

**FORT MYERS BEACH
TOWN COUNCIL & LPA JOINT MEETING
JUNE 17, 1997
NationsBank, Council Chambers
2523 Estero Boulevard
FORT MYERS BEACH, FLORIDA**

I CALL TO ORDER

The meeting was opened on Tuesday, June 17, 1997, at 6:30 P.M. by LPA Chairman, John Mulholland. It was determined that a quorum of members were present.

Council Members Present at the meeting: Anita T. Cereceda, Mayor; Ted FitzSimons, Vice Mayor, Ray Murphy and Rusty Isler; Marsha Segal-George, Town Manager; John Gucciardo, Deputy Town Manager, and Attorney Richard Roosa.

Excused council absence from meeting: Garr Reynolds.

LPA Members Present at the meeting: Linda Beasley, Johanna Campbell, Ron Kidder, John Mulholland, Betty Simpson, Roxie Smith and Bill Van Duzer. Also present was Town Manager and LPA Attorney Marsha Segal-George.

Excused LPA absences from meeting: Lena Heyman and Dan Hughes

II PLEDGE OF ALLEGIANCE AND INVOCATION

All assembled recited the Pledge of Allegiance to the flag and the invocation was given by John Mulholland.

John Mulholland advised all assembled that at last night's council meeting, Attorney Roosa had talked about the LPA and Sunshine. Mr. Roosa was called on to speak.

III GOVERNMENT IN SUNSHINE

Attorney Roosa stated that the first thing he wanted to point out is that there is only one Sunshine law in the state of Florida and it applies uniformly to large cities and to small towns. We must comply with the Sunshine law. It is a critical issue in defending lawsuits against enforcement of the comprehensive plan. The law is clear that any action taken after a Sunshine violation is void.

Mr. Roosa referred to recent articles in the press regarding the term "subcommittee." LPA members were assigned particular subjects to ensure that these subjects were addressed. Members met with people in the community in order to get their input and then reported back to the LPA. These efforts do not violate government Sunshine. The State Attorney's office has determined that there was no violation when the LPA assigned people to do fact finding.

An example of being subject to government in Sunshine would be if the town council delegated authority to the town manager to employ an architect. That single administrator when she acts as the council has to comply with

government in Sunshine. But when the town council directs the town attorney to prepare an ordinance, he would not be subject to government in Sunshine. His responsibility is to bring back information to the council.

IV DISCUSSION BY BILL SPIKOWSKI AND THE PLANNING CONSULTANTS

Mr. Spikowski stated that this was a midpoint discussion on their progress to date. With him tonight is Carol Cunningham and the gentleman in charge of the transportation element of the comprehensive plan.

The way the law is structured, Mr. Spikowski advised, the LPA is responsible for preparing the comprehensive plan but not for adopting it. When the plan is prepared and comes to the council for adoption, the Spikowski Associates want to know that they've worked out as many problems as they can.

Part of doing the comprehensive plan is the process itself, the activity of creating it as opposed to the result. This activity includes workshops, meeting with the LPA every two weeks and occasional council meetings. There is also the outreach efforts conducted by individual LPA members and all of the consulting team. They are doing what the town needs to do and also what the state says we have to do. The last part of the public process is the consensus building.

Another part of the comprehensive plan is the document. In the backup material tonight are three chapters (elements) covering specific subjects. There will be eleven altogether -- nine that we're required to have and two optionals. Within each element there are two distinct parts. Bill Spikowski explained the document in further detail. The state will look through the document very carefully and make sure that each and every item has been done.

By law, we have to adopt certain parts of the plan: the goals, objectives and policies, certain maps, a level of service standards, and some smaller matters.

The future land use map is probably the most important map that will be in the document. We have not prepared one yet but have been doing research for one.

Some policies in the plan must be absolute, clear and mandatory. Other policies will have to be implemented by an ordinance. Most of the policies in the plan will be general statements of what the town officials want. These policies are very important but we need to be careful that we word them in such a way that they say exactly what we want them to say, no more and no less.

When a plan is adopted, you have to follow all the mandatory parts of it. Citizens will challenge you over their view that you've misinterpreted your plan. When a case is not clear, a judge will look at the policies. Be careful on the wording so that it will be quite clear to everybody.

In other cases, we will have broad discretion in carrying out our powers of interpreting the plan, such as in rezoning cases where there is really no requirement that every allowable thing in this plan has to be allowed everywhere immediately.

What happens once the plan is adopted? Under current rules, if

somebody challenges it, it doesn't become effective until that's been resolved. Once any challenges are taken care of, we have one year to bring our land development regulations in compliance with the new plan. This is a big job, especially if we choose to change the format of that plan. Mr. Spikowski mentioned problem areas that will arise during this interim period.

Mr. Spikowski now answered questions from council members.

Rusty Isler suggested emphasizing Little Estero Island on the map because in the future it would be a nice asset. Mr. Spikowski said, definitely, and that we will have one or two categories that deal with conservation areas where human use is limited more to observation rather than building, such as the mango swamps in Little Estero Island. We will need to talk about further accretion of that land. Whatever we map, we'll try and map what's there today, but it is definitely still enlarging, and so is Bowditch.

V MOTHER-IN-LAW APARTMENTS

On Fort Myers Beach this is a major issue that pits neighbor against neighbor, Mr. Spikowski stated and really highlights some of the discrepancies between the plan and the zoning laws themselves.

We have current enforcement activities against quite a few property owners on Fort Myers Beach concerning the issue of illegal apartments. We discussed with county officials sometime back that we were looking at this situation. We ended up with having the LPA make this one of the priority land use issues that they would address through the plan, and we provided interim advice to the county as to which way we were going. In those cases where our direction was going to make things more lenient, the county would do their initial investigation and dismiss any complaints that were unfounded but not proceed to enforce them on the rest. We now need to give the county enforcement people advice again on what to do about the mother-in-law apartments: continue on a holding pattern or go forward with prosecution or something inbetween. Needed tonight from the council is if the direction the LPA and the consulting team has come up with is acceptable. We could go ahead and implement this now without waiting for full plan adoption, at least in several parts of it.

Mr. Spikowski said that in the memorandum he provided to us is a summary of the three different ways we might go about looking at the older neighborhoods where there are higher densities, and where even though they might not be consistent with today's plan, the apartments might be more acceptable. There are five exceptions under which these apartments would be legal. The first three exceptions are already in county law and we would keep all three of them.

The council asked questions of Mr. Spikowski regarding apartments that might be illegal.

The recommendation of the LPA to the council, Mr. Spikowski stated, is that apartments that meet the rules or could be adjusted to meet the rules would be legalized.

Emphasized by Mr. Spikowski is that apartments have to brought up to code.

Rusty Isler asked how expensive it would be to monitor apartments and Mr. Spikowski said that to do so would be much more expensive than what we're spending now. Not because the rules make it that way, but because the current level of enforcement compared to the problem is almost a joke. Ultimately, however, it leads to a resolution where currently illegal units now have a way to get legal in certain cases. And there is a very clear statement from the local government that in other cases there is no path. Every situation is unique.

Anita Cereceda asked if there were something that could make it definitively clear that an apartment is legal. Mr. Spikowski replied that if you have approval on an owner-occupied apartment and are on a list from the town, that will be in the public records and be very clear. Hardest to determine if legal is the multi-family unit that doesn't show up from the zoning. And the current method of calculating density is very complicated.

Ron Kidder asked about houses built between 1962 and 1964. If the owner lives there, does he have the right to one apartment? If a house was built before 1984 and is zoned multi-family, Bill Spikowski advised, the owner might have three or four perfectly legal apartments. There are five different categories to choose from.

Attorney Roosa said he didn't understand the reasoning behind changing the ordinance. Bill Spikowski advised that if an owner complied with one of the categories for multi-family use, he would be able to continue this use. The exception to that would be if the owner converts his multi-family dwelling to a single house. He would then lose his right for multi-family status after six months. If a house is rented every winter, however, that is considered continuous use.

In the case of a natural disaster, there is a policy in the plan that's very clear. It is called the build-back policy. When you rebuild, you have to meet all the new rules.

2> More items in the ordinance were discussed.

Marsha Segal-George was asked if she planned on budgeting more money for code enforcement. She advised that currently we don't have a full-time code enforcement person in our contract. Right now code enforcement is doing repetitive things for us and we are working toward making this unnecessary.

It was decided that the council and the Spikowski Associates would communicate with the enforcement people that we're considering the adoption of Item E with a cap of 400 square feet and add the language "while the owner's living in the house." We will suggest that those houses not proceed through enforcement until we finalize this regulation and make sure we go ahead with it.

Mayor Cereceda thanked Mr. Spikowski and the LPA for putting the ordinance together.

VI SPECIFIC ELEMENTS IN THE PLAN

A. COMMUNITY DESIGN

Mr. Spikowski advised that this incorporates all the work done by Wallace, Roberts & Todd in the core area master plan. It also incorporates all

the outputs of the two big community workshops we had. It will be drafted up with Carol Cunningham's work into a coherent whole. The images and drawings are by Dover, Kohl & Partners. What was found is that there is a lot more consensus about what people want this town to be like than even our fondest hopes. The question now is to what degree will this vision come about merely through inspiration, how much will take place through regulation and how much will take place through the town taking action, such as pouring concrete or making public improvements.

In the Goals, Objectives and Policies is a balanced view. It's probably a little short on the regulations, maybe a little strong on the inspiration.

Discussion:

Johanna Campbell brought up the subject of regulating the removal of valuable trees. Bill Spikowski said that Objective 3 was not the place to deal with this, but rather deals with getting more trees in the ground. The town may want to go with the kind of regulations that the county commission just adopted for Captiva Island where tree permits are required for cutting down native trees even when there's no development. Mrs. Campbell and Mr. Mulholland said that they would both like to go in that direction. Mr. Spikowski said he would put in a section dealing with this matter.

Rusty Isler questioned the advisability of giving names to the different zones and Bill Spikowski advised that the names at this point were just working titles for our own use.

Changing the name of Times Square was discussed -- most were against it.

Johanna Campbell wished to know if we could have a tram on the whole island. Would this be workable? Mr. Spikowski stated that the advisability of one was still being discussed.

Also asked by Mrs. Campbell was the legality of having water tanks buried underground. Bill said this is a different method for storing water. If your land is very valuable, you save a lot of space by having water stored underground instead of having an open lake. This is legal today but is very expensive and hard to clean.

Explained was why a porous pavement is beneficial in some cases. Water can seep into the ground instead of running off into the bay or onto someone else's property.

Betty Simpson touched on the boardwalk construction issue. Because lighting could be a factor in keeping turtles from the beach, this is still under consideration. The fact that bridges are so often destroyed in torrential rains was also mentioned.

Regarding costs, Mr. Spikowski advised that one of the mandatory elements in the plan is the capital improvements element. It addresses what we will spend our money on for the next five years. Anything we have not put aside money for will not be high on our priority list.

Mr. Spikowski noted that they tried to include a lot of graphics and drawings. There is one sketch that's from the WRT plan that shows the look for old San Carlos. To Mr. Spikowski, that one sketch gives a feel for what we are

looking for more than a dozen pages of the report. The finished document can have all the sketches in color.

Also included in the document is a part of the vision language that was passed out at the first or the second workshops.

The objectives and policies in each element are numbered separately now but ultimately they will be numbered 1-100 and fit nicely together.

There are nine required elements, but two are required to be combined. Combined will be conservation and coastal management. Also this year you have to combine traffic, ports and mass traffic. Proposed but optional is an historic preservation element. Storm water has been separated from utilities, although they could be together.

Mayor Cereceda said that the document makes your vision visual, as Victor Dover had suggested. Anybody could pick this up and look at it and have some idea of the direction the town is moving in. She thinks the format is excellent. You want to look at it. It's friendly and real.

This element will be just as binding as the future land use element; they just tried to make it the inspirational part of the plan. It could be totally combined with the land use element, but it wouldn't have the prominence in the plan that we want it to have.

The inspirational portion of the design element is set off in italics, Mr. Spikowski advised.

A short break was taken.

B. STORM WATER MANAGEMENT

Mr. Spikowski identified the engineering consultant company that worked with them on storm water management as Camp, Dresser & McKee. They don't often deal with a community that's almost totally built out. The state would like this element to be called drainage because there's a lot more to it than merely avoiding flooding. It's really an environmental element as much as anything else.

Laid out in the goals, objectives and policies is a three-year plan of action. With citizen volunteers we can map out exactly what drainage structures there are and also what used to exist but have gotten filled in. It must be determined to what degree drainage structures can be made to function better merely by regular maintenance. The third step would be to come up with a longer term plan for retrofitting the system we have and hopefully improving it in the future.

In the third year we would need to identify a source of funds to carry on this kind of program. Beyond that, most cities and towns have created a storm water utility that basically sets aside a certain amount of money just for maintaining the storm water system. There is usually a \$3.00 per month charge on the utility bill. Marsha Segal-George feels that a charge like this would be acceptable to the town as long as its purpose is clearly identified.

Asked if the Times Square project was the first time that filtration has been used in this community, Bill Spikowski responded that there had been other

applications. How have they survived the high water tables in the rainy season? Camp, Dresser & McKee were asked to look at the plans for the Times Square improvements and give their second opinion as to how well they worked. They say that their biggest concern is how close the seasonal high water table is to the bottom of these trenches. As you go to two feet or less, you reduce the effectiveness of it, because instead of going through the sand and getting cleaned, it goes directly to the ground water. This is not an ideal location for any of these techniques. If maintained, however, a lot of them have merits.

For discharges, in the order of priority putting in swales is best, the sewer system is the next best, and the beach is the worst.

Asked was if we have a line item on our tax bills now for storm water runoff. The response was no. Right now the county uses general fund money and the unincorporated MSTU money.

3> C. UTILITIES

Since we don't run our utilities like most cities do, we don't have a lot of control over it. We are required under state law to set a level of service standards. These are the standards that are in the policies. We are responsible for not issuing any building permits or development orders unless we are sure that those standards will be maintained for the new development.

Also discussed in the plan are some of the alternatives that we could get into on utilities should we choose to. Many communities end up buying the utility and running it themselves, but Bill Spikowski can't see any advantages for us to do so. More in our interest might be the ability to contract separately for solid waste hauling. Recommended for us is a very modest role on utilities.

The advisability of having a backup water system was discussed. The Regional Water Supply Authority is sponsored by Lee County and Fort Myers. There is a move afoot now to rejuvenate the organization and Cape Coral may or may not rejoin it. It exists as sort of an entity between the individual water suppliers and the Water Management District that has actually funded much of this authority. Mr. Spikowski advised that he thinks it is very worthwhile.

Asked how he would rank the utility companies on the island, Mr. Spikowski said he knew the most about the water system. Florida Cities is basically in the best situation as to well fill capacity and treatment capacity of anybody. They have staked out and have acquired easements for expanding their well field in just about the best place there is. As for the Regional Water Authority, if they ultimately cooperate, they probably in the early years will be selling water to the other utilities because they have done good planning.

Mr. Spikowski was thanked by John Mulholland for his fine presentation.

VII PROPOSED ORDINANCE FOR PROVIDING AN AMENDMENT TO SECTION 34-2174 OF THE TOWN OF FORT MYERS BEACH LAND DEVELOPMENT CODE

This amendment would prohibit the use of setbacks while increasing

height.

Rusty Isler explained that the height ordinance that is on the books at 35 feet has an exception that says if you increase your setbacks, you can go higher. He finds this too liberal and feels that it encourages people to put gulf front property closer to the gulf. Mr. Isler wants the exception to be eliminated.

Marsha Segal-George explained that Mr. Isler is suggesting just doing an interim regulation that would deal with taking away the use of setbacks in order to raise heights. If we wish to go in that direction, the LPA has to have the first hearing on it. If the LPA is willing to interrupt their vacation schedule and meet the first Tuesday in July, there would be sufficient time to advertise and hold a hearing. The proposal could then be transmitted to the council. It was determined that a quorum would be available next Tuesday, July 1.

VIII PUBLIC COMMENTS AND INQUIRIES ON THE AGENDA

None.

Mayor Cereceda advised that looking at the work that has been done says a lot for the maturity and the maturing process that the town has undergone in just one year and a half. She expressed her pride in everyone and her appreciation for the work done.

Ted FitzSimons complimented the LPA on their efforts and called it fantastic and much more prompt in delivery than he had ever anticipated.

A lot of credit, it was noted, also goes to Attorney Marsha Segal-George, Bill Spikowski and Carol Cunningham.

IX ADJOURNMENT

John Mulholland adjourned the meeting at 9:50 P.M.

Respectfully submitted,
Lorraine Calhoun
Recording Secretary