

**JOINT MEETING  
FORT MYERS BEACH TOWN COUNCIL AND LOCAL PLANNING AGENCY  
SEPTEMBER 1, 1998**

NationsBank Building, Council Chambers  
2523 Estero Boulevard  
FORT MYERS BEACH, FLORIDA

**I CALL TO ORDER**

Roxie Smith, co-chairman of the Local Planning Agency, called the meeting to order on Tuesday, September 1, 1998 at 6:35 PM.

Present at the meeting from the Town Council were: Mayor Anita T.Cereceda; Vice-Mayor Ray Murphy; Council Members Daniel Hughes, Garr Reynolds, and John Mulholland; Town Manager Marsha Segal-George; and Town Attorney Richard Roosa.

Present from the Local Planning Agency: Co-Chairman Smith, Co-chairman Betty Simpson, Linda Beasley, Bill Van Duzer, Ron Kidder, Lena Heyman, and David Smith. Absent from the meeting: Johanna Campbell and Ed Bonkowski.

**II INVOCATION AND PLEDGE OF ALLEGIANCE**

Co-chairman Simpson led the Council and LPA in prayer. All assembled recited the Pledge of Allegiance to the flag.

**III PUBLIC COMMENT ON AGENDA ITEMS**

**A BEVERLY GRADY**

Ms. Grady commented on the memorandum by Bill Spikowski regarding his response to the DCA. She wished the state had been required to give some positive comments. But they are only required to list objections. The state does not know our town or our issues, but Mr. Spikowski's response was good. The Red Coconut will be happy to help the town in any way they can.

**IV BAY BEACH**

**A MEMORANDA DATED 6/17/98 and 6/8/98**

Mr. Spikowski said that the first two memos are similar and can be discussed together. In the new LDC, which must be adopted by next summer, we have to be specific about what development rights are allowed consistent with the new Comp Plan. We need to address the question about what is allowed at Bay Beach for future development, just like you do for the rest of the town. In addition there are some other cases coming forward that will have to go through the old plan. In the Comp Plan, we did not spend a lot of time on Bay Beach because we assumed we would go with what the county has already agreed to, but the question now is what have they allowed and that is not as simple as it would seem. Preexisting rights override the new regulations. Just because we don't provide for them in the plan, it doesn't mean that those rights don't exist. Vested rights don't necessarily go on forever, but they exist as long as development is an ongoing entity. Bay Beach has been a continuous ongoing development. There are several different classes of vested rights. Bay Beach started in the early 70's. Just when they were getting their land and plan and zoning, the state adopted Development of Regional Impact (DRI) law, which says all developments over a certain size must go to the state as well as to the local government. Bay Beach was recognized as being vested so they do not have to comply with the DRI law. But in the 1980's it was determined that the 500 boat docks were not on the original plan, so the docks are not vested and had to go through the DRI process. So the question is "vested as to what."

The first two memos discuss the main vesting issues regarding the county rules we inherited. Two major site plans have been approved by Lee: the 1974 site plan and the 1987 plan. The property was assembled from four different owners, and was rezoned to become a unified development in 1972. It is built around a golf course and that open space contributes toward the open space required on each parcel. The County approved the "site location only" for zoning in 1972, and then they asked for a more detailed plan to come back. The 1974 plan is the more detailed plan. It shows the golf course and detailed diagrams of how buildings would be built and how many stories. It shows 1731 dwelling units. In 1981, they went before the county commission and asked to have the plan modified to allow Harbour Pointe to be built (two ten-story buildings instead of two seven-story buildings.) In 1984 the Lee Plan was adopted

which set the maximum density at 6 units per acre on the beach. Because that was such a change from the 25-30 that had been allowed here for a long time, the Plan had a vesting procedure that allowed developers to request to stay with the 1974 plan that allowed 9.6 units per acre. In 1985 the Commissioners agreed that the project was vested. In 1986 the developer came to the county and said that the county reviewers were having a hard time following the plans, so a new site plan was submitted in 1987 as a vesting clarification. It was an attempt to reconcile the issues at a practical level. The 1974 plan shows specific buildings, but the 1987 plan (after 1/3 was already built) was more schematic. Instead of showing a 7-story building, it just showed a parcel, but it is basically the same development. There is a list of notes that show what is already built, how many units there were, how tall they were, and on what parcel they were located. The plan contemplated that the developer would update that chart each time another approval was granted, but that has never been done. No public hearings were held because these were vesting issues, not zoning changes. They did not grant new rights. There are minor differences in the plans (the early plan had no Lenell Road) but they are pretty similar. The most important difference is the single note on the 1987 plan that says: "height limitations amended to permit 10-story buildings, approved by county commission June 10, 1981." That meeting date did allow two 10-story buildings on that date at Harbour Pointe, but the developer now says that it means that 10-story buildings are allowed anywhere on Bay Beach now. The note doesn't say that, and if it did, it would be a great increase in development rights and they would have had to have a public hearing. The bottom line is that he believes the note only acknowledges what happened at Harbour Pointe. If the developer's interpretation of the note is correct, that makes the 1987 decision legally inadequate. If it increased development rights, there should have been notification of surrounding owners and a public hearing. That doesn't say the town can't allow those 10-story buildings, but he doesn't think they are required to allow them. That area is all high rise and a high building takes up less land. When we do our LDC, we would be within our rights to allow some or all of them at that height, but it should be done at public hearings. We need to find out what is gained by the town by allowing the rest of the units to be built at 10 stores. Would open space be added, and where would it go?

Mr. Van Duzer said he has read the minutes from June 10, 1981 and the minutes from the 1987 meeting where staff recommended adoption. His feeling is that they are entitled to 1731 units. Mr. Spikowski agreed. Mr. Hughes doesn't necessarily agree and would like to address that issue further. Mr. Van Duzer said the 1981 action was a tradeoff approved from three 7-story buildings to one 7-story building and two 10-story buildings, with a reduction of density. They went from 223 units to 196 units but they increased the size of the units. They also traded densities from one section to another. He doesn't understand why we are here because the primary thing we are concerned with is the density and they have not asked for an increase.

Mr. Hughes said there is a question of trading off density. Mr. Spikowski said in Harbour Pointe, you could read that they just reduced density, although he is sure that they did not intend to reduce density on the entire development. The #1 issue is height, and a secondary issue is the tradeoff. Mr. Hughes wanted to address the definition of vested rights. Is it statutory or case law? Mr. Spikowski said it is spelled out in the Lee Plan. Mr. Hughes said the Lee Plan was adopted after the site plan was approved, so how could it address vested rights? Mr. Spikowski said the wording is that they would recognize the 1974 plan and vesting would only recognize what was already there. It wasn't until 1987 that there is a question of getting something more. Mr. Hughes asked why a municipality cannot change zoning after public hearing. It happens everywhere else. He has trouble with a concept that doesn't even exist at the time that they got their original site plan. Mr. Roosa said courts in Florida have ruled that property owners do not have the right to rely on existing zoning and that a municipality has the right to change it. But in the case of a development order, it takes it out from under general zoning, and it also creates the equitable principal of estoppel. Local governments are prevented from changing circumstances in mid stream. If it is just a case of 19 per acre and we changed to 6, they would change to 6. But they had a development order which gave them those rights. On June 10, 1981 the hearing commission approved two 10-story buildings. Mr. Hughes said at the time this was adopted, it was not a planned development, it was just zoned RM2 and CT commercial. Unless they have a pre-annexation agreement, the town can change zoning because the concept of vested rights did not exist at the time the original development was approved. Mr. Roosa said this is one parcel and has been treated by the county as one parcel. As long as it was continuing as one parcel, that triggers the vesting. The question is what they are vested with. Mr. Hughes said it was a number of parcels on a site plan. Mr. Van Duzer said in 1972 it was called a community unit plan, which means a plan will follow and it did in 1974 for 1731 units. Mr. Hughes said that community unit plan did not exist as a type under the land development plan at the time. Ms. Simpson said that on the preliminary

master plan they called it a planned unit development which was really a master plan. She thinks it may just be semantics what it is called. Mr. Hughes said it is a legal issue. That doesn't legalize it by calling it something later. Ms. Heyman said it is separated into separate projects and each one has its own condo association. Ms. Smith said it is still a master plan with 1731 units. Mr. Reynolds asked if there will still be 78% open space. Mr. Spikowski said they don't know currently, but the county will insist from now on that that is verified. It lets them count canals, Buccaneer Lagoon and the golf course so he doesn't think that will be a problem. Mr. Hughes said if everyone else accepts the 1731 units in 180 acres as the density, then we can move on. But he thinks it is a serious controversy and he doesn't want to concede to something up front. He thinks they have the burden to prove it.

Mr. James T. Humphrey, representing Stardial, developer of Bay Beach, spoke. He also introduced Mike Johnson and Kitty Taylor. He believes the decision made by Lee County in 1972 to zone for BU4 and RU4 allowed them to go through the community concept plan. That was found sufficient under Florida case law at that time. They did not have a PUD, but BU4 and RU4 allowed higher density. Vesting rights were addressed by the county under chapter 14 of the Lee Plan in October 1985. It said they were allowed to continue at RM2 and CT zoning at 9.6 units with 78% open space. They made a finding that is binding on this city when they incorporated. It was zoned in 1972 for those uses and approved at public meeting. The public hearing was in 1972 and they did not need a rezoning in 1974. They operated under that plan which was titled a preliminary concept plan. Later on the county adopted PUD and RPD zonings, but that wasn't required for Bay Beach because it was operating under an approved plan. It provided a conversion table where you could convert RU4 and BU4 to RM2 and CT, and it specifically provides that if uses were approved under RU4 and BU4, you could still carry on those uses if you had acted in reliance on it. Bay Beach has continued under one basic plan for twelve years. Whether you call them Harbour Pointe or Waterside, it is still Bay Beach. Stardial feels an urgency because the county staff is now responding differently based on Mr. Spikowski's memos. Mr. Hughes asked if they regarded the permission for two buildings for Harbour Pointe at 10 stories as authorizing the whole development at 10 stories? Mr. Humphrey said yes. In June 1987 the commissioners took two actions. First they clarified the decision of vested rights. Second they instructed the staff to issue permits based on this plan. It starts with plan approval references, which includes "height amended to permit 10 story buildings." Mr. Hughes said that is not in an ordinance. That is an administrative action and somebody writing on the plan does not make it OK without public hearing. Mr. Humphreys said before 1987 they were allowed to go higher than 10 stories. Mr. Hughes said that is irrelevant because they weren't asking to go higher than 10 stories. Mr. Humphrey showed a chart that is current as of August 31, 1998. Now there are 1020 units built, or 1484 including those in the planning stages. Planned means ones for which an application for a development order has been made. They still plan to build 1731 units. Mr. Humphrey pointed out that all the buildings in the area are tall, and 10-story buildings are consistent with the area. It also helps preserve the golf course. Mr. Reynolds asked how many 10-story buildings the developers see in future, Mr. Johnson replied there would be six 10-story buildings on parcel 16 and one on parcel 13. Ms. Taylor said that on parcel 13 there are two lots that are not a part of what the present builder is building. They propose to combine those and put on one 10-story building instead of two 5's, and that will help the views of the residents of Harbour Pointe. They foresee the project would be completed in about 5 years. Mr. Murphy asked if Mr. Spikowski could rebut what Mr. Humphreys said. Mr. Spikowski said the only new thing Mr. Humphreys has submitted is the chart showing the buildout. The central issue remains about the 10-story building. He does not see how that could have happened without a public hearing. They don't need to make a decision tonight but the county staff needs to have some guidance, and also he needs to know so he can draft the Comp Plan for final consideration. If they give no direction, the permits will not be approved and the developer will appeal. It will come to the council on appeal in about two months, and it will be for the permits in question, not the whole development. Mr. Murphy said he does not want to delay, but he isn't sure they can take that sort of action in a workshop. Mr. Spikowski said they could do it at the next meeting and not have to wait for the LDC. Mr. Humphrey said the paramount issue is the question of 10 stories. Even a two-month delay is a lot. No decision is a denial because they can't get permits. Owners have already signed contracts for these units. Whatever the council can do to expedite the decision would be helpful. Mr. Smith asked why it was turned down by the county. Pam Houck, principal planner with Lee County Development Services said that questions were raised by the county staff and they needed direction. Since the recent change to the LDC regarding building height, they did not know which rules to follow. With the 25' height limitation, they needed to know if the rights are vested. Mr. Humphrey said they can provide evidence that when the application was filed, the response by the county did not object

because of the 10 stories. It was not until June 17 and 18 that they added the wording that 10 stories is not allowed. For 12 years they operated under the assumption that 10 stories is allowed until June of this year. Mr. Hughes said he does want to delay anything, but the issue is not necessarily 10 stories, but vesting. If we say they are vested, we are saying a lot more than the issue of stories. He is challenging the whole issue of vesting. He thinks there is nothing in the record that 10 stories is vested over all of Bay Beach. If we had a plan to look at for the remainder of the property, it would be another thing and he might not be opposed. Taller buildings may be more attractive in some areas. Height allows more green space, but we don't have a plan for the rest of it. What if the person who owns the golf course wants to develop it, how can we protect ourselves? Mr. Humphreys said the protection is that space is to remain green and open. The owners cannot act arbitrarily. Mr. Hughes asked if we can be assured that he will run the golf course even if he starts losing money. Mr. Humphreys said they can't require it to be a golf course, but it must be green and open. Mr. Hughes asked if they would consider a conservation easement. Mr. Reynolds asked if vested rights take precedence over local regulations. He thinks local regulations take precedence. Mr. Humphrey agreed with Mr. Roosa. If the development is approved and they are substantially on the way, then a municipality would be estopped from changing the zoning. Mr. Reynolds said we have a responsibility to the town, and our ordinance says 25'. Are we supposed to ignore our ordinance? If we let one person do it, we have to do it for others. Mr. Humphrey said that provides for vesting. He is not asking them to deviate from their duties as council persons. Mrs. Segal-George said the workshop came about because during the permitting process for one of these projects, she got a call from the county raising questions. She also has had some people come to her from Bay Beach asking questions. She felt she needed more information so Mr. Spikowski did some research for her. It is a policy issue that needs to be dealt with. But we also got our response from DCA on the Comp Plan. That's a lot of material but it is all important, but there was no expectation to resolve anything tonight. But there is some urgency because there are permits that are waiting for approval. Ms. Smith agreed that some decision needs to be made quickly. The developers are suffering financially in the meantime. Mr. Murphy agreed and asked if this could be decided at the next meeting or if it has to go to the LPA first. Mr. Mulholland said we can't leave without developing some policies. What could the LPA act on if we sent it to them? Mr. Kidder said they have 1731 units and the choice is 10-story buildings or a bunch of 2 story buildings. Then they couldn't come up with the 78% open space. Mr. Van Duzer feels they are vested for 1731 (except for perhaps a few they may have traded off) and he feels they are vested for 10 stories, which will leave more open space. He feels we should resolve it and move on and not go to court. The density will be the same whether they are 10-story or shorter. Mayor Cereceda said she is concerned about the residents of Bay Beach who have to live with the implications of development. Mr. Spikowski said what has changed from the last time a 10-story building was permitted is that we passed a height ordinance, and also that the county staff is now not convinced that they did the right thing when they approved the last two. Mayor Cereceda said the question is what we would rather see down there--a few ten story buildings or a cluster of lower buildings. Mr. Smith said 1731 is the maximum they can build. That doesn't mean they have to build that much. The maximum speed limit on Estero is 35 mph but you are not required to go that fast. If they build out on the land before they reach that number, that is not the problem of the town. Mr. Kidder said he heard a rumor that they were going to build a motel on the tennis courts. Is that part of Bay Beach? Yes. Will that then be part of the density? They replied that it will counted in the density. The motel will come off the 247 units left to build. They said that one of the ten-story buildings will only have 48 units. Mr. Kidder said he also heard rumors that some of the lakes will be filled. They replied that they have applied for a portion of the lake to be filled in. Ms. Heyman questioned how you would keep 78% green space then because the picture they showed looks pretty built out already. Mr. Spikowski said he is not sure if parking lots are allowed to be counted in the open space. Mr. Hughes said they are asserting all the rights of a PUD (even though it was not one originally), yet without of the burdens that a PUD would be required to furnish. We don't know how the rest of the property is being developed. It is being developed parcel by parcel. There should be environmental and traffic studies, etc. that should be required of a PUD. Mr. Kidder said he thinks the roads are inadequate back there already. Is there adequate water or sewer? Ms. Heyman said they all received a letter from Daniel Haggarty and he brought up some issues that should be addressed. Is Waterside a gated community? Does that mean the rest of Bay Beach can't go back and use the fishing pier? Mr. Roosa said there is evidence that the permitted number of units may not be 1731. When they developed a parcel, they could not transfer all of those units so there was an adjustment.

Mr. Roosa said the document that Mr. Humphrey presented regarding units built and units in the planning stage is significant because it shows the differences between the plan that was approved by the

county commission, which they are basing their vested rights on. The 1984 plan is not complete. He agrees with Mr. Spikowski that the interpretation of the plan that prior approval is carried forward to authorize 10-stories throughout the development is not legally justified.

He said after vested rights, you must consider the question of estoppel. You look at the action of the developer and the prior conduct of the county. In his opinion, the county was in error when it issued the permits above and beyond the two that were authorized by the county commission. But the developer, in reliance on that error and reasonable interpretation, went ahead and started selling units for their next building. So he doesn't think they are vested for 10-story buildings, however on certain parcels where they have already sold units and have gone to pull permits, he thinks the town is estopped because of the reliance. There is a potential for legal exposure in those instances if we are taking away a right they had a lawful basis to rely upon. With regard to those parcels for which they have not applied for permits, he does not believe they can continue to perpetuate what is in his opinion an error. Basically we did not consider Bay Beach at the time of the adoption of the height ordinance. The question is whether the town should take the position that it is detrimental to have 10-story buildings. If we say they cannot build 10 stories they may not be able to build out to the whole 1731 units unless they reduce the size of the units. Motels must be a one-for-one tradeoff. The number of units is not the issue. It is the height and if there a detriment to the town on this particular development. If the consensus is that there is no detriment, the issue of vesting becomes moot. Another issue is maybe there should be a requirement that units be allocated to each of these parcels so we can be sure we have the infrastructure to support the buildings. So he feels the group should start with a consensus on whether 10 stories in this development is detrimental to the environment, infrastructure, fire, police, municipal services, etc. Mr. Hughes agreed that the ultimate decision is whether it is detrimental. Their position that they are vested for 10 stories is not legally justified. He disagrees on the doctrine of estoppel. That requires a change of position and an element of loss. The doctrine of estoppel does not usually apply when there was an administrative error, but that may or may not apply in Florida. We should not decide on the basis of vesting or estoppel, but on the basis of the best interests considering all the other relevant factors. Mr. Van Duzer suggested a compromise. If we can agree on permits for the two 10-ten story buildings we can allow them to go ahead. In the meantime, the attorneys for Bay Beach and the town can discuss the future of 10-story units. That will take care of the immediate situation only. Mr. Kidder suggested if we allow the two 10-story buildings and the attorneys get together, we need a tradeoff. He does not want to see the lakes filled in. They are attractive and good for the environment. Mr. Reynolds said he understood those lakes were good for drainage and the flow of groundwater. If they were required then, why would you fill them up now? He also asked Mr. Roosa about the height ordinance. Mr. Roosa said at the time of the ordinance, they didn't consider Bay Beach. It was an unwritten law that it was a separate parcel under separate rules. He doesn't think they intended to limit Bay Beach to two stories. Mr. Reynolds said if they do not have vested rights, then our ordinance would apply. Mr. Hughes said the loophole is that we repealed the setbacks for additional heights. It needs to be addressed that if there is greater height, there must be greater setbacks.

The Council and LPA took a break at 9:05 PM and reconvened at 9:16 PM.

Mr. Roosa said he had a chance at the break to talk to Mr. Humphrey. He would like to find out generally how the two bodies feel about a compromise, without taking a vote. His client would submit a full development plan for the remainder of the subdivision if the council will issue the two permits they have applied for. The LPA and council would then consider the rest of the development and review it. It would be treated as if it were a planned development, which would allow community development staff to give input. It would allow the town to have some control. Mr. Mulholland said we are giving away height on these two buildings in order to get a look at the development. He asked if we are in essence having a public hearing? He would like to involve more people from Bay Beach and the town. Mr. Van Duzer said he can go with the compromise. Mr. Hughes said he can go with the compromise too, but he wants to treat it as a planned unit development. His only caveat is that we are not providing a precedent or estopping ourselves on additional buildings. Ms. Beasley can go with compromise. Mr. Kidder can go along, but he wonders about a time frame when we will get the plan. He also wants to save the two lakes. Mr. Murphy says it is a good idea. Mr. Smith said we need to hear from the public before we take any kind of vote. Mr. Reynolds said he feels this is a vote even if we are not calling it that. We have people who look at these issues for us, and these two are being denied by them. We should have confidence in our staff and our ordinances. Mrs. Heyman said she is not sure because in the planned development that they come back

with, they will still think they are under vested rights. Mr. Roosa said you have to talk about vested rights item by item. We are most concerned about the height. She asked how many 10-stories are up now. It was clarified that there are now four, plus two under construction. Mrs. Segal-George said she is uncomfortable with this process. She suggested that it come before the council on September 14. It would give an opportunity for Mr. Roosa to work out something written and it will be on the agenda and advertised. Mayor Cereceda said there needs to be something advertised publicly. She suggested a resolution from this meeting. Ms. Smith said she feels better about seeing something in a formalized form. Mr. Roosa agreed. He will get with the attorney and have a resolution for the council to adopt on the 14<sup>th</sup>. Mr. Reynolds asked if the resolution could be changed at the meeting. Mr. Roosa said that it could. Ms. Simpson said she hopes there will be a large public turnout at the meeting on the 14<sup>th</sup>. She would be eager to see a full development plan. She looks forward to the 78% green space in the golf course and lakes.

**B MEMORANDUM DATED 7/28/98 ON SEPTIC TANKS**

Mr. Spikowski said there is one septic tank in use on Bay Beach even though Lee County says they must be disconnected. The agencies say this one is OK. In the LDC we will need to be more clear about how remaining septic tanks should be treated. We might allow some other alternative that would be environmentally safer than a septic system, but not necessarily require hooking into the sewer system at remote locations. Mr. Mulholland said that Kitty Taylor appeared before the MRTF on the 26<sup>th</sup> and answered questions and was very helpful. One of the MRTF's objectives is the water quality in the back bay. Ms. Taylor indicated they have consultants working on the problem now. Ms. Taylor said they had a meeting on Aug. 24 where the points in the memo have already been addressed. They have had the health department inspect, and there is no pollution and no DEP violations. They are in the process of modifying their water plan and are doing water quality testing. The test results are positive. The lake that feeds the large pump has been drained, cleaned and filled with riprap. They are looking at a smaller pump so a smaller amount of lake water will enter the bay at one time. Mr. Hughes says the codes are not consistent, but Mr. Spikowski said that will be fixed in the LDC. Mr. Reynolds said there other ways of containment. He doesn't see why Bay Beach cannot solve this problem simply by using some type of facility that can be emptied. Ms. Smith said she hoped this would be addressed in the development plan.

**C MEMORANDUM DATED 7/30/98 ON PALM HARBOR CLUB**

Mr. Spikowski said this is two 7-story units on Lenell. It has been denied and resubmitted. He believes this has been shown in the previous plans and would be vested. He believes it should go ahead. It is different from the 10-story issue. He believes they have a right to 44 units but they want 56 units. That would include some units from across Lenell. But he doesn't see much advantage for the town to fight this because they will just put the 12 units elsewhere. Mr. Hughes said we eliminated the setbacks with our height ordinance, so they have gotten the good part and not the bad part. Mr. Spikowski said he does not see any detrimental effect of that. We need to address what the setbacks should be, and the council will now have the chance to address that. Mr. Humphrey said they agree with the conclusions of Mr. Spikowski.

**D LETTER DATED 6/24/98 FROM SOUTH FLORIDA WATER MANAGEMENT DISTRICT**

Mrs. Segal-George said the MRTF discussed this letter at their last meeting and they have communicated with them and DEP about being plugged in and kept in the loop. She feels this one is more informational and is pretty much in hand. Mr. Mulholland agreed.

**E LETTER FROM DANIEL HAGGARTY**

Mrs. Segal-George said she will let Mr. Haggarty know about the hearing date before the council.

**V STATE'S RESPONSE TO THE COMPREHENSIVE PLAN**

Mr. Mulholland asked Mr. Spikowski to explain to the LPA the process of the items that the council added to the Comp Plan before it went to Tallahassee. Mr. Spikowski said he provided the LPA with a list. There were two problems, both having to do with existing lots and density calculations. When he ran the calculations that the LPA agreed to, if we didn't make some changes we would be divesting the rights of some people with existing duplexes. The LPA may wish to look into this on their own. He suspects they will come to the same conclusion as the council. He is aware of at least one additional subdivision that may need the same changes. Ms. Smith said she still thinks the job was well done although the comments from DCA are discouraging. But if you look at how many are major and minor, it proves what a good job was done. Mrs. Segal-George said that the discussion of the DCA response has

been set for Sept. 15 before the LPA. Tonight's discussion is for preliminary remarks from Mr. Spikowski with the idea that the LPA and council will go through it in detail later. She wanted to let everybody see it and deal with it and not get frantic about the comments before they get a chance to discuss it.

Mr. Spikowski said he will leave the detailed discussion until the LPA meeting, but he wanted to hear if anyone has a problem with the approach before they leave tonight. He assured them that we are not in trouble here. The report is discouraging, but it is only 14 pages and sometimes they are 50 or 100. DCA liked this plan and they are just trying to do their job. They have to be able to defend everything they did and didn't do. They are trying to improve the plan, but they aren't very forthcoming about what they expect. He is meeting with DCA to see what the real issues are. In every one there is a objection and a recommendation. If they have not raised an objection now, they can not ever raise it again. The recommendation is one way of dealing with it, but there are other ways. In the administrative code rule, it says that when reviewing, DCA shall consider based on the size of community. They have a fair amount of latitude. They can let some of these go, if it make sense. Some are in the statues and they can't ignore them. He has put them in categories of major and minor based on what is important to the town, not what is easy to fix. They didn't seem to like the Red Coconut plan. In the transportation level of service, they say we didn't use the normal peak information. He thinks we proved our case and he believes that issue will go away. Tonight all he needs is responses from the council that it looks like it is or is not the way to go. Mr. Reynolds asked if the comp plan will retain the 1:1 ratio with motels, and the 24' height. Mr. Spikowski said the LDC will have an equivalency factor and they will vary by area. DCA wants the plan to have guidelines rather than just deferring it until the LDC stage. He will be recommending an increase in some categories but the council will make the final decision. They chose 1:1 as an interim measure. Mr. Reynolds said he is not happy with the area from Crescent to Miramar. He said future development encourages increased density. He would like to see 6 units per acre there rather than 10. Mr. Spikowski said this does not commit us to having the buildings close to the street, but he will be encouraging that. The plan does not force it. Mr. Reynolds asked about Crescent, Santos, and the little bit along School Street and Anchorage that will go to 10 units per acre. Why should we legalize something that is already there? Mr. Spikowski said DCA is concerned about this too. It will not legalize the triplexes and quadruplexes. People think this is much more lenient than it is, but it is more lenient than you have to be. Mr. Reynolds said most people don't want them torn out, they want them upgraded. Mr. Spikowski said if they are illegal, they cannot be upgraded. Mr. Reynolds asked about the statement that most areas are going down in density. Mr. Spikowski said all areas shown in yellow on the map are now 6 units per acres and are going to 4 in the new plan. The increase will be in those few areas they just talked about . The net effect is to go down. Mr. Reynolds said some places have to pull out illegal buildings. We are not doing that. We are letting them stand. What are our plans for enforcement? The new Comp Plan seems to be making everything legal. It bothers to him to include whole streets and areas. Mr. Spikowski said we are legalizing accessory apartments in occupied homes, we are legalizing two units on Santos, and the other ones will still not be legal. Sometimes this will allow people to put a second unit in the duplex zone, but not many. They would be able to under the current rules anyway. Also from Crescent to Miramar, Mr. Reynolds said the idea is to keep buildings small, open and with lots of vegetation to keep the small town feelings. He said the overlay used to allow building out to the street from Crescent to Pearl, but they decided that was too far, so building to the street is only to Miramar. That doesn't work on the gulf side because of the coastal construction line. The Pedestrian Commercial area needs to be in a few concentrated areas. We need to work on a streetscape for Estero and that will include not just sidewalks and landscaping.

**VI PUBLIC COMMENT**

There was no public comment.

**VII ADJOURNMENT**

The meeting was adjourned 10:25 PM.

Respectfully submitted,

Peggy Salfen  
Recording Secretary

