed that they may receive another 5% reduction and possibly more. They go through an annual re-evaluation. After a 5-year period they will start fresh and get a complete evaluation. The last evaluation was done in September, and they have another two years before the complete evaluation. He does not anticipate any change in premiums for another two years.

Jennifer Kaestner asked for the consequences of adopting as is? Bill Spikowski replied that if it is adopted as is they may come in and state that they do not like the deleting of the drywall costs, and will need to be taken out. They may want to take out the substantial damage out also. One offsets the other. He suggests that they just wait for their reaction. He does not know positively the result. The substantial damage is optional and can be taken out.

Jodi Hester would like to see the substantial damage underlined area that is optional taken out. They would not have to worry about the substantial improvement #2 & #3. She does not feel the cost savings would be that great.

A discussion regarding the open space below homes on the beach were discussed. Bill Spikowski gave some suggestions as to the limitations. Input was given from Jane Plummer and she agrees with enclosing it in to keep property from blowing around. Councilman Bill Thomas does not feel that they should put a limit on the size of the garage underneath. Some people have different needs and he feels that they would be invading on their property rights. He would like to see that a disclosure is prepared, so they do not build a residence underneath. Harold Huber feels that a percentage of the footprint would be better, because there are so many different size homes. Bill Spikowski can take all the ideas and make up four or five options for their consideration. Vice Mayor Cain feels the same as Jane Plummer. If they have a lot of toys they need toy space. She is afraid they will end up with sheds and they are a wind hazard.

Much discussion was held regarding the possibility of a disclosure. Jennifer Kaestner questioned if this could be retroactive? Town Manager Segal-George replied that she did not believe that could be done. Betty Simpson commented that the Realtors already have many disclosures that must be presented and she could not see why this could not be also included. Also, there should be a way to get it on the contracts for other types of closings.

It was decided that the underlined optional information regarding substantial damage will be left in for purposes of the hearings. Bill Spikowski will add two more options to reflect two good ideas he heard. They can pick any or delete them all at the adoption hearing.

Vice Mayor Cain questioned page 7 - 2 a. regarding the mobile homes. Bill Spikowski replied that the current County ordinance, which is also the Town's ordinance states that replacement mobile homes only need to be raised three feet. This violates Federal Law. He discovered this while doing other research and is only fixing this to read as it should without being a violation.

Bill Spikowski went on to Chapter 14. These are most of the environmental rules. They have already done a major amendment on the sea turtle rules. The only changes are to keep the terminology straight. The only new rule is regarding the beach raking or the moving of jetski's in the morning during sea turtle season. They will need to wait until 9:00 a.m. or could do it earlier if the morning sea turtle inspection has come by earlier. This seems to very acceptable to those in the business and also to Turtle Time.

Article 3 is regarding the southern bald eagle. No eagles nests are on Fort Myers Beach now. He suggests that they keep this language. Should a nest be formed on the beach it will give the same restrictions and incentives to the property owner who ends up with the nest on their property. They would take advantage of all the County's expertise on the eagles.

Article 4 for Wetland Protection is different. Shortly after the Town incorporated Lee County eliminated the language. The new language implements the Towns new Comprehensive Plan. This language is totally new and basically restates what has already been adopted into the Comprehensive Plan.

Mayor Hughes questioned that each of the sections have a director for each article. This is a person that the Town Manager has delegated. Who is this going to be? Town Manager Segal-George replied that they purposely keep it ambiguous. She stated that under normal circumstances it will be Dan Folke, herself or the County. It will give the Town Manager flexibility and they will not have to keep changing the ordinance.

Bill Spikowski went on to discuss the tree regulations. The County and the Town's tree regulations are mainly aimed at protecting native trees when development is first taking place. This does not have much of an impact on Fort Myers Beach. If you own a home and have protected trees on your property you can cut up to 3 trees a year with no permits. This does add a new requirement when someone builds a house on a vacant lot or tears a house down and rebuilds the new language would require a tree permit as part of the building permit process. The purpose is to try and save the trees that can be saved.

Town Manager Segal-George commented that this is a subject where they have received a lot of calls. Many residents call about trees being cut down on the island and asking if there is anything that can be done to protect the trees. In the past there was not much to offer.

Rick Joyce, Director of Environmental Sciences, discussed how this code has worked on Captiva, which was implemented about 1 year ago. It has worked well. They have had great success in meeting with the owners and moving trees around on many properties.

Chapter 22 is the Historic Preservation requirements. Bill announced that the changes are minor. This is the chapter under which the Town will make formal historic designations. The property owner will then receive a lot of benefits and will have an extra layer of oversight over any changes they make to the building. The County has its own Historic Preservation Board to make the designations. In the Town's Comprehensive Plan they decided to just assign this to the LPA rather than set-up a separate board. He feels that this is a good way to do this. This language implements this change. The LPA has a special committee working to decide which properties

should be designated.

Bill discussed Chapter 26 and indicated that this contains all of the marine regulations, docks, seawalls and boathouses. Many of the changes seen here were made by Lee County shortly after the Town's incorporation. Many changes are unique to the Town. Some are as simple as illustrating terms to make them easier to understand the ordinance. A lot of new definitions were added to make things flow easier. A number of Comprehensive Plan policies on seawalls, particularly on the beach, which are very restrictive are implemented through this new language. He called their attention to Page 9 & 10, which has not yet been seen by the LPA. Hans Wilson has been working on seawall replacement ideas. They have come up with some ideas to make things better. He discussed these ideas with all present.

Town Manager Segal-George expressed that she is very proud of this chapter. A lot of collaboration has gone into it. This is new and different and has the ability to make some of the canals become alive again. They can tremendously improve water quality in the canals and into the back bay.

Rick Joyce discussed the ending of canals. This is where you have pie shaped parcels entering the cul-de-sac of a canal. How do you fairly allocate dock space and mooring area? It can be really problematic. They came up with a good solution. The property owner will be required to get a licensed surveyor to come in and allocate these riparian lines. The methodology has been pretty accepted in the practice. Once the lines have been established you must build within the lines. It has avoided many neighbor conflicts. This is a major advance in the code. The code reaches a reasonable balance between providing good mooring and safe mooring for vessels, but also not letting the docks get so big that they impact other peoples view. He feels that they have done a good job restricting the size of the docks. The proposed changes on seawalls are cutting edge. This is the one area that has been neglected. This will improve, in the future, both the water quality and habitat for the fish. Dock and shoreline permits are very popular. Boatlifts are a great way to get your boat out of the water and they are issuing about 40 permits per month.

Mayor Hughes asked if there is a provision or if they can have one regarding the amortization of boathouses and large docks that extend out into the canals unreasonably? Rick Joyce replied that he felt they could do this. He indicated that boathouses were not regulated until 1988. The current policy for the County is that they are grandfathered in. Bill Spikowski will look into this provision.

Jane Plummer asked if there are any Class 2 marinas? Bill Spikowski does not have the answer to this question at this time. He will research.

Roxie Smith asked some questions regarding the seawalls. **(This was not audible to the transcriber)** Vice Mayor Cain pointed out that one of the illustrations is missing a seawall. This was discussed at MRTF and will be corrected. Overall the cost savings will be greater. These will be more efficient and last longer.

Town Manager Segal-George commented that they are presently looking at Crescent, which is the oldest canal on the island. It has a number of seawalls that are in very poor condition. These types of regulations would be used there as they look at doing canal improvements.

Mayor Hughes feels that they should move ahead with the public hearings. Bill Spikowski indicated that they could have the first LPA public hearing on December 11.

They will introduce the ordinance before the Council on December 17. The two public hearings will be held at the two regular Council meetings in January. Town Manager Segal-George suggested the hearing dates to be on January 2, 2002 and February 4, 2002. The reason is due to the Martin Luther King Jr. holiday.

Bill Spikowski indicated that the October 16, 2001 LPA meeting was devoted to short-term rental issues. He is working on suggesting a couple of options for the LPA to look at for the January 15, 2002 meeting at 12:00 p.m. (Noon). The Council will not need to deal with this for a month or so.

V. PUBLIC COMMENT

None.

VI. ADJOURNMENT

The meeting was adjourned at 7:35 p.m.

Respectfully Submitted,

Shannon Miller
Transcribing Secretary