

MINUTES

COUNCIL OF THE TOWN OF FORT MYERS BEACH

WORKSHOP- MARCH 28, 1996

SUBJECT: ZONING AND DEVELOPMENT

The Special Workshop of the Council of the Town of Fort Myers Beach was called to order at 6:30 pm. at the Town Hall (Nations Bank), with the Pledge of Allegiance.

Council members present were:

Mayor: Anita Cereceda
Vice Mayor: Ted Fitzsimmons
Town Manager: Marsha Segal-George
Council Members: Ray Murphy
Garr Reynolds
Rusty Isler

Guest Speakers:

Bill Spikowski

Owner:

Spikowski Planning Association

(334-8866)

Mary Gibbs

Director of Community Development

Lee County Community Development

(335-2194)

Bill Spikowski began the meeting with an introduction to the LPA (Local Planning Agency) and the Council members on how to prepare the Town's Comprehensive Plan. Following is a topical outline. Mr. Spikowski's presentation:

Public Sector Planning does not only have to do with first-time land developing or when developing land from vacant to built-up

Once community is built up, planning options are limited:

Deteriorating buildings need replacement

Sometimes is used to force re-development through
the use of their zoning/planning regulations

Sometimes zoning is used for the opposite

Rather than intending it to change the focus of redevelopment
or how the community gets redeveloped, it's used to get rid of old uses (Term:
Non-Conforming Use)

Existing plans/uses cannot be supported anymore when

Land value increases

Converting homes into small businesses

Converting small businesses into large businesses

The opposite can happen when

Land values fall because lots are too small

Fort Myers Beach has a Historical value that needs to be considered

Fort Myers Beach's economy is dynamic

The Planning Process is an attempt to manage the above mentioned changes. The Comprehensive Plan
fits in with other regulations (starting at the far end and working towards the Comprehensive Plan)

Building Code must be adopted

Not written by the council, consultants, or the council's staff

Written by organizations of building inspectors,
contractors and material suppliers

The council basically has no choice on which of the codes it adopts
because of the strictness of the State Law

Very little discretion is involved as to how the council adopts it or what changes the council makes

There is, however, a lot of discretion on how the code is administered

Can be contracted out

Expensive

Development Regulations

Sub-Division Ordinance

how land was sub-divided

Development Standards Ordinance

Shopping Centers

Condominium Project

The council will need to adopt something along the above
whatever name you decide to call it, tailored to

lines by

Site Plans

Buffers required

Open spaces required

Depending on how the council adopts their Comprehensive Plan

Certain amounts of discretion can be delegated to the town staff.

The council can reserve that right to themselves

Can be delegated to the town's LPA

Extremely time-consuming

Looking over development applications

Even minor remodeling can cause major delays

Changing interpretations are tough on

people who are trying to design bldgs.

Example: Diamondhead Convention Center

Zoning

Every piece of property will have a zone

Zones will be established by this council

Two ways of changing zoning

Property owner wants to change his own zoning

requires hearing

Changing what you're allowed to do in a zoning category

Applies to every piece of land within that category

complex hearing process

LPA has to have a hearing and make recommendations (required by law)

Land Development Code/Regulations Hook

Zoning and Development Regulations

Combines the building code, the development ordinance and zoning

Establish your zoning ordinance

Largely governed by what you do with your comprehensive plan

Legislative capacity/broad policy

Considerable discretion

Commit to do thing in the future

Once approved, it takes effect implemented itself

(if town is prepared to)

Zoning/Development ordinance can be amended to conform with the plan Comprehensive Plan

That single document that guides what the regulations themselves look like and guides what decisions you make on re-zoning

Re-zoning must concur with your comprehensive plan or same can be challenged in court

Broadest citizen opportunity, in law, that's expensive, aggravating, you spend a lot of time defending a very minor point, because any one effective person can challenge you in court.

Cannot be avoided, but you can do your best to make your plan defensible and based on clear reasoning, clearly explained, having the implications of that being considered in the record beforehand State Law (Dept. of Community Affairs) governs and approves your plan

Having a Comprehensive Plan is mandatory

Until the state approves it, it is not effective

The state has a checklist of issues that they will push you on (i.e.. affordable housing, traffic level issues, effects on evacuation)

How to prepare your Comprehensive Plan (examples)

Sanibel (determined the total number of people that the causeway could handle and that was how much development they decided to allow and instead of spreading it uniformly across the entire island, they spread it across the island based on the ecological characteristics of the land.)

Key Biscayne (They wanted independence without any of the problems you're facing. Their main concern was a tennis facility that was being developed and they were concerned about how it would effect traffic on the island. They are not in the middle of a re-development project like Ft. Myers Beach is.)

Ft. Myers Beach will fall in the middle of the above. You'll need to do less than Sanibel but more than Key Biscayne.

What you'll need to address in your Plan (bare minimum)

Traffic

Utilities

Parks

Conservation Issues

Capital Improvements

Housing Element

Government Coordination

Work with the LPA focusing on where the County's plan falls short, getting a consensus on same
determine major conflict areas

begin getting information on data collection, inventories and mapping that have to be done

Concurrency (you can't keep issuing development or building permits if they are not already in place)

Hurricane evacuation is a major issue

Drainage issues (existing and fixing same)

The Plan must be updated every 5 years

In observation of how many cities/towns deal with development issues be clear

be absolute make the process work well contract it out if you can

QUESTION SESSION

Anita Cereceda With all the bad things we've heard, are there any bad things?

The good thing is this is the way to implement the movement behind the city. This is your best opportunity to change the shape of the community. It's designed for it.

Garr Reynolds

If the council passes a Plan that will interrupt my speculative efforts to develop my land, how can I get by that Plan?

There are recourses. They are greatly stronger than they were year ago. The Bert Harris Private Property Law sort of grandfathers in old regulations but it also effects new regulations and there are processes for them to challenge them. Some involve mediations and ways to work things without going to very expensive litigation options. If your planning process involves the public from the beginning, you'll know what the issues are and they should be taken into account then.

Garr Reynolds

The scenario I just gave you is the living one here on the island ...it's not really mine. But, is there any way that those persons who have this in mind can rush this ahead and get it by before the Plan is in place that will be beneficial to all that live on the island?

To some degree you can avoid it. This is what a "Moratorium" does. A moratorium is something you only want to do if you really know what the problem is and there's some consensus on what to do about it. The broader a moratorium is, the more hardship it causes without helping to solve the problem and the more litigation you get into over the moratorium itself rather than about what your actually trying to do.

Garr Reynolds

Let me ask you, when you say 'consensus', who are you talking about...the council?

Yes, the council. And that's important... under the State Law its the Local Planning Agency that's required to prepare the Plan for you but you just can't stand aside and let them do it all. If you're not involved, particularly in the initial stage of determining the problem areas, they could work for a year and have you reject it and that would be a terrible waste of time.

Rusty Isler

If you say that traffic is as good as you can make it, and there's very little we can do about the traffic, are we going to be able to just say we have "F" roads to try to stop redevelopment density?

What they're going to look at before they accept the fact that your roads are just terrible and you're going to live with it is have you donr everything you could with mass transit. Have you done everything you can within the right-of-way that you have to speed traffic. Have you looked at all the bottlenecks and have you done what you can with them. Have you made sure that your vacant land and redevelopment isn't going to be redeveloped at much higher densities there by making the problem worse. Have you done everything you can and show that you have, you should be OK. You can't just say you have.

Rusty Isler

On a small piece of gulf land, if you move back, if you build your building on the surf it will let you go high (than 35 feet), how did that happen? How did that particular direction get in place?

I don't know. Many of the island communities in Lee County have an absolute height limit of 35 feet, with the exception of Bonita Beach and Fort Myers Beach, going way back. Why, I don't know. What you're explaining about being near the surf, I'm not even familiar with. The State has the coastal construction line, yeah, maybe Mary will be able to explain it, but

I really can't help you with that.

Rusty Isler

I only have one more question. After a category I (minimal) hurricane, let's say a small 5 or 10 percent of the building is destroyed, what plan does the County have, or should we have, with the process of reconstruction? What's allowed? Can you update us on the setback line? Do we need a separate set of plans?

There's two parts of the approach of a big storm. One is what you do in the immediate months after and how does permitting work, and who cleans up, and what happens in the County. Lee County is very advanced on that ... the post-disaster redevelopment. But the question of what kind of development is going to be allowed after you go through the clean-up period. The Lee County rule that was adopted after tremendous outcries from beach residents who didn't like the alternatives they were presented with was that everybody can build back all the units they had. If a tall building goes down, you can build it back up as tall or taller, to get back those units, if the new rules don't let you build on the ground level or if new setbacks make you build a little closer. From a planning perspective, that's undesirable, but politically, you can challenge that...good luck.

Marsha Segal-George

I had a question about the LPA starting point with the council.

In preparation for that, the LPA and the council can look over the Fort Myers Beach Chapter of the Lee County Plan. That's not the whole thing but it is directly relevant and it tackles, not solves, all the problems. It's important that everybody reads it.

Lena Hayman

Question on the rule of 50% destruction. What's the standard rule on permitting?

That's the standard rule that's in the Federal Regulations that every county has to adopt or none of the citizens can get flood insurance. And what that says is if more than 50% of the value is destroyed, you have to build back to the current regulations. But the regulations they're talking about is basically the elevation of the first floor and structural regulations on how the building is braced. But that doesn't address how many units you can rebuild. It just says that the Federal Government is not going to keep you from doing it. The County can well state that there are certain areas the densities are going to be lower. The biggest problem, of course, is in a condominium project, you might have sixty unit owners in the building and if you can only rebuild thirty units, you can imagine dividing that up.

Lena Hayman

Also, if you don't have flood insurance, they're not going to allow FEMA to come in and help you rebuild (as Bonita was recently told).

Primarily what that is, is FEMA's new policy on repeat losses. Now it doesn't effect you, but somebody where there's been damage, if it happens again, they don't want to keep covering you over and over.

John Mulholland

Question on applications that come through that contradict the Plan. What happens then?

Often a community will say that any application that was in the pipeline will be considered under the old rules.

Mr. Hughes

Question on adoption of the Comprehensive Plan and Zoning Ordinance. Can a municipality adopt an ordinance that would modify the Lee County Plan in a specific area?

Yes. If you do that and your ordinance gets challenged in court, obviously you'd be in a much better position to defend it if you had a comprehensive plan that says this is what we're going to do. So somebody might try to challenge that in court saying, hey, you haven't done your planning yet. How that would come out is unclear. The State Law, forever, for 50 to 60 years has said that zoning has to be in accordance with the comprehensive plan (in the 1930's laws that set up zoning), but until the last ten years, the courts pretty much interpret that if your going to zone, you have to zone everybody something. They didn't mean that if you can't find something in your comprehensive plan, your going to be subject to challenge.

Mr. Hughes

Question on if there's an emergency situation or specific problem area does the council adopt the plan?

Yes. the council has to adopt it.

Betty Davis-Simpson

Question on concurrency with regards to the traffic concern.

The concurrency law that's written applies to every permit, everybody, everything, remodeling, fix-up stuff. You can have two levels of concurrency: one for concurrency and one that might trigger something lesser than stopping development.

Johanna Campbell

Question on local CRA Committee Master Plan -Time Square Area - can it be incorporated into the Comprehensive Plan.

Sure. Absolutely. Not only you can incorporate but there's a part of that plan is a series changes to the zoning regulations for the main business area and there's really no reason why the council couldn't go ahead and adopt that in the very near future. There's no need to wait for this whole planning process. It's been thought through, it's been through the community process, it's been polished, it's a finished product that's ready to adopt and I would hope that you'd go through with it. It would be good for everybody, I think.

Johanna Campbell

New idea ... dividing and zoning certain areas of beach by "performance zoning"

Performance Zoning is a concept that instead of saying you can do certain things in one zone and not in another, it's a subjective which says you can do any use as long as it doesn't create a certain amount of traffic, and a certain amount of light. and that doesn't effect it's neighbors. It's a more experimental approach and harder to administer.

Johanna Campbell

LPA Traffic expert needed to have to prove traffic issue?

You would really have to.

Lena Hayman

Where to get the Land Development Code?

The Dept. of Community Affairs will reprint what you need in your comprehensive plan. They'll send it to you either in paper form or on a disk.

Mr. Van Duser

Plan approval? Which Plan?

You will get a handout (effective November, '94).

Mr. Van Duser

Timeline when plan approved?

Department of Community Affairs intercedes with this procedure/works with the County.

Mr. Van Duser

Rewriting/Amending plan? Make variances on plan? If adopted plan and want to change/amend?

You cannot make a variance to the plan. However, you can amend it up to twice a year (the council can amend it).

Johanna Campbell

Beach Plan?

Copies from Marsha.

Lena Hayman

Plan/Charter?

Unbound copies from Marsha

MARY GIBBS

DIRECTOR OF COMMUNITY DEVELOPMENT

Answers to Randy Isler's questions:

If you setback into the coastal area, could you increase the height?

The height limits were developed before Bill or I were in place. You can go higher, but you'd have to put your building kind of into the middle of your property.

Category I, minor hurricane, what would happen with permitting?

Don't confuse the build-back policy with the 50% destruction rule. You can still get the density you had before it was destroyed. There are all kinds different plans, depending on how severe the storm is. There's an expedited process where there are on-site inspections and relying on what is already on file for the particular property.

ZONING (Land Developing Code Book)

Types of Process

1) Rezoning (different use)

a) Residential

b) Commercial

c) Industrial

d) Institutional

2) Variances

Hardship unique to property not commonly occurring

3) Special Exemptions

Procedures of Zoning

1) Application to Dept. of Community Development

2) Review by DOCD staff generates written report recommendations

3) Hearing Examiner(similar to LPA functions)is a formal legal procedure 4) Notification to the public

- staff/public cross-examination at hearings
- applicant cannot approach town council to discuss application

5) Final Decision of Hearing Examiner to County Commissioner

- can be approved
 - can be denied (must have findings of fact to do this)
 - can be approved with conditions (must be related to the impacts)

6) Second public hearing

QUESTION SESSION

John Mulholland

50% of destruction question?

It's based on the appraised value of the property.

Anita Cereceda

LPA operate under Sunshine Law? Can they discuss with the council?

The answer to that is probably no. You should not be discussing zoning cases outside of a public hearing. It's really your attorney's call.

Lena Hayman

Question on Sunshine Law? Who can converse with who?

With regards to how an LPA member or council member will VOTE on a issue, there should be no one-on-one discussion.

Ted Fitzsimmons

Question on changing existing Charter, Comprehensive Plan/LDC. Docs this complicate the county process?

We did just adopt a revision to the LDC I/III they were mostly housekeeping changes that I don't think will effect Ft. Myers Beach. However, if you think of adopting the CRA or the more and more you change things, the more complicated it will get.

Ted Fitzsimmons

Question on CRA overlay adoption? Is it rezoning?

A large one. LPA hearing process. LPA to public and council.

Ted Fitzsimons

WRT?

If you have either or, you might not get the plan as good as you want it.

Garr Reynolds

Question regarding the Times Square Area CRA project. Declaring/eliminating residential to commercial and commercial to residential.

You don't need to rezone the Times Square area to CPD.

Ted Fitzsimmons

Mentioned the 4 major categories.

Garr Reynolds

Mentioned the master overlay plan/marketing concept.

(Mary was unsure she understood the question. Her answer was to look at the comp plan to address issues/problems)

Garr Reynolds

Question on the Sunshine Law situation. Inquiries with attorney/development managers. Contract with the council?

I'd be very careful. You need to know if their going to be talking about rezoning, don't discuss it. You should really try to stay away from that.

Mr. Hughes

Question on Appellate Procedure. Petitioners Option before LPA and town council or file law suit? What's the procedure?

Everything is on record.

Mr. Hughes

Will we need a court reporter/transcript at hearings?

It's not a state requirement to have one. They're very expensive. To meet the law you can have a clerk of the courts or a tape recorder.

Anita Cereceda

Question to Marsha on LPA member meetings.

Marsha Segal-George

(Indecision among the LPA members and council. Marsha will call each member to arrange for future meeting dates.)

Ted Fitzsimmons to Betty

Homework assignments to LPA members

Betty to Ted Fitzsimons

Permitting guide will be sent to council.

Ted Fitzsimons

Beach Plan? Comprehensive Plan? Corporate Area Master Plan?

Lena to Marsha

Feasibility Studies

Rusty Isler

LPA phone Address list to Council and Council list to LPA members.

Ray Murphy

Do we want to address Marsha's Employment Agreement?

Anita Cereceda

Sure. Lets take a short break.

Meeting Break: 8:20 p.m.

Meeting Re adjourned: 8:30 p.m.

Marsha Segal-George excused from this portion of the meeting.

DISCUSSION ON EMPLOYMENT AGREEMENT FOR MARSHA SEGAL-GEORGE

Copies handed out to each town council member.

Ray Murphy read each item of agreement:

Item #1: Salary

Concerns and Questions

Anita Cereceda: \$3,000 a month vrs. \$300 a month?

Typo...it should read \$3,000 a month.

Garr Reynolds: A B Computation?

Anita Cereceda: Separate Figure

Ted Fitzsimons: Est. \$36,000 year of service for \$8,000

If Option B is unnecessary, revert back to Option A

Item #2: Vacation & Sick Leave

Concerns and Questions

(None)

Item #3: Health Insurance

Concerns and Questions

Ted Fitzsimons: Is it possible to translate the benefits into dollars?

We could. I have a rough idea what the benefits would cost.

Ted Fitzsimons: Legal Cities Involvement

Yes. They could help.

Item #4: Life Insurance

Concerns and Questions

(None)

Item #5: Retirement

Concerns and Questions

(None)

Item #6: Professional Dues & Subscriptions

Concerns and Questions

(None)

Item #7: Outside Employment Activities

Concerns and Questions

(None)

Item #8: Car Allowance

Concerns and Questions

Garr Reynolds: Regular vs. Occasional Allowance

As stated in agreement

Item #9: Severance

Concerns and Questions

Garr Reynolds: Add clause as to with/without cause

clarification

Will discuss with attorney on how to include same.

Item #10: Term of Employment

Concerns and Questions

Ted Fitzsimons: Add "Adjustment" concern clause

Will add Item #11: Moving & Living

Concerns and Questions

Garr Reynolds: "X" Completely

Ted Fitzsimons: How large corporations offer

Garr Reynolds: This is offered let know before hire

Rusty Isler: Did Ray and Marsha work on this together

Open Discussion On Employment Agreement:

Rusty Isler: Between Option A or B? Attorney required at workshop LPA meetings

Anita Cereceda and Garr Reynolds debated as to whether it's a "legal" decision vs. town council decision.

Rusty Isler: Sunshine Law concern.

Ray Murphy: Will check on "legal" requirements as opposed to "desired"

Anita Cereceda and Rusty Isler: Research conflict of interest concern

Garr Reynolds: Voting on Employment Contract?

Rusty Isler: His opinion was geared towards Option A

Ted Fitzsimons: Packing Uncosted Items (agrees w/ Rusty)

Anita Cereceda: Don Dean for insurance Florida Legal Cities

Rusty Isler: Husband transfer. Benefits interrupted?
Suggested sharing cost time limit concern

Ray Murphy: Suggested capping benefits, or, agreed w/
sharing cost

Anita Cereceda: Obtain more information

Garr Reynolds: Favored Option A

Ted Fitzsimons: "Interim" town manager

Garr Reynolds: Salary beyond what promised to pay

Entry as opposed to advanced

High Requirement

M&L (x-out)

Need figures for benefits

Life insurance change w/ increases?

Anita Cereceda: Bare Bones Government statement

In agreement w/ contract

Rusty Isler: Bill Mills Salary Survey

Garr Reynolds: Before accepted it should be complete

Rusty Isler: Motion to accept Contract

Ray Murphy: Second motion

Anita Cereceda: Amend motion to vote on annual salary. Option A.

W/ amendments to other options

Ray Murphy: Response to discussion. With minor adjustments to possibility the benefits item, he suggested to accept the contract as is, with salary Option A.

Anita Cereceda: All in favor (Murphy, Cereceda, Fitzsimons, Isler)

Anita Cereceda: Opposed (Reynolds)

Meeting adjourned at 9:30 p.m.